

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2133

S.P. 789

In Senate, February 26, 2002

**An Act to Implement the Recommendations of the Workers'
Compensation Board Governance Study.**

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Pamela L. Cahill".

PAMELA L. CAHILL
Secretary of the Senate

Presented by Senator EDMONDS of Cumberland. (GOVERNOR'S BILL).
Cosponsored by Representative BUNKER of Kossuth Township and
Senator TURNER of Cumberland, Representative: TREADWELL of Carmel.

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

Sec. 1. 2 MRSA §6, sub-§1, as amended by PL 1997, c. 643, Pt. Q, §1 and 2001, c. 354, §3, is further amended to read:

1. Range 91. The salaries of the following state officials and employees are within salary range 91:

Commissioner of Transportation;

Commissioner of Conservation;

Commissioner of Administrative and Financial Services;

Commissioner of Education;

Commissioner of Environmental Protection;

Commissioner of Human Services;

Commissioner of Behavioral and Developmental Services;

Commissioner of Public Safety;

Commissioner of Professional and Financial Regulation;

Commissioner of Labor;

Commissioner of Agriculture, Food and Rural Resources;

Commissioner of Inland Fisheries and Wildlife;

Commissioner of Marine Resources;

Commissioner of Corrections;

Commissioner of Economic and Community Development; and

Commissioner of Defense, Veterans and Emergency Management; and

Executive Director of the Workers' Compensation Agency.

Sec. 2. 2 MRSA §6-E, as amended by PL 1999, c. 354, §1, is further amended to read:

§6-E. Salaries of certain employees of the Workers' Compensation Agency

2 Notwithstanding any other provision of law, the salaries of
the following employees of the Workers' Compensation Board Agency
4 are established by the Executive Director of the Workers'
Compensation Board Agency and must be within the salary ranges
6 indicated in this section.

8 ~~1. --- Executive --- director. --- The --- salary --- of --- the --- executive
director --- is --- within --- salary --- range --- 91.~~

10 2. **General counsel.** The salary of the general counsel is
12 within salary range 86.

14 3. **Deputy general counsel.** The salary of the deputy
general counsel is within salary range 85.

16 4. **Assistants to the general counsel.** The salary of the
18 assistants to the general counsel is within salary range 82.

20 5. **Deputy directors.** The salary of the deputy directors is
within the following salary ranges:

22 A. Deputy Director of Medical/Rehabilitation Services,
24 Range 85;

26 B. Deputy Director of Business Services, Range 85; and

28 C. Deputy Director of Benefits Administration, Range 85.

30 6. **Hearing officers.** The salary of the hearing officers is
within salary range 90.

32 7. **Mediators.** The salary of the mediators is within salary
34 range 80.

36 **Sec. 3. 3 MRSA §522-B**, as amended by PL 1991, c. 885, Pt. D,
§2, is further amended to read:

38 **§522-B. Workers' Compensation Agency budget review**

40 The joint standing committee of the Legislature having
42 jurisdiction over labor matters shall review the budget of the
Workers' Compensation Board Agency and submit its recommendations
44 in a written report to the joint standing committee of the
Legislature having jurisdiction over appropriations and financial
46 affairs not later than 60 days after reference of the current
services budget legislation and any supplemental budget
48 legislation to the joint standing committee having jurisdiction
over appropriations and financial affairs.

2 **Sec. 4. 3 MRSA §959, sub-§1, ¶I**, as amended by PL 1997, c. 683,
Pt. D, §1, is further amended to read:

4 I. The joint standing committee of the Legislature having
6 jurisdiction over labor matters shall use the following list
as a guideline for scheduling reviews:

8 (1) Maine State Retirement System in 1997;

10 (2) Department of Labor in 1999;

12 (3) Maine Labor Relations Board in 2001; and

14 (4) Workers' Compensation Board in 2001 and the
Workers' Compensation Agency starting in 2011.

16 **Sec. 5. 4 MRSA §807, sub-§3, ¶G**, as amended by PL 1995, c.
18 419, §1, is further amended to read:

20 G. A person who is not an attorney, but is representing a
22 party in any hearing, action or proceeding before the
Workers' Compensation Board Agency as provided in Title
24 39-A, section 317;

26 **Sec. 6. 4 MRSA §1353, sub-§6**, as amended by PL 1991, c. 885,
Pt. E, §5 and affected by §47, is further amended to read:

28 **6. Reduction.** The disability retirement allowance must be
30 reduced if a disability beneficiary is receiving or has received
payments for the same disability under the workers' compensation
32 law, or similar law, except for amounts that may be paid or
payable under former Title 39, section 56 or 56-A or Title 39-A,
34 section 212, subsection 2 or 3.

36 The total of the allowance, not including adjustments under
section 1358 and the payment described in the preceding
38 paragraph, may not exceed 80% of the beneficiary's average final
compensation. The disability retirement allowance may in no event
40 be reduced below the actuarial equivalent of the beneficiary's
accumulated contributions at the time of retirement.

42 If the disability beneficiary has received a lump-sum settlement
44 of workers' compensation benefits, any portion of that settlement
not attributable to vocational rehabilitation, attorneys' fees or
46 medical expenses must reduce the disability retirement allowance
in the same manner and amount as monthly workers' compensation
48 benefits. The reduction must be prorated on a monthly basis in
an equitable manner prescribed by the board.

2 If amounts paid or payable under workers' compensation or the
3 amount of the lump-sum settlement or its attribution are in
4 dispute, those disputes must be settled by ~~a single member of~~ the
5 Workers' Compensation Board Agency as provided under Title 39-A.
6 Determinations of the ~~commissioner~~ agency may be appealed in the
7 manner provided by Title 39-A, section 322.

8 **Sec. 7. 5 MRSA §958**, as enacted by PL 1993, c. 145, §2, is
9 amended to read:

10

§958. Workers' Compensation Agency

11

12 **1. Major policy-influencing positions.** The following
13 positions are major policy-influencing positions within the
14 Workers' Compensation Board Agency. Notwithstanding any other
15 provision of law, these positions and their successor positions
16 are subject to this chapter:

17

A. Executive director;

18

B. General counsel; and

19

C. Deputy directors.

20

21 **Sec. 8. 5 MRSA §1833, first ¶**, as amended by PL 1991, c. 885,
22 Pt. D, §2, is further amended to read:

23 The Workers' Compensation Management Fund is established to
24 provide for any expenses related to the resolution of workers'
25 compensation claims including: records and information
26 management; investigation; medical review; representation;
27 rehabilitation; payment of compensation; appropriate medical
28 expenses and other payments required by the Workers' Compensation
29 Board Agency; the settlement of cases; and other necessary
30 expenses.

31

32 **Sec. 9. 5 MRSA §9051, sub-§1**, as amended by PL 1991, c. 885,
33 Pt. D, §2, is further amended to read:

34 **1. Adjudicatory proceeding.** In any adjudicatory
35 proceedings, except those proceedings involving correctional
36 facilities, ~~the Workers' Compensation Board~~ or the State Parole
37 Board, the procedures of this subchapter shall apply. However,
38 in proceedings arising under Title 39-A, in the event of any
39 conflict with this subchapter, the applicable provisions of Title
40 39-A and rules adopted under that title by the Workers'
41 Compensation Board.

42

43 **Sec. 10. 5 MRSA §12004-G, sub-§35**, as enacted by PL 1991, c.
44 885, Pt. A, §5 and affected by §§9 to 11, is amended to read:

45

2	35.	Workers' Com-	Lest-wages	39-A MRSA
	Workers'	pensation	up-to	§151
4	Compensation	Board	\$100 per	<u>§151-C</u>
			<u>diem</u> ; ex-	
6			penses	

8 **Sec. 11. 5 MRSA §17906, sub-§2, ¶E**, as amended by PL 1991, c.
 10 885, Pt. E, §10 and affected by §47, is further amended to read:

12 E. Any dispute about amounts paid or payable under workers'
 14 compensation, or about the amount of the lump-sum settlement
 16 and its attributions must be determined on petition, by -a
~~single-member-of~~ the Workers' Compensation Board Agency, in
 accordance with Title 39-A. These determinations may be
 appealed under Title 39-A, section 322.

18 **Sec. 12. 5 MRSA §17930, sub-§4, ¶E**, as amended by PL 1991, c.
 20 885, Pt. E, §11 and affected by §47, is further amended to read:

22 E. Any dispute about amounts paid or payable under workers'
 24 compensation or the amount of the lump-sum settlement and
 26 its attributions must be determined on petition by a-~~single~~
~~member--of~~ the Workers' Compensation Board Agency in
 accordance with Title 39-A. These determinations may be
 appealed under Title 39-A, section 322.

28 **Sec. 13. 5 MRSA §18506, sub-§2, ¶E**, as amended by PL 1991, c.
 30 885, Pt. E, §14 and affected by §47, is further amended to read:

32 E. Any dispute about amounts paid or payable under workers'
 34 compensation or about the amount of the lump-sum settlement
 36 and its attributions must be determined, on petition, by -a
~~single-member-of~~ the Workers' Compensation Board Agency, in
 accordance with Title 39-A. These determinations may be
 appealed under Title 39-A, section 322.

38 **Sec. 14. 5 MRSA §18530, sub-§4, ¶E**, as amended by PL 1991, c.
 40 885, Pt. E, §15 and affected by §47, is further amended to read:

42 E. Any dispute about amounts paid or payable under workers'
 44 compensation or the amount of the lump-sum settlement and
 46 its attributions must be determined on petition by a-~~single~~
~~member--of~~ the Workers' Compensation Board Agency in
 accordance with Title 39-A. These determinations may be
 appealed under Title 39-A, section 322.

2 **Sec. 15. 17 MRSA §3964**, as amended by PL 1991, c. 885, Pt. E,
§18 and affected by §47, is further amended to read:

4
6 **§3964. Settlements or releases from injured persons**

8 Except as provided in this section, no settlement or general
release or statement either oral, in writing, or electronically
10 recorded made by any person confined in a hospital or sanitarium
as a patient with reference to any personal injuries for which
12 that person is confined in that hospital or sanitarium is
admissible in evidence, used or referred to in any manner at the
14 trial of any action to recover damages for personal injuries or
consequential damages, so called, resulting therefrom, which
16 statement, settlement or general release was obtained within 30
days after the injuries were sustained and such settlement or
18 release is null and void. This section does not apply to
statements or releases obtained by police officers or inspectors
20 of motor vehicles in the performance of their duty, members of
the family of that person or by or on behalf of that person's
22 attorney. This section does not apply to agreements entered into
pursuant to former Title 39 and approved by the former Workers'
24 Compensation Commission or Title 39-A and approved by the
Workers' Compensation Board or Workers' Compensation Agency.

26 **Sec. 16. 19-A MRSA §2154, sub-§9**, as enacted by PL 1997, c.
537, §39 and affected by §62, is amended to read:

28
30 **9. Access to information.** The Department of Labor, the
Workers' Compensation ~~Board~~ Agency and the State Tax Assessor may
32 have access to the information reported to the department for
purposes of program administration.

34 **Sec. 17. 19-A MRSA §2360-A**, as enacted by PL 1997, c. 654,
§1, is amended to read:

36 **§2360-A. Lump-sum settlement; workers' compensation claims**

38
40 On a monthly basis, the department shall notify the Workers'
Compensation ~~Board~~ Agency, referred to in this section as the
42 "~~board agency~~," of the names and social security numbers of all
persons who owe the department child support debts that have been
44 liquidated by judicial or administrative action. Before
approving any lump-sum settlement, the ~~board~~ agency shall
46 determine whether the person receiving the settlement is on the
list of persons who owe to the department child support debts
48 that have been liquidated by judicial or administrative action.
If the person is on the list, the ~~board~~ agency shall notify the
50 department of the pending settlement and inform the person of the
notification to the department.

2 **Sec. 18. 24-A MRSA §2384-B, sub-§2, ¶C**, as enacted by PL 1991,
c. 885, Pt. B, §12 and affected by §13, is amended to read:

4
6 C. Information concerning former Workers' Compensation
Commission and Workers' Compensation Board or Workers'
8 Compensation Agency proceedings, including:

10 (1) For each informal conference, mediation and
arbitration, the date, commissioner, hearing officer,
12 mediator or arbitrator for the proceeding, involvement
of attorney or other designated representative and the
14 resolution; and

16 (2) For each hearing, the date, commissioner, hearing
officer, involvement of attorney or other designated
18 representative and the decision of the commissioner or
the hearing officer. If a disputed claim results in
20 multiple hearing dates, the decision must be reported
for the last hearing date; and

22 **Sec. 19. 24-A MRSA §2384-B, sub-§4**, as enacted by PL 1991, c.
885, Pt. B, §12 and affected by §13, is amended to read:

24
26 **4. Other data collection systems.** The statistical advisory
organization may rely on data collected and reported by other
28 data gathering organizations or agencies, such as the Workers'
Compensation Board Agency or the Department of Labor. If the
30 statistical advisory organization is to incorporate data from
other sources, it must satisfy itself that the data is
32 sufficiently complete and accurate for the purposes for which it
is to be used. The Workers' Compensation Board Agency and the
34 Department of Labor shall assist the statistical advisory
organization in the development and maintenance of a
36 comprehensive data base by recording and making available
information within the custody and control of each, respectively,
pursuant to the request of the statistical advisory organization.

38
40 **Sec. 20. 24-A MRSA §2384-B, sub-§10**, as amended by PL 1995, c.
462, Pt. B, §5, is further amended to read:

42 **10. Claims covered.** This section applies to all claims
occurring on or after January 1, 1989 and prior to January 1,
44 1993 and to all death, permanent total and major permanent
partial claims occurring between January 1, 1987 and December 31,
46 1988; and to a reasonable sample, as approved by the
superintendent, of all other indemnity claims occurring between
48 January 1, 1987 and December 31, 1988. The superintendent may
suspend the reporting requirements of specific items for periods

2 when information that is to be obtained from the Workers'
Compensation Board Agency is temporarily unavailable.

4 **Sec. 21. 24-A MRSA §2384-C, sub-§2, ¶C**, as enacted by PL 1993,
c. 610, §2, is amended to read:

6 C. Information concerning Workers' Compensation Board
8 Agency proceedings, including:

10 (1) For each mediation and arbitration, the date,
hearing officer, mediator or arbitrator for the
12 proceeding and the resolution; and

14 (2) For each hearing, the date, hearing officer and
the decision of the hearing officer. If a disputed
16 claim results in multiple hearing dates, the decision
must be reported for the last hearing date; and

18 **Sec. 22. 24-A MRSA §2384-C, sub-§4**, as enacted by PL 1993, c.
20 610, §2, is amended to read:

22 **4. Other data collection systems.** The statistical
organizations may rely on data collected and reported by other
24 data-gathering organizations or agencies, such as the Workers'
Compensation Board Agency or the Department of Labor, and shall
26 coordinate with any other statutorily created medical data
collection systems. If a statistical organization is to
28 incorporate data from other sources, it must satisfy itself that
the data is sufficiently complete and accurate for the purpose
30 for which it is to be used. The Workers' Compensation Board
Agency and the Department of Labor shall assist the statistical
32 organizations in the development and maintenance of a
comprehensive data base by recording and making available
34 information within the custody and control of each, respectively,
pursuant to the request of the statistical organization. The
36 superintendent may suspend the reporting requirements of specific
items for periods when information that is to be obtained from
38 the Workers' Compensation Board Agency is temporarily unavailable
or information is found to be unreliable and the unreliability is
40 not a result of the reporting practices of the carriers or
self-insurers. The superintendent may accept an established data
42 collection mechanism that is substantially in compliance with the
data elements specified in this section and otherwise meets the
44 requirements of this section.

46 **Sec. 23. 24-A MRSA §2809-A, sub-§11, ¶G**, as amended by PL
1991, c. 885, Pt. E, §30 and affected by §47, is further amended
48 to read:

2 G. Coverage provided under this section may be terminated
sooner than provided under paragraph F if:

4 (1) The member or employee fails to make timely
6 payment of a required premium amount;

8 (2) The member or employee becomes eligible for
coverage under another group policy; or

10 (3) The Workers' Compensation Board Agency determines
12 that the injury or disease that entitles the employee
to continue coverage under this section is not
14 compensable under Title 39-A.

16 **Sec. 24. 24-A MRSA §3706, sub-§2**, as amended by PL 1991, c.
885, Pt. D, §2, is further amended to read:

18 **2. Statistical and actuarial data.** The company ~~must~~ shall
20 compile and maintain statistical and actuarial data related to
the determination of proper premium rate levels, the incidence of
22 work-related injuries, costs related to those injuries and any
other data that the company considers desirable. The company
24 ~~must~~ shall provide this data to the Superintendent of Insurance,
the ~~Chair~~ Executive Director of the Workers' Compensation Board
Agency and the Department of Labor annually and upon request.

26 **Sec. 25. 24-A MRSA §4449, last ¶**, as amended by PL 1991, c.
28 885, Pt. D, §2, is further amended to read:

30 This section does not authorize a stay of proceedings before
the Workers' Compensation Board Agency, or of proceedings in
32 Superior Court to enforce orders of the Workers' Compensation
Board Agency. A stay of workers' compensation proceedings before
34 the Workers' Compensation Board Agency or the Superior Court may
be granted if otherwise authorized by law, ~~provided-that~~ as long
36 as good cause for a stay exists and ~~that~~ reasonable diligence was
exhibited by the insurer, the employer, the association and their
38 counsel to proceed with the proceeding prior to the insolvency.

40 **Sec. 26. 26 MRSA §631**, as amended by PL 1999, c. 235, §1, is
42 further amended to read:

44 **§631. Employee right to review personnel file**

46 The employer shall, upon written request from an employee or
former employee, provide the employee, former employee or duly
authorized representative with an opportunity to review and copy
48 the employee's personnel file if the employer has a personnel
file for that employee. The reviews and copying must take place
50 at the location where the personnel files are maintained and

2 during normal office hours unless, at the employer's discretion,
3 a more convenient time and location for the employee are
4 arranged. The cost of copying is paid by the person requesting
5 the copy. For the purpose of this section, a personnel file
6 includes, but is not limited to, any formal or informal employee
7 evaluations and reports relating to the employee's character,
8 credit, work habits, compensation and benefits and nonprivileged
9 medical records or nurses' station notes relating to the employee
10 that the employer has in the employer's possession. Records in a
11 personnel file may be maintained in any form including paper,
12 microfiche or electronic form. The employer shall take adequate
13 steps to ensure the integrity and confidentiality of these
14 records. An employer maintaining records in a form other than
15 paper shall have available to the employee, former employee or
16 duly authorized representative the equipment necessary to review
17 and copy the personnel file. Any employer who, following a
18 request pursuant to this section, without good cause fails to
19 provide an opportunity for review and copying of a personnel
20 file, within 10 days of receipt of that request, is subject to a
21 civil forfeiture of \$25 for each day that a failure continues.
22 The total forfeiture may not exceed \$500. An employee, former
23 employee or the Department of Labor may bring an action in the
24 District Court or the Superior Court for such equitable relief,
25 including an injunction, as the court may consider to be
26 necessary and proper. The employer may also be required to
27 reimburse the employee, former employee or the Department of
28 Labor for costs of suit including a reasonable attorney's fee if
29 the employee or the department receives a judgment in the
30 employee's or department's favor, respectively. For the purposes
31 of this section, the term "nonprivileged medical records or
32 nurses' station notes" means all those materials that have not
33 been found to be protected from discovery or disclosure in the
34 course of civil litigation under the Maine Rules of Civil
35 Procedure, Rule 26, the Maine Rules of Evidence, Article V or
36 similar rules adopted by the Workers' Compensation Board Agency
or other administrative tribunals.

38 **Sec. 27. 26 MRSA §1401-B, sub-§6**, as enacted by PL 1997, c.
39 393, Pt. A, §30 and amended by c. 526, §14, is further amended to
40 read:

42 **6. Monitor employee leasing industry.** The commissioner
43 shall coordinate the efforts of the State to ensure that the
44 employee leasing industry is developing in a manner that provides
45 the greatest benefit to Maine employers while minimizing the
46 financial risk to those employers and to the leased employees.
47 The commissioner shall meet at least annually with
48 representatives of the Bureau of Insurance, the Bureau of Revenue
49 Services, the Department of Economic and Community Development,
50 the Workers' Compensation Board Agency and the Bureau of Labor

Standards within the Department of Labor. This group shall develop written material for employers and new businesses that are considering using an employee leasing firm. The material must provide guidance for employers on what questions to ask to minimize their own financial risk and that of their employees. The material must also include instructions on how to obtain public information on employee leasing companies, such as information required for registration purposes. The commissioner shall meet with the state officials listed in this subsection on at least an annual basis to review the status of the employee leasing industry and update the written materials as needed.

Sec. 28. 39-A MRSA §102, sub-§1, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

1. After-tax average weekly wage. "After-tax average weekly wage" means average weekly wage, as defined in subsection 4, reduced by the prorated weekly amount that would have been paid under the Federal Insurance Contributions Act, 26 United States Code, Sections 3101 to 3126, state income tax and federal income tax calculated on an annual basis, using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. Effective January 1, 1993 and each January 1st thereafter, the applicable federal and state laws in effect on the preceding July 1st are used in determining the after-tax weekly wage. Each December 1st the board ~~agency~~ shall publish tables of the average weekly wage and 80% of after-tax average weekly wage that will take effect on the following January 1st. These tables are conclusive for the purpose of converting an average weekly wage into 80% of after-tax average weekly wage.

Sec. 29. 39-A MRSA §102, sub-§1-A is enacted to read:

1-A. Agency. "Agency" means the Workers' Compensation Agency created by section 151-B and includes a designee of the agency.

Sec. 30. 39-A MRSA §102, sub-§5, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

5. Board; board member. "Board" means the Workers' Compensation Board created by section ~~151~~ 151-C and includes a designee of the board. "Board member" means any member of the board, including the chair.

Sec. 31. 39-A MRSA §102, sub-§7, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

2 period. A child is not deemed to have ceased to be a
3 student during any interim between school years if the
4 interim does not exceed 5 months and if the dependent
5 shows to the satisfaction of the board agency that the
6 dependent has a bona fide intention of continuing to
7 pursue a full-time course of education or training
8 during the semester or other enrollment period
9 immediately following the interim or during periods of
10 reasonable duration during which, in the judgment of
11 the board agency, the dependent is prevented by factors
12 beyond the dependent's control from pursuing the
13 dependent's education. A child is not deemed to be a
14 student under this Act during a period of service in
the Armed Forces of the United States.

16 **Sec. 33. 39-A MRSA §102, sub-§11, ¶A**, as amended by PL 1999,
17 c. 364, §1, is further amended by amending sub-¶(4) and (5) to
18 read:

20 ~~(4) Except for persons engaged in harvesting of forest~~
21 ~~products,--any~~ Any person, other than a person engaged
22 in harvesting of forest products, who, in a written
23 statement to the board executive director, waives all
24 the benefits and privileges provided by the workers'
25 compensation laws, ~~provided that as long as the board~~
26 executive director has found that person to be a bona
27 fide owner of at least 20% of the outstanding voting
28 stock of the corporation by which that person is
29 employed or a shareholder of the professional
30 corporation by which that person is employed and that
31 this waiver was not a prerequisite condition to
32 employment. For the purposes of this subparagraph, the
33 term "professional corporation" has the same meaning as
34 found in Title 13, section 703, subsection 1.

36 Any person may revoke or rescind that person's waiver
37 upon 30 days' written notice to the board executive
38 director and that person's employer. The parent,
39 spouse or child of a person who has made a waiver under
40 the previous ~~sentenee~~ paragraph may state, in writing,
41 that the parent, spouse or child waives all the
42 benefits and privileges provided by the workers'
43 compensation laws if the board executive director finds
44 that the waiver is not a prerequisite condition to
45 employment and if the parent, spouse or child is
46 employed by the same corporation that employs the
47 person who has made the first waiver;

48 ~~(5) Except for persons engaged in harvesting of forest~~
49 ~~products,--the~~ The parent, spouse or child of a sole

2 proprietor who is employed by that sole proprietor, or
3 the parent, spouse or child of a partner who is
4 employed by the partnership of that partner may-state,
5 who states in writing, that the parent, spouse or child
6 waives all the benefits and privileges provided by the
7 workers' compensation laws if the board executive
8 director finds that the waiver is not a prerequisite
9 condition to employment. This subparagraph does not
10 apply to persons engaged in harvesting of forest
11 products;

12 **Sec. 34. 39-A MRSA §102, sub-§11, ¶B,** as enacted by PL 1991,
13 c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

14 B. "Employee" includes, if the person elects to be
15 personally covered by this Title, any person who regularly
16 operates a business or practices a trade, profession or
17 occupation, whether individually or in partnership or
18 association with other persons, whether or not the person
19 hires employees. Such a person shall elect personal
20 coverage by insuring and keeping insured the payment of
21 compensation and other benefits under a workers'
22 compensation insurance policy. The insurance policy must
23 clearly indicate the intention of the parties to provide
24 coverage for the person electing to be personally covered.
25 The insurance company shall file with the board agency
26 notice, in such form as the board agency approves, of the
27 issuance of any workers' compensation policy to a person
28 electing personal coverage. That insurance may not be
29 cancelled within the time limited in that policy for its
30 expiration until at least 30 days after mailing a notice of
31 the cancellation of that insurance to the board agency and
32 the person electing personal coverage. In the event that
33 the person electing personal coverage has obtained a
34 workers' compensation insurance policy from another
35 insurance company, and that insurance becomes effective
36 prior to the expiration of the 30 days, cancellation is
37 effective as of the effective date of the other insurance.
38 The Superintendent of Insurance is authorized to review for
39 approval, at the superintendent's discretion, an appropriate
40 classification for this class of persons and a reasonable
41 rate.

42 **Sec. 35. 39-A MRSA §102, sub-§12-B** is enacted to read:

43 12-B. Executive director. "Executive director" means the
44 Executive Director of the Workers' Compensation Agency appointed
45 pursuant to section 152-A and includes a designee of the
46 executive director.

2 **Sec. 36. 39-A MRSA §102, sub-§13**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

4
6 **13. Independent contractor.** "Independent contractor" means
8 a person who performs services for another under contract, but
10 who is not under the essential control or superintendence of the
other person while performing those services. In determining
whether such a relationship exists, the ~~board~~ agency shall
consider the following factors:

12 A. Whether or not a contract exists for the person to
perform a certain piece or kind of work at a fixed price;

14 B. Whether or not the person employs assistants with the
16 right to supervise their activities;

18 C. Whether or not the person has an obligation to furnish
any necessary tools, supplies and materials;

20 D. Whether or not the person has the right to control the
22 progress of the work, except as to final results;

24 E. Whether or not the work is part of the regular business
of the employer;

26 F. Whether or not the person's business or occupation is
28 typically of an independent nature;

30 G. The amount of time for which the person is employed; and

32 H. The method of payment, whether by time or by job.

34 In applying these factors, the ~~board~~ agency may not give any
particular factor a greater weight than any other factor, nor may
36 the existence or absence of any one factor be decisive. The
~~board~~ agency shall consider the totality of the relationship in
38 determining whether an employer exercises essential control or
superintendence of the person.

40 **Sec. 37. 39-A MRSA §105**, as amended by PL 1993, c. 120, §1
42 and affected by §6, is further amended to read:

44 **§105. Predetermination of independent contractor status**

46 **1. Predetermination permitted.** A worker, an employer or a
workers' compensation insurance carrier, or any together, may
48 apply to the ~~board~~ executive director for a predetermination of
whether the status of an individual worker, group of workers or a

2 job classification associated with the employer is that of an
employee or an independent contractor.

4 A. The predetermination by the board executive director
6 creates a rebuttable presumption that the determination is
correct in any later claim for benefits under this Act.

8 B. Nothing in this section requires a worker, an employer
10 or a workers' compensation insurance carrier to request
predetermination.

12 **2. Premium adjustment.** If it is determined that a
14 predetermination does not withstand board agency or judicial
scrutiny when raised in a subsequent workers' compensation claim,
16 then, depending on the final outcome of that subsequent
proceeding, either the workers' compensation insurance carrier
shall return excess premium collected or the employer shall remit
18 premium subsequently due in order to put the parties in the same
position as if the final outcome under the contested claim were
20 predetermined correctly.

22 **3. Predetermination submission.** A party may submit, on
forms approved by the board executive director, a request for
24 predetermination regarding the status of a person or job
description as an employee or independent contractor. The status
26 requested by a party is deemed to have been approved if the board
does not deny or take other appropriate action on the submission
28 within 14 days.

30 **4. Hearing.** ~~A hearing, if requested by a party within 10~~
~~days of the board's decision on a petition, must be conducted~~
32 ~~under the Maine Administrative Procedure Act. A party may file a~~
request for hearing with the executive director within 10 days
34 after receiving notice of the executive director's decision on a
petition. The executive director shall set the matter for
36 hearing, which must be conducted under the Maine Administrative
Procedure Act.

38 **5. Certificate.** The board executive director shall provide
40 the petitioning party a certified copy of the decision regarding
predetermination that is to be used as evidence at a later
42 hearing on benefits.

44 **6. Rulemaking.** The board is authorized to adopt reasonable
rules pursuant to the Maine Administrative Procedure Act to
46 implement the intent of this section, which is to afford speedy
and equitable predetermination of employee and independent
48 contractor status.

2 **Sec. 38. 39-A MRSA §106**, as amended by PL 1995, c. 694, Pt.
D, §63 and affected by Pt. E, §2, is further amended to read:

4 **§106. Invalidity of waiver of rights; claims not assignable**

6 No ~~An~~ agreement by an employee, ~~unless approved by the board~~
~~or by the Commissioner of Labor,~~ to waive the employee's rights
8 to compensation under this Act is not valid unless approved by
the agency or the Commissioner or Labor. ~~No-claims~~ A claim for
10 compensation under this Act is not assignable or subject to
12 attachment or liable in any way for debt, except for the
14 enforcement of a current support obligation or support arrears
pursuant to Title 19-A, chapter 65, subchapter II, article 3 or
16 Title 19-A, chapter 65, subchapter III, or for reimbursement of
general assistance pursuant to Title 22, section 4318.

18 **Sec. 39. 39-A MRSA §107, last ¶**, as enacted by PL 1991, c. 885,
Pt. A, §8 and affected by §§9 to 11, is amended to read:

20 If the employer recovers from a 3rd person damages in excess
22 of the compensation and benefits paid or for which the employer
has become liable, then any excess must be paid to the injured
24 employee, less a proportionate share of the expenses and cost of
actions or collection, including reasonable attorney's fees.
26 Settlement of any such subrogation claims and the distribution of
the proceeds therefrom must have the approval of the court in
28 which the subrogation action is pending or to which it is
returnable; or if not in suit, of the ~~board~~ executive director.
30 When the court in which the subrogation action is pending or to
which it is returnable is in vacation, the judge of the court,
32 or, if the action is pending in or returnable to the Superior
Court, any Justice of the Superior Court has the power to approve
34 the settlement of the action and the distribution of the proceeds
therefrom. The beneficiary is entitled to reasonable notice and
36 the opportunity to be present in person or by counsel at the
approval proceeding and to request a hearing pursuant to section
38 315 if the beneficiary disputes a decision of the executive
director.

40 **Sec. 40. 39-A MRSA §109**, as enacted by PL 1991, c. 885, Pt.
A, §8 and affected by §§9 to 11, is amended to read:

42 **§109. Compilation of claims information**

44 A person or entity may not compile for the purpose of
46 distribution and sale listings of employee names and information
regarding their claims with the ~~board~~ agency. Any person or
48 entity found by the board to have violated this section is
subject to the remedy provision of the Maine Human Rights Act,
50 Title 5, sections 4613 and 4614.

2 **Sec. 41. 39-A MRSA §110, sub-§1**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

4
6 **1. Permitted options.** Subject to the limitation of
subsection 2, the board agency shall recognize as valid and
8 binding a provision in a collective bargaining agreement between
an employer and a recognized bargaining agent establishing any of
the following:

10 A. Alternative dispute resolution systems that may include,
12 but are not limited to, mediation or binding arbitration or
the use of mediation and binding arbitration;

14 B. Preferred provider systems for the delivery of health
16 care services or treatment;

18 C. The use of a designated or limited list of independent
20 medical examiners;

22 D. Light-duty, modified job or return-to-work programs;

24 E. Vocational rehabilitation or retraining programs; or

26 F. A 24-hour coverage program.

28 **Sec. 42. 39-A MRSA §111**, as enacted by PL 1991, c. 885, Pt.
A, §8 and affected by §§9 to 11, is amended to read:

30 **§111. Alternative programs**

32 After consultation with the Superintendent of Insurance, the
34 board executive director may approve an agreement entered into
between an employer and some or all of the employer's employees
36 to secure the payment of compensation and benefits through an
alternative program that is different from but not less than the
38 compensation and benefits provided by this Act. The alternative
program may not be approved by the board executive director
40 unless it provides for compensation and benefits in addition to
those required by this Act and unless it is for a fixed period of
time.

42
44 **Sec. 43. 39-A MRSA §113, sub-§§3 and 4**, as enacted by PL 1995,
c. 70, §1, are amended to read:

46 **3. Certificate of compliance.** A certificate from a duly
48 authorized official of the workers' compensation board agency or
similar department or agency of the other state certifying that
an employer is insured in that other state and has provided
50 extraterritorial coverage insuring the employer's employees while

2 working within this State is prima facie evidence that the
3 employer carries such compensation insurance.

4 **4. Reciprocal agreements.** The board agency may enter into
5 reciprocal agreements with workers' compensation agencies of
6 other states adopting legislation similar to this section to
7 ensure efficient administration of the Act.

8
9 **Sec. 44. 39-A MRSA c. 3,** is amended by repealing the chapter
10 headnote and enacting in its place the following:

11 **CHAPTER 3**

12 **WORKERS' COMPENSATION AGENCY**

13
14 **Sec. 45. 39-A MRSA §151,** as enacted by PL 1991, c. 885, Pt.
15 A, §8 and affected by §§9 to 11, is repealed.

16
17 **Sec. 46. 39-A MRSA §151-A,** as enacted by PL 1997, c. 486,
18 §1, is amended to read:

19 **§151-A. Mission statement**

20
21 The board's agency's mission is to serve the employees and
22 employers of the State fairly and expeditiously by ensuring
23 compliance with the workers' compensation laws, ensuring the
24 prompt delivery of benefits legally due, promoting the prevention
25 of disputes, utilizing dispute resolution to reduce litigation
26 and facilitating labor-management cooperation.

27
28 **Sec. 47. 39-A MRSA §§151-B and 151-C** are enacted to read:

29 **§151-B. Workers' Compensation Agency**

30
31 **1. Agency established.** The Workers' Compensation Agency is
32 established as an agency to be governed and administered in
33 accordance with the provisions of this chapter and other
34 applicable provisions of state law.

35
36 **2. Headquarters; regional offices.** The agency must have its
37 central office in the Augusta area, and the executive director
38 may choose to establish additional regional offices, subject to
39 the approval of the board.

40
41 **3. Seal.** The agency may adopt a seal.

42
43 **§151-C. Workers' Compensation Board**

2 The board is the governing body of the agency and has
3 general policy-making and oversight responsibilities for the
4 implementation of this Act.

6 1. Board established. Pursuant to Title 5, section 12004-G,
7 subsection 35, the Workers' Compensation Board is established as
8 an independent board composed of 9 members, subject to review by
9 the joint standing committee of the Legislature having
10 jurisdiction over state and local government matters and
11 confirmation by the Legislature. Notwithstanding the scheduling
12 provisions of Title 3, chapter 6, the designated committee shall
13 complete its review of an appointment of the Governor within 15
14 days of the Governor's written notice of appointment and the vote
15 of the Legislature must be taken no later than 7 days after the
16 vote of the designated committee.

18 Three members of the board must be representatives of the public,
19 3 members of the board must be representatives of management and
20 3 members of the board must be representatives of labor. All
21 management representatives must be appointed from a list provided
22 by the Maine Chamber of Commerce and Industry or another bona
23 fide organization or association of employers. All labor
24 representatives must be from a list provided by the Executive
25 Board of the Maine AFL-CIO or another bona fide labor
26 organization or association of employees representing at least
27 10% of the Maine workforce. Any list submitted to the Governor
28 must have at least 4 times as many names as there are vacancies
29 for the group represented by the vacancies. A person nominated
30 for consideration as a management or labor representative may not
31 subsequently be appointed as a public member of the board, and a
32 public member of the board may not subsequently be nominated for
33 consideration as a management or labor representative.

34 A member of the board is not liable in a civil action for any act
35 performed in good faith in the execution of duties as a board
36 member.

38 A member of the board may not be a lobbyist required to be
39 registered with the Secretary of State, a service provider to the
40 workers' compensation system or a representative of a service
41 provider to the workers' compensation system.

42 Members of the board hold office for staggered terms of 4 years,
43 except for members appointed to fill unexpired terms. The term
44 of one member representing each constituency expires February 1st
45 of each year that is not a gubernatorial election year. A member
46 may not serve for more than 2 full terms.

48 2. Removal. A board member holds office for the term
49 provided under this section, unless removed, and until a
50

2 successor is appointed and qualified. A board member must be
3 sworn and may be removed by the Governor for inefficiency,
4 willful neglect of duty or malfeasance in office, but only with
5 the review and concurrence of the joint standing committee of the
6 Legislature having jurisdiction over state and local government
7 matters upon hearing in executive session or by impeachment.
8 Before removing a board member, the Governor shall notify the
9 President of the Senate and the Speaker of the House of
10 Representatives of the removal and the reasons for the removal.

11 3. Vacancies. If a vacancy occurs during a term of a
12 member, the Governor shall appoint a replacement to fill the
13 unexpired part of the term. The replacement must be from the
14 group represented by the member being replaced. In case the
15 office of chair becomes vacant, the public member who has served
16 for the longest period of time shall act as chair until the board
17 elects a replacement.

18 4. Chair. The board shall annually elect one of its members
19 to serve as chair for a one-year term expiring February 1st. The
20 chair may vote on all matters before the board.

21 5. Meetings. The board may hold sessions at the central
22 office of the agency or at any other place within the State. A
23 quorum of the board is 5 members but a smaller number may adjourn
24 from time to time until a quorum is present. Except as otherwise
25 provided, the board may take action by a majority vote of those
26 members present and voting but only if a quorum is present at the
27 time of the action.

28 6. Compensation. A board member must be paid a per diem
29 allowance as provided in Title 5, chapter 379 and be reimbursed
30 for actual, necessary, cash expenses while on official business
31 of the board.

32 7. Leave of absence. An employer may not terminate the
33 employment of an employee who is appointed as a member of the
34 board because of the exercise by the employee of duties required
35 as a board member. The member is entitled to a leave of absence
36 from employment for the period of time required to perform the
37 duties of a board member. During the leave of absence, the
38 member may not be subjected to loss of time, vacation time or
39 benefits of employment, excluding salary.

40 8. Seal. The board must have a seal bearing the words
41 "Workers' Compensation Board of Maine."

42 **Sec. 48. 39-A MRSA §152, as amended by PL 1997, c. 486, §2,**
43 **is repealed.**

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Sec. 49. 39-A MRSA §152-A is enacted to read:

§152-A. Powers, duties and administration of agency

1. Executive director. The Governor shall appoint an executive director who shall serve as the chief executive and administrative officer of the agency and shall consult with the board on an ongoing basis.

A. The Governor shall consult with the board before making the appointment of the executive director pursuant to this subsection. The appointment is subject to review by the joint standing committee of the Legislature having jurisdiction over state and local government matters and to confirmation by the Legislature.

B. The executive director holds office for a 5-year term and may be reappointed. An executive director whose term has expired continues to serve until a successor has been appointed and confirmed. The Governor shall fill any vacancy by appointment for the unexpired portion of the term.

C. Notwithstanding Title 5, section 931, subsection 2, the executive director is removable for cause by impeachment or by address of the Governor to both Houses of the Legislature.

D. The executive director has all the powers necessary to carry out the executive director's functions under the law, including the power to enter into contracts on behalf of the agency.

E. Except as otherwise provided, the executive director shall hire personnel as necessary to administer this Act, subject to the Civil Service Law.

F. The executive director, in consultation with the board, shall appoint deputy directors in charge of the bureaus and divisions of the agency. These deputy directors are unclassified employees, serve at the pleasure of the executive director and are not subject to the Civil Service Law.

G. The executive director shall administer the agency's budget. The executive director shall allocate the agency's resources prudently and achieve administrative and staff efficiencies wherever possible. The executive director shall develop a technology plan in conjunction with the Department of Administrative and Financial Services so as to maximize the use of technology for the purpose of collecting and analyzing data on the workers' compensation system.

2 Subject to review and approval by the board, the executive
3 director shall submit the biennial budget in accordance with
4 Title 5, sections 1665 and 1666 and shall submit the annual
5 budget in accordance with Title 5, section 1667.

6 H. The executive director shall prepare and submit complete
7 reports, including duly audited and certified financial
8 reports, to be distributed in the same manner as state
9 departmental reports.

10 **2. Delegation of authority.** The board and the executive
11 director may delegate powers and duties as necessary. Any
12 official action of an employee of the agency or a designee of the
13 board or the executive director is an official act of the agency.

14 **3. Agency counsel; staff attorney.** The executive director
15 shall appoint a general counsel, who is the legal adviser to the
16 agency and who shall perform other duties assigned by the agency,
17 and assistants to the general counsel as necessary. The general
18 counsel and assistants to the general counsel are unclassified
19 employees, serve at the pleasure of the executive director and
20 are not subject to the Civil Service Law. The executive director
21 shall appoint a staff attorney to advise the advocates pursuant
22 to section 153-A. The staff attorney is subject to the Civil
23 Service Law and works under the direction of the general counsel.

24 **4. Employment of and contracts with mediators.** The
25 executive director shall obtain the services of persons qualified
26 by background and training to serve as mediators. In the
27 exercise of the executive director's discretion, the services of
28 mediators may be obtained by either of the following methods:

29 A. The executive director may contract for the services of
30 mediators. If the executive director contracts directly
31 with individual mediators, they must be paid reasonable per
32 diem fees for their services plus reimbursement of their
33 actual, necessary and reasonable expenses incurred in the
34 performance of their duties, consistent with policies
35 established by the agency; or

36 B. The executive director may employ mediators who are not
37 subject to the Civil Service Law to serve at the pleasure of
38 the executive director. They are entitled to receive
39 reimbursement of their actual, necessary and reasonable
40 expenses incurred in the performance of their duties,
41 consistent with policies established by the agency.

42 **5. Hearing officers.** The executive director shall obtain
43 the services of persons qualified by background and training to
44 serve as hearing officers, who shall conduct all adjudicatory
45 proceedings.

2 hearings arising under section 315, all proceedings ancillary to
3 such hearings except as otherwise provided in this Title and any
4 other adjudicatory proceedings of the agency as assigned at the
5 discretion of the executive director. The services of hearing
6 officers may be obtained by either of the following methods:

7 A. The executive director may contract for the services of
8 hearing officers. If the executive director contracts
9 directly with individual hearing officers, they must be paid
10 reasonable per diem fees for their services plus
11 reimbursement of their actual, necessary and reasonable
12 expenses incurred in the performance of their duties,
13 consistent with policies established by the agency; or

14 B. The executive director may appoint hearing officers to
15 serve for 3-year terms. Hearing officers appointed pursuant
16 to this paragraph are not subject to the Civil Service Law,
17 are subject to removal by the executive director for good
18 cause shown and may be appointed for additional 3-year terms
19 at the pleasure of the executive director.

20 6. Adjudicatory proceedings. Except as otherwise expressly
21 provided, all adjudicatory proceedings arising under this Title
22 must be conducted under the Maine Administrative Procedure Act.
23 In proceedings assigned to hearing officers pursuant to
24 subsection 5, the hearing officer has full decision-making
25 authority on behalf of the agency, subject to judicial review as
26 provided by law and board review under section 320 if
27 applicable. In all other proceedings, the executive director or
28 the executive director's designee shall preside and is empowered
29 to take final agency action unless rules adopted by the agency
30 provide otherwise or one of the following alternative procedures
31 is adopted in advance of the hearing with adequate notice to the
32 parties:

33 A. At the board's initiative or by referral from the
34 executive director, the board or a subcommittee or member
35 designated by the board presides over the hearing and takes
36 final agency action;

37 B. At the board's initiative or by referral from the
38 executive director, a hearing officer or the executive
39 director or another designee of the board presides over the
40 hearing and submits proposed findings to the board pursuant
41 to Title 5, section 9062. The board takes final agency
42 action; or

43 C. A hearing officer or other designee of the executive
44 director presides over the hearing and submits proposed
45 findings to the executive director pursuant to Title 5.
46

2 section 9062. The executive director takes final agency
3 action.

4 7. Rules. The board shall adopt rules on behalf of the
5 agency to accomplish the purposes of this Act. Rules adopted
6 under this section may define terms, prescribe forms and make
7 suitable orders of procedure to ensure the speedy, efficient,
8 just and inexpensive disposition of all proceedings under this
9 Act. The executive director shall develop rule-making proposals
10 for consideration by the board, provide additional assistance as
11 the board requests and preside over rule-making hearings except
12 when the board otherwise directs.

13 8. Privacy protection. The board shall adopt rules
14 establishing a policy and procedures to safeguard the
15 confidentiality of the records of the agency and board and the
16 former Workers' Compensation Commission pertaining to individual
17 injured employees. The policy must provide for the availability
18 of records on a need-to-know basis only and must allow for
19 legitimate research while protecting individual confidentiality.

20 9. Conflict of interest. Each member of the board and each
21 employee, contractor, agent or other representative of the agency
22 is an executive employee for purposes of Title 5, section 18 and
23 is subject to the limitations of that section. In addition,
24 Title 17, section 3104 is applicable, in accordance with its
25 provisions, to all such representatives of the agency.

26 10. Accepting gifts, grants or donations. The board or the
27 executive director may accept gifts, grants or donations for the
28 use of the agency as provided by rules adopted by the board under
29 this section.

30 11. Case administration. The board shall assume an active
31 and forceful role in the administration of this Act to ensure
32 that the system operates efficiently and with maximum benefit to
33 both employers and employees. The board shall provide for the
34 continual oversight of individual cases to ensure that benefits
35 are provided in accordance with this Act.

36 12. Recommending legislative change. The board shall
37 consider and recommend to the Legislature changes in this Act.
38 Recommended changes must be forwarded to the Legislature annually
39 on or before December 1st.

40 13. Advisory committees. The board and the executive
41 director may appoint advisory committees as they determine
42 necessary to assist the agency in matters that arise under this
43 Act. Advisory committee members are not entitled to compensation
44 under this Act.

2 but may be reimbursed for travel and reasonable expenses as
3 determined by the executive director.

4 14. Reimbursement. The agency shall impose reasonable
5 charges for reimbursement for the provision of services,
6 facilities and materials, including, but not limited to,
7 reproduction and distribution of forms, reports and publications;
8 photocopying; and the use of facilities.

10 15. Rulemaking. Rules adopted pursuant to this section are
11 routine technical rules as defined in Title 5, chapter 375,
12 subchapter II-A.

14 **Sec. 50. 39-A MRSA §153,** as amended by PL 1999, c. 354, §2,
15 is further amended to read:

16 **§153. Agency actions**

18 In addition to other actions required of or permitted the
19 board under this Act, the board agency shall perform the actions
20 required by this section to ensure just and efficient
21 administration of claims.
22

24 **1. Monitor payments.** The board agency shall monitor cases
25 to ensure that:

26 A. Payments are initiated within the time limits
27 established in section 205; and

30 B. Payments to the employee provide the full amount of
31 compensation to which the employee is entitled and are
32 properly indicated on the memorandum of payment.

34 **2. Troubleshooter program.** The board agency shall
35 establish a troubleshooter program to provide information and
36 assistance to participants in the workers' compensation system.
37 The A troubleshooter may meet or otherwise communicate with
38 employees, employers, insurance carriers and health care
39 providers in order to prevent or informally resolve disputes.
40

42 **3. Construction.** In interpreting this Act, the board
43 agency and reviewing courts shall construe it so as to ensure the
44 efficient delivery of compensation to injured employees at a
45 reasonable cost to employers. All workers' compensation cases
46 must be decided on their merits and the rule of liberal
47 construction does not apply. Accordingly, this Act is not to be
48 given a construction in favor of the employee, nor are the rights
49 and interests of the employer to be favored over those of the
50 employee.

2 **4. Information.** The board agency shall require the
employee, employer or insurer to provide it with any information
4 it reasonably determines necessary to monitor cases, including,
but not limited to, preinjury and postinjury wage statements.

6 **5. Abuse investigation unit.** The board agency shall
provide adequate funding for an abuse investigation unit.

8 A. The board executive director shall, subject to the Civil
10 Service Law, appoint at least 2 abuse investigators who must
be qualified by experience and training to perform their
12 duties.

14 B. The unit shall, at the direction of the board executive
director, investigate all complaints or allegations of
16 fraud, illegal or improper conduct or violation of this Act
or rules of the board agency relating to workers'
18 compensation insurance, benefits or programs, including
those acts by employers, employees or insurers. All records,
20 correspondence and reports of investigation in connection
with actual or alleged fraud, illegal or improper conduct or
22 violation of this Act or rules of the board agency and all
records, correspondence and reports of criminal prosecution
24 or civil action are confidential. The confidential nature
of any such record, correspondence or report does not limit
26 or affect the use of those materials in any prosecution or
action.

28 C. Each employer or employee and each state, county,
30 municipal or quasi-governmental agency shall cooperate fully
with the unit and provide any information requested by it.

32 D. The unit shall report all its findings to the board
34 executive director.

36 E. Whenever the executive director or the board determines
that a fraud, attempted fraud or violation of this Act or
38 rules of the board agency may have occurred, the board
executive director shall report in writing all information
40 concerning it to the Attorney General or the Attorney
General's delegate for appropriate action, including which
42 may include a civil action for recovery of funds and
criminal prosecution by the Attorney General.

44 **6. Mediation.** The board agency shall establish a mediation
46 program to provide mediation services to parties to workers'
compensation cases.

48 **7. Investigation.** The board executive director may, when
50 the interests of any of the parties or when the administration of

2 this Act demands, appoint a person to make a full investigation
3 of the circumstances surrounding any industrial injury or any
4 matter connected to an industrial injury, or conduct an audit
5 pursuant to section 359 and report the same without delay to the
6 board executive director.

7 **8. Impairment guidelines.** The following provisions apply
8 regarding impairment guidelines.

10 A. In order to reduce litigation and establish more
11 certainty and uniformity in the rating of permanent
12 impairment, the board shall establish by rule a schedule for
13 determining the existence and degree of permanent impairment
14 based upon medically or scientifically demonstrable
15 findings. The schedule must be based on generally accepted
16 medical standards for determining impairment and may
17 incorporate all or part of any one or more generally
18 accepted schedules used for that purpose, such as the
19 American Medical Association's "Guides to the Evaluation of
20 Permanent Impairment." Pending the adoption of a permanent
21 schedule, "Guides to the Evaluation of Permanent
22 Impairment," 3rd edition, copyright 1990, by the American
23 Medical Association, is the temporary schedule and must be
24 used for the purposes of this subsection.

26 B. The board agency shall collect and analyze data from
27 Maine cases, studies from other states and generally
28 accepted medical guidelines for occupational impairment ~~to~~
29 so that the board may examine the feasibility and
30 desirability of establishing an objectively ascertainable
31 functional capacity standard to be used for determining
32 eligibility for benefits under this Act consistent with
33 section 213, subsection 2.

34 **9. Audit and enforcement.** The executive director shall
35 establish an audit, enforcement and monitoring program by July 1,
36 1998, to ensure that all obligations under this Act are met,
37 including the requirements of section 359. The functions of the
38 audit and enforcement program include, but are not limited to,
39 auditing timeliness of payments and claims handling practices of
40 insurers, self-insurers and 3rd-party administrators; determining
41 whether insurers, self-insurers and 3rd-party administrators are
42 unreasonably contesting claims; and ensuring that all reporting
43 requirements to the board agency are met. The program must be
44 coordinated with the abuse investigation unit established by
45 ~~section--153,~~ subsection 5 as appropriate. The program must
46 monitor activity and conduct audits pursuant to a schedule
47 developed by the deputy director of benefits administration.
48 Audit working papers are confidential and may not be disclosed to
49 any person outside of the board agency except the audited
50

entity. For purposes of this subsection "audit working papers" means all documentary and other information acquired, prepared or maintained by the ~~board~~ agency during the conduct of an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and draft reports or any portion of a draft report. The final audit report, including the underlying reconciled information, is not confidential. At the end of each calendar quarter, the executive director shall prepare a compliance report summarizing the results of the audits and reviews conducted pursuant to this subsection. The executive director shall submit the quarterly compliance reports to the board, the Bureau of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor. An annual summary must be provided to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year. The quarterly compliance reports and the annual summaries must be made available to the public following distribution.

Sec. 51. 39-A MRSA §153-A, as amended by PL 1999, c. 410, §1, is further amended to read:

§153-A. Advocate program

1. Advocate program established. The ~~board~~ executive director shall establish an advocate program to provide assistance to qualified employees who proceed to mediation and formal hearing.

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

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

A. The minimum qualifications for employment as an advocate must include at least the following:

- (1) A 6-year combination of appropriate experience, education and training in advocacy or dispute resolution;

- 2 (2) Knowledge of administrative, adjudicatory or
workers' compensation laws, rules and procedures;
- 4 (3) Knowledge of legal documents, court procedures and
rules of evidence; and
- 6 (4) Knowledge of medical and legal terminology and
8 practices with respect to workers' compensation.

10 B. The ~~board~~ executive director shall ensure that advocates
12 receive appropriate and ongoing education and training.

14 C. An advocate may not represent before the ~~board~~ agency
any insurer, self-insurer or 3rd-party administrator for a
16 period of 2 years after terminating employment with the
~~board~~ agency.

18 **4. Duties of advocates.** Advocates have the following duties:

20 A. Assisting qualified employees in matters regarding
workers' compensation claims, including negotiations;

22 B. Acting as an information resource to qualified employees
24 on laws, decisions, rules, policies and procedures of the
~~board~~ agency;

26 C. Assisting and advocating on behalf of qualified
28 employees to obtain appropriate rehabilitation, return to
work and employment security services;

30 D. Meeting with or otherwise communicating with insurers,
32 employers and health care and other authorized providers in
order to assist qualified employees;

34 E. Assisting and advocating on behalf of qualified
36 employees in any mediation or hearing proceeding under the
jurisdiction of the ~~board~~ agency; and

38 F. Maintaining confidentiality of information and
40 communications with respect to the assistance and
representation provided to qualified employees.

42 **5. Legal advice to advocates.** The ~~board's~~ agency's general
44 counsel shall assign a staff attorney as necessary to advise
46 advocates on the preparation of qualified employees' cases at the
formal hearing stage.

48 **6. Case management authority of advocates.** An advocate has
the authority to:

50

2 A. Manage and prioritize the advocate's caseload to
efficiently move cases through the ~~board~~ agency mediation
and hearing process and to achieve resolution;

4
6 B. With the written approval of the staff attorney, decline
cases or cease assistance to an employee when the advocate
after investigation finds:

8
10 (1) Timely notice of the injury was not given by the
employee to the employer, pursuant to this Act;

12 (2) The statute of limitations has expired;

14 (3) The employee's case is based on an argument or
issue adversely determined by the Supreme Judicial
16 Court;

18 (4) The employee's case is based on a claim of
discrimination governed by section 353;

20 (5) There is no record of medical assessment stating
22 that the employee's injury was either caused by,
aggravated by or precipitated by the employee's work
24 or, when the issue is aggravation, there is no record
of medical assessment stating that the employee's work
26 aggravated a preexisting condition in a significant
manner; or

28 (6) The employee has admitted to a fraudulent act, has
30 been convicted of a fraudulent act by a court of
competent jurisdiction or has been found to have
32 committed a fraudulent act by the abuse investigation
unit of the ~~board~~ agency; and

34
36 C. With the written approval of the staff attorney, present
lump-sum settlements on cases pursuant to section 352.

38 A qualified employee whose case is declined or whose advocate
assistance ceases pursuant to this subsection may appeal the
40 action to the executive director ~~of the board~~, within 30 days of
the action. The executive director's ruling on the appeal is
42 final and is not subject to judicial review. If the executive
director finds assistance by an advocate should resume, the
44 employee must be assigned to an advocate other than the advocate
who declined the case or ceased assistance.

46
48 **7. Rulemaking.** In addition to the ~~case--management~~
~~authority--established~~ reasons specified in subsection 6, the
board may establish by rule additional reasons for which the
50 advocates may decline or cease assistance on cases. Rules

2 adopted pursuant to this section are routine technical rules as
defined in Title 5, chapter 375, subchapter II-A.

4 **Sec. 52. 39-A MRSA §154**, as amended by PL 2001, c. 393, §1,
is further amended to read:

6
8 **§154. Dedicated fund; assessment on workers' compensation
insurers and self-insurers**

10 The Workers' Compensation ~~Board~~ Agency Administrative Fund
12 is established to accomplish the purposes of this Act. All
income generated pursuant to this section must be recorded on the
14 books of the State in a separate account and deposited with the
Treasurer of State and be credited to the Workers' Compensation
~~Board~~ Agency Administrative Fund.

16
18 **1. Use of fund.** All money credited to the Workers'
Compensation ~~Board~~ Agency Administrative Fund must be used to
20 support the activities of the ~~board~~ agency through duly approved
expenditures within the agency's budget and for no other
22 purpose. Any balance remaining continues from year to year as a
fund available for the purposes set out in this section and for
no other purpose.

24
26 **2. Expenditures.** Expenditures from the Workers'
Compensation ~~Board~~ Agency Administrative Fund are subject to
28 legislative approval and allocation in the same manner as
appropriations are made from the General Fund. The State
30 Controller shall authorize expenditures from the Worker's
Compensation Agency Administrative Fund upon the basis of
32 allotments recommended by the State Budget Officer and approved
by the Governor that do not exceed the legislatively approved
34 allocations of the Workers' Compensation Agency Administrative
Fund and not on any other basis. The joint standing committee of
36 the Legislature having jurisdiction over appropriations and
financial affairs shall approve the allocation.

38 **3. Assessment on workers' compensation insurance.** The
following provisions apply regarding the Workers' Compensation
40 ~~Board~~ Agency assessment on workers' compensation insurance.

42 A. Every insurance company ~~ex--association~~ that writes
44 workers' compensation insurance in the State and that does
business or collects premiums or assessments in the State,
46 ~~including---newly---licensed---insurance---companies---and~~
associations and every self-insured employer approved
48 pursuant to section 403, shall pay to the ~~board~~ agency the
assessment determined pursuant to this section for the
50 purpose of providing partial support and maintenance of the
~~board~~ agency. An insurance company or self-insurer whose

2 authority terminates remains responsible for the assessment
3 that is due in the year following the termination of its
4 certificate of authority.

6 B. The assessment must be stated ~~as a percentage of each~~
7 ~~employer's premium base~~ a dollar amount determined by the
8 executive director in accordance with subsection 5. In
9 determining the assessment percentage level, consideration
10 must be given to the balance in the Workers' Compensation
11 Board Agency Administrative Fund.

12 ~~B-1. An employer's premium base for assessment purposes is~~
13 ~~defined as payroll times the filed manual rate applicable to~~
14 ~~the employer times the employer's current experience~~
15 ~~modification factor, if applicable. The calculation may not~~
16 ~~include any deductible credit, other than credits for the~~
17 ~~\$1,000 and \$5,000 indemnity deductibles and the \$250 and~~
18 ~~\$500 medical deductibles established pursuant to Title 24-A,~~
19 ~~sections 2385 and 2385-A. For policies written using~~
20 ~~retrospective rating, the premium base must be calculated in~~
21 ~~accordance with this paragraph regardless of the actual~~
22 ~~retrospective premium calculation.~~

24 ~~The employer's premium base is subject to the final audit~~
25 ~~requirements of the Bureau of Insurance Rule, Chapter 470.~~
26 ~~If the audit results in a change in premium base, the amount~~
27 ~~of the assessment must be adjusted accordingly.~~

28
29 ~~C. For each fiscal year, the initial assessment percentage~~
30 ~~must be determined by the board by May 1st of the prior~~
31 ~~fiscal year. Insurance companies or associations must begin~~
32 ~~collecting the initial assessment from all employers on July~~
33 ~~1st of each year. In establishing the assessment~~
34 ~~percentage, the board shall estimate the expected premium~~
35 ~~base for the upcoming fiscal year based on the returns filed~~
36 ~~under paragraph D and anticipated trends in the insurance~~
37 ~~marketplace. The board shall consult with the Bureau of~~
38 ~~Insurance and other knowledgeable sources to help determine~~
39 ~~the trends. The board may adjust the assessment percentage~~
40 ~~at any time but shall provide written notice to the affected~~
41 ~~companies and associations at least 45 days prior to the~~
42 ~~effective date of the adjustment. The board may not adjust~~
43 ~~the assessment percentage more than 3 times in a fiscal~~
44 ~~year. The adjusted assessment percentage must be applied~~
45 ~~prospectively on policies with an effective date on or after~~
46 ~~the effective date of the adjustment.~~

48 D. Every All assessments under this section are due and
49 payable by June 1st, except that an insurance company or
50 association subject to the assessment imposed by this

2 section or individual or group self-insurer with an
estimated annual payment of \$50,000 or more based--on
previous--assessment--returns may make payments in equal
4 quarterly installments on the first day of each June,
September, December and March. Each--insurance--company--or
6 association electing quarterly payments must on or before
the last day of each January, each April, the 25th day of
8 each June and the last day of each October file with the
board on forms prescribed by the board a return for the
10 quarter ending the last day of the preceding month, except
the month of June, which is for the quarter ending June 30th
12 and remit payment of the assessment based upon the results
for the quarter reported. A final reconciled annual return
14 must be filed on or before September 15th covering the prior
fiscal year in which the previous assessment was levied.
16 The final return must be certified by the company's or
association's chief financial officer. Insurance companies
18 or associations with an annual assessment estimate of under
\$50,000 shall pay the assessment on or before June 1st and
20 shall also file a quarterly and an annual return on forms
prescribed by the board. Each insurer and individual or
22 group self-insurer subject to assessment shall file a return
with the agency, on a form prescribed by the agency, on or
24 before the date the annual or quarterly payment is due and
remit payment of the assessment. Affiliated insurers may
26 aggregate their collection volume in order to meet the
\$50,000 assessment threshold as long as the affiliation is
28 consistent with the standards defined in Title 24-A, section
222. Those qualifying insurance companies or associations
30 that opt to consolidate their quarterly payments and reports
may do so only if each individually licensed company or
32 association is individually reported within each
consolidated return.

34
36 E. The Department of Professional and Financial Regulation,
Bureau of Insurance shall report to the agency all newly
38 authorized workers' compensation insurers or individual or
group self-insurers in order to facilitate notification to
40 the new insurer or self-insurer of its obligations under
this section.

42 4. Assessment on self-insured employers. Every
self-insured employer approved pursuant to section 403 shall, for
44 the purpose of providing partial support and maintenance of the
board, pay an assessment on aggregate benefits paid by each
46 member pursuant to section 404, subsection 4. This assessment
must be a dollar amount.

48
50 5. Amounts of premiums and losses; distribution of
assessment. The Department of Professional and Financial

2 Regulation, Bureau of Insurance shall provide to the board agency
the amounts of gross direct workers' compensation premiums
4 written by each insurance carrier company and the amounts of
aggregate benefits paid by each self-insurer individual and group
6 self-insurer in each calendar year on or before April 1st of each
the following year. Beginning with the assessment for the fiscal
8 year beginning July 1, 1995 and thereafter, the total assessment
must be distributed between insurance companies ~~or associations~~
and self-insured employers in direct proportion to the pro rata
10 share of disabling cases attributable to each group for the most
recent calendar year for which data is are available. This
12 distribution of the assessment must be determined on a basis
consistent with the information reported by the Department of
14 Labor, Bureau of Labor Standards, Research and Statistics
Division in its annual Characteristics of Work-Related Injuries
16 and Illnesses in Maine publication, provided that any segment of
the market identified as "not-insured" be excluded from the
18 calculation of proportionate shares. In consultation with the
Director of Labor Standards, the board executive director shall
20 determine a date prior to the required assessment to establish
the distribution. Within each group, insurance companies must be
22 assessed in proportion to their gross direct workers'
compensation premium in the preceding calendar year, and
24 individual and group self-insurers must be assessed in proportion
to their aggregate benefits paid in the preceding calendar year.
26 For the purposes of this subsection, aggregate benefits paid by a
self-insurer include all benefits paid by any related entity that
28 is recognized as a predecessor self-insurer for purposes of
membership in the Maine Self-Insurance Guarantee Association
30 pursuant to section 404, subsection 2, paragraphs D and E.

32 ~~6. -- Assessment levied. -- The assessments levied under this~~
~~section may not be designed to produce more than \$6,000,000 in~~
34 ~~revenues annually beginning in the 1995-96 fiscal year, more than~~
~~\$6,600,000 annually beginning in the 1997-98 fiscal year or more~~
36 ~~than \$6,735,000 beginning in the 1999-00 fiscal year, except that~~
~~in the 2001-02 fiscal year the assessment may not be designed to~~
38 ~~produce more than \$7,035,000. -- Assessments collected that exceed~~
~~\$6,000,000 beginning in the 1995-96 fiscal year, \$6,600,000~~
40 ~~beginning in the 1997-98 fiscal year or \$6,735,000 beginning in~~
~~the 1999-00 fiscal year or \$7,035,000 in fiscal year 2001-02 by a~~
42 ~~margin of more than 10% must be refunded to those who paid the~~
~~assessment. -- Any amount collected above the board's allocated~~
44 ~~budget and within the 10% margin must be used to create a reserve~~
~~of up to 1/4 of the board's annual budget. -- Any collected amounts~~
46 ~~or savings above the allowed reserve must be used to reduce the~~
~~assessment for the following fiscal year. -- The board shall~~
48 ~~determine the assessments prior to May 1st and shall assess each~~
~~insurance company or association and self-insured employer its~~
50 ~~pro-rata share for expenditures during the fiscal year beginning~~

2 July 1st. ~~Each self-insured employer shall pay the assessment on~~
3 ~~or before June 1st. Each insurance company or association shall~~
4 ~~pay the assessment in accordance with subsection 3.~~

6 6-A. Calculation of assessment. Beginning with the
7 assessment levied in 2003 for fiscal year 2003-04, on or before
8 May 1st of each year, the executive director shall determine the
9 aggregate assessment to be levied under this section for the
10 coming fiscal year and shall send an invoice to each insurance
11 company and each individual and group self-insurer for its share
12 of the assessment. The annual aggregate assessment may not
13 exceed \$8,600,000 and when added to the projected fund balance as
14 of the beginning of the fiscal year may not exceed the agency's
15 allocated budget for the fiscal year, or the Governor's
16 recommended budget in the event that there is not a legislatively
17 approved budget by April 20th, by more than 10%.

18 ~~7. Insurance company or association collections. Insurance~~
19 ~~companies or associations shall bill and collect assessments~~
20 ~~under this section on insured employers. The assessments must be~~
21 ~~separately stated amounts on all premium notices and may not be~~
22 ~~reported as premiums for any tax or regulatory purpose or for the~~
23 ~~purpose of any other law. All collected payments must be~~
24 ~~submitted to the board with the next quarterly payment. The~~
25 ~~Bureau of Insurance shall report to the board all newly~~
26 ~~authorized workers' compensation carriers in order to facilitate~~
27 ~~notification to the new carrier of its obligations under this~~
28 ~~section.~~

30 7-A. Insurance premiums. An insurer may include within its
31 rates and premiums charged for workers' compensation insurance
32 policies an amount sufficient to cover the assessment the insurer
33 reasonably expects to be assessed pursuant to this section.

34 **8. Violations.** Any insurance company, ~~association~~ or
35 self-insured employer subject to this section that willfully
36 fails to pay an assessment in accordance with this section
37 commits a civil violation for which a forfeiture of not more than
38 \$500 may be adjudged for each day following the due date for
39 which payment is not made.

42 **9. Deposit of funds; investment.** All revenues derived from
43 assessments levied against insurance companies, ~~associations~~ and
44 self-insured employers described in this section must be reported
45 and paid to the Treasurer of State and credited to the Workers'
46 Compensation Board Agency Administrative Fund. The Treasurer of
47 State may invest the funds in accordance with state law. All
48 interest must be paid to the fund.

10. **Deposit of funds in Workers' Compensation Agency Administrative Fund.** The Treasurer of State shall deposit in the Workers' Compensation ~~Board~~ Agency Administrative Fund funds collected pursuant to section ~~152~~ 152-A, subsection 14.

12. **Audit.** In consultation with the Bureau of Insurance, the ~~board~~ agency may audit all returns and investigate any issues relevant to the collection and payment of any assessment under this section.

Sec. 53. 39-A MRSA §205, sub-§§2, 4 and 7, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

2. **Time for payment.** The first payment of compensation for incapacity under section 212 or 213 is due and payable within 14 days after the employer has notice or knowledge of the injury or death, on which date all compensation then accrued must be paid. Subsequent incapacity payments must be made weekly and in a timely fashion. Every insurance carrier, self-insured and group self-insurer shall keep a record of all payments made under this Act and of the time and manner of making the payments and shall furnish reports, based upon these records, to the ~~board~~ agency as it may reasonably require.

4. **Payment of medical bills.** When there is no ongoing dispute, if medical bills are not paid within 30 days after the carrier has received notice of nonpayment by certified mail, \$50 or the amount of the bill due, whichever is less, must be added and paid to the Workers' Compensation ~~Board~~ Agency Administrative Fund for each day over 30 days in which the medical bills are not paid. Not more than \$1,500 in total may be added pursuant to this subsection.

7. **Memorandum of payment.** Upon making the first payment of compensation for incapacity or upon making a payment of compensation for impairment, the employer shall immediately forward to the ~~board~~ agency a memorandum of payment on forms prescribed by the ~~board~~ agency. This information must include, at a minimum, the following:

A. The names of the employee, employer and insurance carrier;

B. The date of the injury;

C. The names of the employee's other employers, if any, or a statement that there is no multiple employment, if that is the case; and

2 D. The initial weekly compensation rate.

4 **Sec. 54. 39-A MRSA §205, sub-§9, ¶¶B and C**, as enacted by PL
1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
6 read:

8 B. In all circumstances other than the return to work or
increase in pay of the employee under paragraph A, if the
10 employer, insurer or group self-insurer determines that the
employee is not eligible for compensation under this Act,
12 the employer, insurer or group self-insurer may discontinue
or reduce benefits only in accordance with this paragraph.

14 (1) If no order or award of compensation or
16 compensation scheme has been entered, the employer,
insurer or group self-insurer may discontinue or reduce
18 benefits by sending a certificate by certified mail to
the employee and to the board agency, together with any
20 information on which the employer, insurer or group
self-insurer relied to support the discontinuance or
22 reduction. The employer may discontinue or reduce
benefits no earlier than 21 days from the date the
24 certificate was mailed to the employee. The
certificate must advise the employee of the date when
26 the employee's benefits will be discontinued or
reduced, as well as other information as prescribed by
28 the board agency, including the employee's appeal
rights.

30 (2) If an order or award of compensation or
32 compensation scheme has been entered, the employer,
insurer or group self-insurer shall petition the board
34 agency for an order to reduce or discontinue benefits
and may not reduce or discontinue benefits until the
36 matter has been finally resolved through the dispute
resolution procedures of this Act, any appeal
38 proceedings have been completed and an order of
reduction or discontinuance has been entered by the
40 board agency.

42 C. The employee may file a petition for review with the
executive director, contesting the employer's discontinuance
44 or reduction of compensation under this subsection.
Regardless of whether the employee files a petition prior to
46 the date of the discontinuance or reduction, benefits may be
discontinued or reduced as described in paragraph A or B.

48 **Sec. 55. 39-A MRSA §205, sub-§9, ¶D**, as amended by PL 1999, c.
354, §4, is further amended to read:
50

2 D. The ~~board~~ executive director, within 21 days after the
employee ~~filed~~ files a petition for review, ~~may~~ shall decide
4 whether to enter an order providing for the continuation or
reinstatement of benefits pending a hearing on the
6 petition. The order must be based upon the information
submitted under this subsection by both the employee and the
7 employer, and the insurer or group self-insurer ~~and--the~~
8 ~~employee-under-this-subsection~~. Once a request for an order
has been ruled upon, the matter may not be referred to
10 mediation, but must be set for hearing.

12 **Sec. 56. 39-A MRSA §205, sub-§9, ¶¶E and F**, as enacted by PL
1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
14 read:

16 E. In all cases under this subsection, the ~~board~~ agency
shall provide for an expedited procedure that must be
18 available upon request of any party.

20 F. If benefits have been discontinued or reduced pursuant
to paragraph A or B and the ~~board~~ agency, after hearing,
22 determines that benefits have been wrongfully withheld, the
~~board~~ agency shall order payment of all benefits withheld
24 together with interest at the rate of 6% a year. The
employer shall pay this amount within 10 days of the order.

26 **Sec. 57. 39-A MRSA §206, sub-§§3 to 6 and 8**, as enacted by PL
28 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
read:

30 **3. Limitation.** Once an employee receives treatment from a
32 health care provider pursuant to subsection 2, the employee may
not change health care providers more than once without approval
34 from the employer or the ~~board~~ agency.

36 **4. Specialist treatment.** This section does not limit an
employee's right to be treated by a specialist when a referral is
38 made by the employee's health care provider. Once an employee
has begun treatment with the specialist, the employee may not
40 seek treatment from a different specialist in the same specialty
without prior approval from the employer or the ~~board~~ agency.

42 **5. Chiropractic care.** An employee sustaining a personal
44 injury arising out of and in the course of employment, provided
the injury relates to the scope of a chiropractor's practice, as
46 defined and regulated by law, is entitled to chiropractic
services as provided by Title 32, chapter 9. A duly licensed
48 chiropractor is competent to testify before the ~~board~~ agency.

2 **6. Podiatric care.** An employee sustaining personal injury
3 arising out of and in the course of employment, provided the
4 injury relates to the foot, is entitled to an examination,
5 diagnosis and treatment for that injury from a podiatrist who is
6 licensed in the State and who has been granted the degree of
7 Doctor of Podiatric Medicine by an accredited school of podiatry
8 recognized by the Council of Education of the American Podiatry
9 Association. This examination may include diagnostic x rays. Such
10 a podiatrist is competent to testify before the ~~board~~ agency.

11 **8. Physical aids.** The employer shall furnish artificial
12 limbs, eyes, teeth, eyeglasses, hearing aids, orthopedic devices
13 and other physical aids made necessary by the injury and shall
14 replace or renew them when necessary from wear and tear or
15 physical change of the employee. Damage and destruction to
16 artificial limbs, eyes, teeth, eyeglasses, hearing aids,
17 orthopedic devices and other physical aids in the course of and
18 arising out of employment is considered an injury for the
19 purposes of this Act. In case such physical aids in use by the
20 employee at the time of the injury are themselves injured or
21 destroyed, the ~~board--in--its~~ executive director or a hearing
22 officer has the discretion may to require that they the physical
23 aids be repaired or replaced by the employer.

24 **Sec. 58. 39-A MRSA §206, sub-§§12, 14 and 15,** as enacted by PL
25 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
26 read:

27 **12. Petition.** When there is any disagreement as to the
28 proper costs of the services or aids, the periods during which
29 they must be furnished, or the apportionment of the costs among
30 the parties, any interested person may file a petition with the
31 ~~board~~ agency for the determination of the issues.

32 **14. Employer not liable.** An employer is not liable under
33 this Act for charges for health care services to an injured
34 employee in excess of those established under section 209, except
35 upon petition as provided. The ~~board~~ agency shall allow charges
36 in excess of those provided under section 209 against the
37 employer if the provider satisfactorily demonstrates to the ~~board~~
38 agency that the services were extraordinary or that the provider
39 incurred extraordinary costs in treating the employee as compared
40 to those reasonably contemplated for the services provided.

41 **15. Forms; compliance.** The Superintendent of Insurance
42 shall prescribe medical and health care expense forms for the
43 purpose of collecting information as required by Title 24-A,
44 section 2384-B. In the event the provider fails to properly
45 complete and submit the prescribed form or to follow any fee
46 schedule approved by the board, the insurer or self-insurer may
47
48
49
50

2 withhold payment of medical and health care fees and the insurer
or self-insurer is not required to file a notice of controversy
4 but may simply notify the provider of the failure. In the case of
a dispute, any interested party may petition the board agency to
6 resolve the dispute.

8 **Sec. 59. 39-A MRSA §207, first ¶**, as amended by PL 2001, c.
278, §1, is further amended to read:

10 An employee being treated by a health care provider of the
employee's own choice shall, after an injury and at all
12 reasonable times during the continuance of disability if so
requested by the employer, submit to an examination by a
14 physician, surgeon or chiropractor authorized to practice as such
under the laws of this State, to be selected and paid by the
16 employer. The physician, surgeon or chiropractor must have an
active practice of treating patients. For purposes of this
18 section, "active practice" may be demonstrated by having active
clinical privileges at a hospital. A physician or surgeon must
20 be certified in the field of practice that treats the type of
injury complained of by the employee. Certification must be by a
22 board recognized by the American Board of Medical Specialties or
the American Osteopathic Association or their successor
24 organizations. A chiropractor licensed by the Board of
Chiropractic Licensure, who has an active practice of treating
26 patients may provide a 2nd opinion when the initial opinion was
given by a chiropractor. Once an employer selects a health care
28 provider to examine an employee, the employer may not request
that the employee be examined by more than one other health care
30 provider, other than an independent medical examiner appointed
pursuant to section 312, without prior approval from the employee
32 or a hearing officer. This provision does not limit an
employer's right to request that the employee be examined by a
34 specialist upon referral by the health care provider. Once the
employee is examined by the specialist, the employer may not
36 request that the employee be examined by a different specialist
in the same specialty, other than an independent medical examiner
38 appointed pursuant to section 312, without prior approval from
the employee or the board agency. The employee has the right to
40 have a physician, surgeon or chiropractor of the employee's own
selection present at such an examination, whose costs are paid by
42 the employer. The employer shall give the employee notice of this
right at the time the employer requests an examination.

44 **Sec. 60. 39-A MRSA §207, last ¶**, as enacted by PL 1991, c. 885,
46 Pt. A, §8 and affected by §§9 to 11, is amended to read:

48 If any employee refuses or neglects to submit to any
reasonable examination provided for in this Act, or in any way
50 obstructs any such examination, or if the employee declines a

2 service that the employer is required to provide under this Act,
3 then such employee's rights to compensation are forfeited during
4 the period of the infractions if the ~~board~~ agency finds that
5 there is adequate cause to do so.

6 **Sec. 61. 39-A MRSA §208, sub-§2, ¶¶A, B and F,** as enacted by PL
7 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
8 read:

10 A. Except for claims for medical benefits only, within 5
11 business days from the completion of a medical examination
12 or within 5 business days from the date notice of injury is
13 given to the employer, whichever is later, the health care
14 provider treating the employee shall forward to the employer
15 and the employee a diagnostic medical report, on forms
16 prescribed by the ~~board~~ agency, for the injury for which
17 compensation is being claimed. The report must include the
18 employee's work capacity, likely duration of incapacity,
19 return to work suitability and treatment required. The
20 ~~board~~ agency may assess penalties up to \$500 per violation
21 on health care providers who fail to comply with the 5-day
22 requirement of this subsection.

24 B. If ongoing medical treatment is being provided, every 30
25 days the employee's health care provider shall forward to
26 the employer and the employee a diagnostic medical report on
27 forms prescribed by the ~~board~~ agency. An employer may
28 request, at any time, medical information concerning the
29 condition of the employee for which compensation is sought.
30 The health care provider shall respond within 10 business
31 days from receipt of the request.

32 F. An insurer or self-insurer may withhold payment of fees
33 for the submission of any required reports of treatment to
34 any provider who fails to submit the reports on the forms
35 prescribed by the ~~board~~ agency and within the time limits
36 provided. The insurer or self-insurer is not required to
37 file a notice of controversy under these circumstances, but
38 must notify the provider that payment is being withheld due
39 to the failure to use prescribed forms or to submit the
40 reports in a timely fashion. In the case of dispute, any
41 interested party may petition the ~~board~~ agency to resolve
42 the dispute.

44 **Sec. 62. 39-A MRSA §209, sub-§3,** as enacted by PL 1991, c.
45 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

48 **3. Limitation on reimbursement.** In order to qualify for
49 reimbursement for health care services provided to employees
50 under this Title, health care providers providing individual

2 health care services and courses of treatment may not charge more
4 for the services or courses of treatment for employees than is
6 charged to private 3rd-party payors for similar services or
8 courses of treatment. An employer is not responsible for charges
10 that are determined to be excessive or treatment determined to be
12 inappropriate by an independent medical examiner appointed
14 pursuant to section 312 or by the insurance carrier, self-insurer
16 or group self-insurer pursuant to section 210, subsection 7 or
18 the board agency pursuant to section 210, subsection 8.

20 **Sec. 63. 39-A MRSA §210, sub-§§3 to 5, 7 and 8,** as enacted by PL
22 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
24 read:

26 **3. Review.** Utilization review must be performed by an
28 insurance carrier, self-insurer or group self-insurer pursuant to
30 a system established by the board agency that identifies the
32 range of utilization of health care and health services.

34 **4. Certification of insurance carrier.** An insurance
36 carrier may perform utilization review only if it has obtained
38 certification from the executive director that the insurance
40 carrier complies with the criteria or standards established by
42 the-board-must-be-certified-by-the-board pursuant to this section.

44 **5. Consent of health care provider.** By accepting payment
46 under this chapter, a health facility or health care provider is
48 deemed to have consented to submitting necessary records and
other information concerning any health care or health services
provided for utilization review pursuant to this section and to
have agreed to comply with any decision of the board agency
pursuant to this section.

7. Excessive charges, unjustified treatment. If an
insurance carrier, self-insurer or group self-insurer determines
that a health facility or health care provider has made any
excessive charges or required unjustified treatment,
hospitalization or visits, the health facility or health care
provider may not receive payment under this chapter from the
insurance carrier, self-insurer or group self-insurer for the
excessive fees or unjustified treatment, hospitalization or
visits, and is liable to return to the insurance carrier any such
fees or charges already collected. The board agency may review
the records and medical bills of any health facility or health
care provider with regard to a claim that an insurance carrier,
self-insurer or group self-insurer has determined is not in
compliance with the schedule of charges or requires unjustified
treatment, hospitalization or office visits.

2 **8. Inappropriate services.** If an insurance carrier
3 determines that a health facility or health care provider
4 improperly overutilized or otherwise rendered or ordered
5 inappropriate health care or health services, or that the cost of
6 the care or services was inappropriate, the health facility or
7 health care provider may appeal to the board agency regarding
8 that determination pursuant to procedures provided for under the
system of utilization review.

10 **Sec. 64. 39-A MRSA §210, sub-§9,** as amended by PL 1993, c.
11 261, §1, is further amended to read:

12 **9. Penalties.** Any health facility or health care provider
13 that knowingly submits false or misleading records or other
14 information to an insurance carrier, self-insurer or group
15 self-insurer or the board agency is guilty of a Class D crime.

16 **Sec. 65. 39-A MRSA §213, sub-§2,** as enacted by PL 1991, c.
17 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

18 **2. Threshold adjustment.** Effective January 1, 1998 and
19 every other January 1st thereafter, the board, using an
20 independent actuarial review based upon actuarially sound data
21 and methodology, must adjust the 15% impairment threshold
22 established in subsection 1 so that 25% of all cases with
23 permanent impairment will be expected to exceed the threshold and
24 75% of all cases with permanent impairment will be expected to be
25 less than the threshold. The actuarial review must include all
26 cases receiving permanent impairment ratings on or after January
27 1, 1993, irrespective of date of injury, but may utilize a cutoff
28 date of 90 days prior to each adjustment date to permit the
29 collection and analysis of data. The data must be adjusted to
30 reflect ultimate loss development. In order to ensure the
31 accuracy of the data, the board shall require that all cases
32 involving permanent injury, including those settled pursuant to
33 section 352, include an impairment rating performed in accordance
34 with the guidelines adopted by the board and either agreed to by
35 the parties or determined by the board agency. Each adjusted
36 threshold is applicable to all cases with dates of injury on or
37 after the date of adjustment and prior to the date of the next
38 adjustment.

39 **Sec. 66. 39-A MRSA §214, sub-§4,** as amended by PL 1995, c.
40 560, Pt. G, §24 and affected by §29, is further amended to read:

41 **4. Notice of refusal; termination of benefits.** The Bureau
42 of Employment Services shall notify the board agency in writing
43 of the name of any employee who refuses any bona fide offer of
44 reasonable employment. Upon receiving such notification ~~to the~~
45 board, the board executive director shall notify the insurance
46

2 carrier or self-insurer who, which shall terminate the benefits
of the employee pursuant to subsection 1, paragraph A.

4 **Sec. 67. 39-A MRSA §215, sub-§1**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

6
8 **1. Death of employee.** If death results from the injury of
an employee, the employer shall pay or cause to be paid to the
dependents of the employee who were wholly dependent upon the
10 employee's earnings for support at the time of the injury, a
weekly payment equal to 80% of the employee's after-tax average
12 weekly wage, but not more than the maximum benefit under section
211, for a period of 500 weeks from the date of death. If the
14 employee leaves dependents only partially dependent upon the
employee's earnings for support at the time of injury, the
16 employer shall pay weekly compensation equal to the same
proportion of the weekly payments for the benefit of persons
18 wholly dependent, as 80% of the amount contributed by the
employee to such partial dependents bears to the annual earnings
20 of the deceased at the time of injury. If, at the expiration of
the 500-week period, any wholly or partially dependent person is
22 less than 18 years of age, the employer shall continue to pay or
cause to be paid the weekly compensation until that person
24 reaches the age of 18.

26 If a dependent spouse becomes a dependent of another person, the
payments must cease upon the payment to the spouse of the balance
28 of the compensation to which the spouse would otherwise have been
entitled but in no event to exceed the sum of \$500.00. The
30 remaining weeks of compensation, if any, are payable to those
persons either wholly or partially dependent upon the employee
32 for support at the employee's death. The ~~board~~ agency shall
determine the amount of compensation or portion thereof that is
34 payable weekly to the wholly or partially dependent person.
When, at the expiration of the 500-week period, any wholly or
36 partially dependent person is less than 18 years of age, the
employer shall continue to pay or cause to be paid the weekly
38 compensation, until that person reaches the age of 18. The
payment of compensation to any dependent child after the
40 expiration of the 500-week period ceases when the child reaches
the age of 18 years, if at the age of 18 years the child is
42 neither physically nor mentally incapacitated from earning, or
when the child reaches the age of 16 years and thereafter is
44 self-supporting for 6 months. If the child ceases to be
self-supporting thereafter, the dependency must be reinstated.
46 As long as any of the 500 weeks of compensation remain, that
compensation is payable to the person either wholly or partially
48 dependent upon the deceased employee for support at the time of
the employee's death, with the exception of a dependent spouse
50 who becomes a dependent of another.

2 **Sec. 68. 39-A MRSA §215, sub-§2, ¶B**, as enacted by PL 1991, c.
385, Pt. A, §8 and affected by §§9 to 11, is amended to read:

4
6 B. If an application for benefits has been filed but has
not been decided by the ~~board~~ agency or is on appeal and the
employee dies from a cause unrelated to the employee's
injury, the proceedings may be continued in the name of the
employee's personal representative. In such a case, any
benefits awarded are payable up to time of death and must be
paid to the same beneficiaries and in the same amounts as
would have been payable if the employee had suffered a
compensable injury resulting in death.

14 **Sec. 69. 39-A MRSA §217**, as enacted by PL 1991, c. 885, Pt.
16 A, §8 and affected by §§9 to 11, is amended to read:

18 **§217. Employment rehabilitation**

20 When as a result of injury the employee is unable to perform
work for which the employee has previous training or experience,
22 the employee is entitled to such employment rehabilitation
services, including retraining and job placement, as reasonably
24 necessary to restore the employee to suitable employment.

26 **1. Services.** If employment rehabilitation services are not
voluntarily offered and accepted, ~~the board on its own motion at~~
28 the initiative of the agency or upon application of the employee,
carrier or employer, after affording the parties an opportunity
30 to ~~be heard~~ provide input, ~~the agency~~ may refer the employee to a
~~board-approved~~ an agency-approved facility for evaluation of the
32 need for and kind of service, treatment or training necessary and
appropriate to return the employee to suitable employment.

34 **2. Plan ordered.** Upon receipt of an evaluation report
pursuant to subsection 1, if the ~~board~~ executive director finds
36 that the proposed plan complies with this Act and that the
implementation of the proposed plan is likely to return the
38 injured employee to suitable employment at a reasonable cost, ~~it~~
the executive director may order the implementation of the plan.
40 Implementation costs of a plan ordered under this subsection must
be paid from the Employment Rehabilitation Fund as provided in
42 section 355, subsection 7. ~~The board's~~ A determination under
44 this subsection is final.

46 **3. Order of implementation costs recovery.** If an injured
employee returns to suitable employment after completing a
48 rehabilitation plan ordered under subsection 2, the ~~board~~
executive director shall order the employer who refused to agree

2 to implement the plan to pay reimbursement to the Employment
Rehabilitation Fund as provided in section 355, subsection 7.

4 **4. Additional payments.** The board executive director may
order that any employee participating in employment
6 rehabilitation receive additional payments for transportation or
any extra and necessary expenses during the period and arising
8 out of the employee's program of employment rehabilitation.

10 **5. Limitation.** Employment rehabilitation training,
treatment or service may not extend for a period of more than 52
12 weeks except in cases when, by special order, the board executive
director extends the period up to an additional 52 weeks.

14 **6. Loss of or reduction in benefits.** If an employee
unjustifiably refuses to accept rehabilitation pursuant to an
16 order ~~of the board~~ issued under this section, the board executive
director shall order a loss or reduction of compensation in an
18 amount determined by the board executive director for each week
20 of the period of refusal, except for specific compensation
payable under section 212, subsection 3.

22 **7. Hearing.** If a dispute arises between the parties
concerning application of any of the provisions of subsections 1
24 to 6, any of the parties may apply to the executive director for
a hearing ~~before the board~~ in accordance with section 315.

28 **Sec. 70. 39-A MRSA §218, first ¶,** as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is repealed.

30 **Sec. 71. 39-A MRSA §218, sub-§2,** as enacted by PL 1991, c.
32 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

34 **2. Reasonable accommodation required.** In order to
facilitate the placement of an injured employee as required under
36 this section, the employer must make reasonable accommodations
for the physical condition of the employee unless the employer
38 can demonstrate that no reasonable accommodation exists or that
the accommodation would impose an undue hardship on the
40 employer. In determining whether undue hardship exists, the
board agency shall consider:

- 42
- 44 A. The size of the employer's business;
 - 46 B. The number of employees employed by the employer;
 - 48 C. The nature of the employer's operations; and
 - 50 D. Any other relevant factors.

2 **Sec. 72. 39-A MRSA §218, sub-§6**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

4 **6. Right to file petition; burden of proof.** Controversies
6 arising under this section may be resolved through a petition
7 filed in accordance with section 307. The petitioning party has
8 the burden of proof on all issues regarding claims under this
9 section except that the employer always retains the burden of
10 proof regarding the availability or nonavailability of work.

11 **Sec. 73. 39-A MRSA §220, sub-§2**, as enacted by PL 1991, c.
12 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

13 **2. Notification.** Before approving or awarding any
14 compensation as limited in subsection 1, the board agency shall
15 request that the Department of Labor:

16 A. Inform the board agency as to whether the claimant has
17 received since the date of injury or is currently receiving
18 unemployment benefits;

19 B. Notify the board agency in the event that the claimant
20 subsequently applies for and receives unemployment benefits;
21 and

22 C. Notify the board agency whenever the claimant ceases to
23 receive unemployment benefits.

24 When the Department of Labor so notifies the board agency, the
25 board agency shall notify the employer and employee, advise them
26 of both the requirements of this section and the difference the
27 employer must make in the employee's compensation. Upon receipt
28 of this information, the employer shall appropriately decrease
29 the compensation or, if the claimant has ceased to receive
30 unemployment benefits, appropriately increase the compensation.

31 **Sec. 74. 39-A MRSA §221, sub-§4**, as enacted by PL 1991, c.
32 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

33 **4. Notification and release of social security benefit**
34 **information.** The board shall adopt rules to provide for
35 notification by an employer to an employee of possible
36 eligibility for social security benefits and the requirements for
37 establishing proof of application for those benefits. Notifica-
38 tion must be promptly mailed to the employee after the
39 date on which by reason of age the employee may be entitled to
40 social security benefits. A copy of the notification of possible
41 eligibility must be filed with the board agency by the employer.
42 Within 30 days after receipt of the notification of possible
43 employee eligibility the employee shall:

- 2 A. Make application for social security benefits;
- 4 B. Provide the employer or carrier with proof of that
6 application; and
- 8 C. Provide the employer or carrier with an authority for
10 release of information which that may be used by the
12 employer to obtain necessary benefit entitlement and amount
14 information from the social security administration.

12 The authority for release of information is effective for one
14 year.

14 **Sec. 75. 39-A MRSA §221, sub-§§7 and 9**, as enacted by PL 1991,
16 c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

18 **7. Failure to provide release or application.** If the
20 employee fails to provide the proof of application or the
22 authority for release of information required in subsection 4 or
24 fails to provide the authority for release of information
26 required in subsection 5 or 6, the employer may, with the
28 approval of the board agency, discontinue the compensation
30 benefits payable to the employee under section 212 or 213 until
the proof of application and the authority for release of
information is provided. Compensation benefits withheld must be
reimbursed to the employee when the required proof of
application, or the authority for release of information, or
both, has been provided.

32 **9. Reports.** The employer taking a credit or making a
34 reduction as provided in this section shall immediately report to
the board agency the amount of any credit or reduction and, as
requested by the board agency, furnish ~~to the board~~ satisfactory
proof of the basis for a credit reduction.

36 **Sec. 76. 39-A MRSA §222, sub-§3, ¶¶A and B**, as enacted by PL
38 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
40 read:

42 A. These rules must impose any requirements on employers or
44 health, disability or workers' compensation insurance
46 carriers that the superintendent finds necessary or
desirable to ease the financial burden on injured employees
whose workers' compensation claims are controverted and who
are awaiting board agency determinations on their claims.

2 B. The superintendent shall consult with the ~~chair-of-the~~
3 ~~board~~ executive director in formulating and adopting these
4 rules.

5 **Sec. 77. 39-A MRSA c. 7, sub-c. I** is amended by repealing the
6 subchapter headnote and enacting in its place the following:

8 **SUBCHAPTER I**

10 **AGENCY PROCEEDINGS**

12 **Sec. 78. 39-A MRSA §303**, as amended by PL 1999, c. 354, §5,
13 is further amended to read:

14 **§303. Reports to agency**

15
16 When any employee has reported to an employer under this Act
17 any injury arising out of and in the course of the employee's
18 employment that has caused the employee to lose a day's work, or
19 when the employer has knowledge of any such injury, the employer
20 shall report the injury to the ~~board~~ agency within 7 days after
21 the employer receives notice or has knowledge of the injury. The
22 employer shall also report the average weekly wages or earnings
23 of the employee, as defined in section 102, subsection 4,
24 together with any other information required by the ~~board~~ agency,
25 within 30 days after the employer receives notice or has
26 knowledge of a claim for compensation under section 212, 213 or
27 215, unless a wage statement has previously been filed with the
28 ~~board~~ agency. A copy of the wage information must be mailed to
29 the employee. The employer shall report when the injured
30 employee resumes the employee's employment and the amount of the
31 employee's wages or earnings at that time. The employer shall
32 complete a first report of injury form for any injury that has
33 required the services of a health care provider within 7 days
34 after the employer receives notice or has knowledge of the
35 injury. The employer shall provide a copy of the form to the
36 injured employee and retain a copy for the employer's records but
37 is not obligated to submit the form to the ~~board~~ agency unless
38 the injury later causes the employee to lose a day's work.

39
40 **Sec. 79. 39-A MRSA §§304 and 305**, as enacted by PL 1991, c.
41 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

42 **§304. Agency notice**

43
44 **1. Inform employee.** Immediately upon receipt of the
45 employer's report of injury required by section 303, the ~~board~~
46 agency shall contact the employee and provide information
47 explaining the compensation system and the employee's rights.
48 The ~~board~~ agency shall advise the employee how to contact the
49
50

2 board agency for further assistance and shall provide that
3 assistance.

4 **2. Notice to employer.** The board agency shall notify the
5 employer when a mediation or formal hearing is scheduled, when a
6 notice of settlement is filed and when any other proceeding
7 regarding a claim of an employee of that employer is scheduled.

8 **3. Notice by agency.** Within 15 days of receipt of an
9 employer's report of injury, as required by section 303, unless
10 it has received a petition for award of compensation relating to
11 the injured employee, the board agency shall take reasonable
12 steps to notify the employee that, unless the employer disputes
13 the claim, the employer is required to pay compensation within
14 the time limits established in section 205; that a petition for
15 award may be filed; and that rights under this Act may not be
16 protected unless a petition of award or memorandum of payment is
17 on file with the board agency within 2 years of the injury.

18
19 **§305. Petition for award; protective decree**

20
21 In the event of a controversy as to the responsibility of an
22 employer for the payment of compensation, any party in interest
23 may file in the office of the board agency a petition for award
24 of compensation setting forth the names and residences of the
25 parties, the facts relating to the employment at the time of the
26 injury, the knowledge of the employer or notice of the occurrence
27 of the injury, the character and extent of the injury and the
28 claims of the petitioner with reference to the injury, together
29 with such other facts as may be necessary and proper for the
30 determination of the rights of the petitioner.

31
32 If, following an injury that causes no incapacity for work,
33 the employer and employee reach an agreement that the employee
34 has received a personal injury arising out of and in the course
35 of employment, a memorandum of such an agreement signed by the
36 parties may be filed in the office of the board agency. The
37 memorandum must set forth the names and residences of the
38 parties, the facts relating to the employment at the time of the
39 injury, the time, place and cause of the injury, and the nature
40 and extent of the injury. Any member of the board or the
41 executive director is empowered, without the necessity of the
42 filing of a petition for award, to render a protective decree
43 based on that memorandum.

44
45 **Sec. 80. 39-A MRSA §306, sub-§3,** as enacted by PL 1999, c.
46 354, §6 and affected by §10, is amended to read:

47
48 **3. Establishment of injury.** If the occurrence of a
49 work-related injury is established by board agency decree,
50

2 mediation report or agreement of the parties without the payment
of benefits as provided in subsection 2, the period during which
4 an employee or other interested party may file a petition is 6
years from the date of that decree, report or agreement.

6 **Sec. 81. 39-A MRSA §307, sub-§§1 and 4**, as enacted by PL 1991,
c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

8
10 **1. Petition.** Any interested party may seek a determination
of rights under this Act by filing with the ~~board~~ agency any
petition authorized under this Act.

12
14 **4. Procedure.** A petition filed under this section must be
referred by the ~~board~~ executive director to mediation, except as
otherwise expressly provided in this Act.

16
18 **Sec. 82. 39-A MRSA §§308 and 309**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

20 **§308. Employment**

22 **1. Return to employment.** Any person receiving compensation
under this Act who returns to employment or engages in new
24 employment after that person's injury shall file a written report
of that employment with the ~~board~~ agency and that person's
26 previous employer within 7 days of that person's return to work.
This report must include the identity of the employee, the
28 employee's employer and the amount of weekly wages or earnings
received or to be received by the employee. The ~~board~~ agency
30 shall send the employee notice of the employee's responsibility
to notify the ~~board~~ agency and the employer when the employee
32 returns to work and the employee's responsibility to submit the
reports required under this section.

34
36 **2. Employment status reports.** At the previous employer's
request, any person receiving compensation under this Act who has
not returned to that person's previous employment must submit
38 quarterly employment status reports to that employer. The report
is due 90 days after the date of injury, or after the filing of
40 the report under subsection 3, and every 90 days thereafter. The
report must be in a form prescribed by the ~~board~~ agency and must
42 indicate whether the employee has been employed, changed
employment or performed any services for compensation during the
44 previous 90 days, the nature of the employment or services, the
name and address of the employer or person for whom the services
46 were performed and any other information that the ~~board~~ agency by
rule may require. Any employer requesting a quarterly report
48 under this subsection must provide the employee with the

2 prescribed form at least 15 days prior to the date on which it is
due.

4 **§309. Subpoenas; evidence; discovery**

6 **1. Subpoenas.** Any board member ~~or~~, the executive director
or a designee of the board or of the executive director may
8 administer oaths and ~~any board member or designee of the board~~
may issue subpoenas for witnesses and subpoenas duces tecum to
10 compel the production of books, papers and photographs relating
to any questions in dispute before the board agency, any matters
12 involved in a hearing or an any audit conducted pursuant to
section 359. Witness fees in all proceedings under this Act are
14 the same as for witnesses before the Superior Court. When a
witness, subpoenaed and obliged to attend before the ~~board or any~~
16 ~~member or designee of the board~~ agency, fails to do so without
reasonable excuse, the Superior Court or any Justice of the
18 Superior Court may, on application of the Attorney General made
at the written request of a hearing officer, the executive
20 director or a member of the board, compel obedience by attachment
proceedings for contempt as in the case of disobedience of the
22 requirements of a subpoena issued from that court or a refusal to
testify in the court.

24 **2. Evidence.** The ~~board or its designee~~ agency need not
26 observe the rules of evidence observed by courts, but shall
observe the rules of privilege recognized by law. The ~~board or~~
28 ~~its designee~~ agency shall admit evidence if it is the kind of
evidence on which reasonable persons are accustomed to ~~relying~~
30 rely in the conduct of serious affairs. The ~~board or its~~
~~designee~~ agency may exclude irrelevant or unduly repetitious
32 evidence.

34 **3. Witnesses; discovery.** All witnesses must be sworn.
Sworn written evidence may not be admitted unless the author is
36 available for cross-examination or subject to subpoena; except
that sworn statements by a medical doctor or osteopathic
38 physician relating to medical questions, by a psychologist
relating to psychological questions or by a chiropractor relating
40 to chiropractic questions are admissible in workers' compensation
hearings only if notice of the testimony to be used is given and
42 service of a copy of the letter or report is made on the opposing
counsel 14 days before the scheduled hearing.

44 Depositions or subpoenas of health care practitioners who have
46 submitted sworn written evidence are permitted only if the
hearing officer finds that the testimony is sufficiently
48 important to outweigh the delay in the proceeding.

2 The board agency may establish procedures for the prefiling of
3 summaries of the testimony of any witness in written form. In
4 all proceedings before the ~~board--or--its--designee~~ agency,
5 discovery beyond that specified in this section is available only
6 upon application to the board presiding officer, ~~which may who~~
7 has discretion to approve the application ~~in the exercise of its~~
8 discretion.

9
10 **4. Contempts before agency.** A person may not, in
11 proceedings before the board agency, disobey or resist any lawful
12 order, process or writ; misbehave during a hearing or so near the
13 place of hearing as to obstruct the hearing; neglect to produce,
14 after having been ordered to do so, any pertinent document; or
15 refuse to appear after having been subpoenaed or, upon appearing,
16 refuse to be examined according to law.

17
18 If any person violates this subsection, ~~the a~~ a board member, the
19 executive director or a hearing officer shall certify the facts
20 to a Justice of the Superior Court in the county where the
21 alleged offense occurred and the justice may serve or cause to be
22 served on that person an order requiring that person to appear
23 before the justice on a day certain to show cause why the person
24 should not be adjudged in contempt by reason of the facts so
25 certified. The justice shall, upon the appearance of that person,
26 in a summary manner, hear the evidence as to the acts complained
27 of and, if it is such as to warrant doing so, punish that person
28 in the same manner and to the same extent as for a contempt
29 committed before the justice, or commit that person on the same
30 conditions as if the doing of the forbidden act had occurred with
31 reference to the process of the Superior Court or in the presence
32 of the justice.

33
34 **Sec. 83. 39-A MRSA §310, first ¶,** as enacted by PL 1991, c.
35 885, Pt. A, §§8 and affected by §§9 to 11, is amended to read:

36
37 Except for statements made in proceedings before the board
38 agency, a statement to any investigator or employer's
39 representative, of any kind, oral or written, recorded or
40 unrecorded, made by the injured employee is not admissible in
41 evidence or considered in any way in any proceeding under this
42 Act, except in accordance with this section.

43
44 **Sec. 84. 39-A MRSA §312,** as enacted by PL 1991, c. 885, Pt.
45 A, §8 and affected by §§9 to 11, is amended to read:

46 **§312. Independent medical examiners**

47
48 **1. Examiner system.** The board agency shall develop and
49 implement an independent medical examiner system consistent with
50 the requirements of this section. As part of this system, the

2 board agency shall, in the exercise of its discretion, create,
3 maintain and periodically validate a list of not more than 50
4 health care providers that it finds to be the most qualified and
5 to be highly experienced and competent in their specific fields
6 of expertise and in the treatment of work-related injuries to
7 serve as independent medical examiners from each of the health
8 care specialties that the board agency finds most commonly used
9 by injured employees. The board agency shall establish a fee
10 schedule for services rendered by independent medical examiners
11 and the board shall adopt any rules considered necessary to
12 effectuate the purposes of this section.

13
14 **2. Duties.** An independent medical examiner shall render
15 medical findings on the medical condition of an employee and
16 related issues as specified under this section. The independent
17 medical examiner in a case may not be the employee's treating
18 health care provider and may not have treated the employee with
19 respect to the injury for which the claim is being made or the
20 benefits are being paid. Nothing in this subsection precludes
21 the selection of a provider authorized to receive reimbursement
22 under section 206 to serve in the capacity of an independent
23 medical examiner. A physician who has examined an employee at
24 the request of an insurance company, employer or employee in
25 accordance with section 207 during the previous 52 weeks is not
26 eligible to serve as an independent medical examiner.

27
28 **3. Appointment.** If the parties to a dispute can not agree
29 on an independent medical examiner of their own choosing, the
30 board agency shall assign an independent medical examiner from
31 the list of qualified examiners to render medical findings in any
32 dispute relating to the medical condition of a claimant,
33 including but not limited to disputes that involve the employee's
34 medical condition, improvement or treatment, degree of impairment
35 or ability to return to work.

36 **4. Rules.** The board may adopt rules pertaining to the
37 procedures before the independent medical examiner, including the
38 parties' ability to propound questions relating to the medical
39 condition of the employee to be submitted to the independent
40 medical examiner. The parties shall submit any medical records
41 or other pertinent information to the independent medical
42 examiner. In addition to the review of records and information
43 submitted by the parties, the independent medical examiner may
44 examine the employee as often as the examiner determines
45 necessary to render medical findings on the questions propounded
46 by the parties.

47
48 **5. Medical findings; fees.** The independent medical
49 examiner shall submit a written report to the board agency, the
50 employer and the employee stating the examiner's medical findings

2 on the issues raised by that case and providing a description of
findings sufficient to explain the basis of those findings. It
4 is presumed that the employer and employee received the report 3
working days after mailing. The fee for the examination and
6 report must be paid by the employer.

8 **6. Subsequent medical evidence.** All subsequent medical
evidence from the treating health care provider must be forwarded
10 to the independent medical examiner no later than 14 days prior
to the hearing. The independent medical examiner must be
12 notified of the hearing and shall make a supplemental report if
the subsequent medical evidence affects the medical findings of
14 the independent medical examiner. If the independent medical
examiner prepares a supplemental report, the report must be
16 submitted to the board agency and the parties at least 3 days
prior to the hearing.

18 **7. Weight.** If the parties agree to a medical examiner, the
examiner's findings are binding. If the board agency assigns an
20 independent medical examiner, the board agency shall adopt the
medical findings of the independent medical examiner unless there
22 is clear and convincing evidence to the contrary in the record
that does not support the medical findings. Contrary evidence
24 does not include medical evidence not considered by the
independent medical examiner. The board agency shall state in
26 writing the reasons for not accepting the medical findings of the
independent medical examiner.

28 **8. Immunity.** Any health care provider acting without
malice and within the scope of the provider's duties as an
30 independent medical examiner is immune from civil liability for
making any report or other information available to the board
32 agency or for assisting in the origination, investigation or
preparation of the report or other information so provided.

36 **9. Annual review.** The board agency shall create a review
process to oversee on an annual basis the quality of performance
38 and the timeliness of the submission of medical findings by the
independent medical examiners.

40 **Sec. 85. 39-A MRSA §313, sub-§1,** as amended by PL 1999, c.
42 354, §7, is further amended to read:

44 **1. Procedure.** Except as provided in section 205,
subsection 9, paragraph D, upon filing of notice of controversy
46 or other indication of controversy, the matter must be referred
by the board executive director to mediation.

2 **Sec. 86. 39-A MRSA §313, sub-§§3, 4 and 5**, as enacted by PL
1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
read:

4
6 **3. Conclusion.** At the conclusion of mediation, the
mediator shall file a written report with the board executive
7 director stating the information required by section 305, 2nd
8 paragraph and the legal issues in dispute. If an agreement is
reached, the report must state the terms of the agreement and
10 must be signed by the parties and the mediator. If a full
agreement is not reached, the report must state the information
12 required by section 305, 2nd paragraph, any terms that are agreed
on by the parties and any facts and legal issues in dispute and
14 the report must be signed by the parties and the mediator.

16 **4. Cooperation; sanctions.** The parties shall cooperate
with the mediator assigned to the case. The assigned mediator
18 shall report to the board executive director the failure of a
party to cooperate or to produce requested material. The board
20 executive director may impose sanctions against a party who does
not cooperate or produce requested materials, including the
22 following:

24 A. Assessment of costs and attorney's fees;

26 B. Reductions of attorney's fees; or

28 C. If the party is the moving party, suspension of
proceedings until the party has cooperated or produced the
30 requested material.

32 **5. Duties of employer or representative of the employee,**
employer or insurer. The employer or representative of the
34 employee, employer or insurer who participates in mediation must
be familiar with the employee's claim and has authority to make
36 decisions regarding the claim. The board executive director may
assess a forfeiture in the amount of \$100 against any employer or
38 representative of the employee, employer or insurer who
participates in mediation without full authority to make
40 decisions regarding the claim. If a representative of the
employer, insurer or employee participates in mediation or any
42 other proceeding of the board agency, the representative shall
notify the employer, insurer or employee of all actions by the
44 representative on behalf of the employer, insurer or employee and
any other actions at the proceeding.

46
48 **Sec. 87. 39-A MRSA §314, sub-§§2 and 4**, as enacted by PL 1991,
c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

2 **2. Testimony.** Testimony must be taken under oath and a
3 record of the arbitration must be made. Any party, at that
4 party's expense, may provide for a written transcript of the
5 proceedings. The cost of any transcription ordered by the
6 arbitrator for the arbitrator's own use must be paid for by the
7 board agency.

8 **4. Arbitration decision.** The arbitrator shall render the
9 arbitration decision within 30 days after the close of the
10 arbitration or the receipt of briefs, if required. The decision
11 must be in writing, signed by the arbitrator and include a
12 written opinion stating the arbitrator's findings of fact and
13 conclusions of law. The decision must be filed with the board
14 executive director within 3 days of after entry of the decision
15 by the arbitrator.

16 **Sec. 88. 39-A MRSA §314, sub-§7,** as amended by PL 1995, c.
17 105, §1, is further amended to read:

18 **7. Fee; rules.** The board shall by rule provide for the
19 amount of the fee to be paid to the arbitrator by the board
20 agency and establish administrative processes to review, adopt
21 and monitor arbitration plans.

22 **Sec. 89. 39-A MRSA §315,** as enacted by PL 1991, c. 885, Pt.
23 A, §8 and affected by §§9 to 11, is repealed and the following is
24 enacted in its place:

25 **§315. Formal hearing**

26 **1. Referral.** Upon the filing of the mediator's report
27 indicating that mediation has not resolved all issues in dispute,
28 the executive director shall fix a time for hearing upon at least
29 a 5-day notice given to all the parties or to the attorney of
30 record of each party and shall designate a hearing officer to
31 resolve the dispute. All hearings must be held before a hearing
32 officer employed by the agency at such towns and cities
33 geographically distributed throughout the State as the agency
34 designates.

35 **2. Travel expenses.** If the designated place of hearing is
36 more than 10 miles from the place where the injury occurred, the
37 employer shall provide transportation or reimburse the employee
38 for reasonable mileage in traveling within the State to and from
39 the hearing. The amount allowed for travel is determined by the
40 agency and awarded separately in the decree.

41 **3. Expedited proceedings.** The agency shall provide for an
42 expedited process for scheduling and hearing matters involving
43 medical care or the right to benefits for total incapacity.
44

2 **4. Applicability of Maine Administrative Procedure Act.**
3 The Maine Administrative Procedure Act does not apply to
4 proceedings governed by this subchapter except to the extent
5 provided in rules adopted by the board. Rules adopted pursuant
6 to this subsection are routine technical rules as defined in
7 Title 5, chapter 375, subchapter II-A.

8
9 **Sec. 90. 39-A MRSA §316**, as enacted by PL 1991, c. 885, Pt.
10 A, §8 and affected by §§9 to 11, is amended to read:

11 **§316. Guardians and other representatives for minors and**
12 **incompetents**

13
14 If an injured employee is a minor or is mentally incompetent
15 or, when death results from the injury, if any of the employee's
16 dependents entitled to compensation are minors or mentally
17 incompetent at the time when any right, privilege or election
18 accrues under this Act, the parent, guardian or next friend of
19 the minor or incompetent, or some disinterested person designated
20 by the board assigned hearing officer or the executive director,
21 may claim and exercise that right, privilege or election, or file
22 any petition or answer, on behalf of the minor or incompetent.
23 No limitation of time provided in this Act may run as long as the
24 minor or incompetent has no parent living or guardian.

25
26 If the board assigned hearing officer or the executive
27 director has reasonable grounds for believing that compensation
28 paid under this Act, either in weekly installments or in a lump
29 sum, will be squandered or wasted by the injured employee or the
30 employee's dependents, the board hearing officer or executive
31 director may designate in writing some disinterested person to
32 act as trustee for the injured employee or the dependents. The
33 trustee shall file an account at least once a year with the board
34 agency showing the amounts of receipts and expenditures in behalf
35 of the injured employee or the dependents.

36
37 **Sec. 91. 39-A MRSA §317**, as amended by PL 1997, c. 486, §6,
38 is further amended to read:

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

40
41 The appearance before the board agency of an authorized
42 officer, employee, advocate or representative of a party in any
43 hearing, action or proceeding in which the party is participating
44 or desires to participate is not an unauthorized practice of law
45 and is not subject to any criminal sanction. If the appearance of
46 such an officer, employee, advocate or representative prevents
47 the efficient processing of any proceeding, the board, ~~in its~~
48 assigned hearing officer, a board member or the executive
49 director

2 director has the discretion, ~~may~~ to remove that person from
representation of the party.

4 **Sec. 92. 39-A MRS §318**, as amended by PL 1999, c. 410, §2,
is further amended to read:

6 **§318. Hearing and decision**

8
10 The hearing officer shall hear those witnesses as may be
presented or, by agreement, the claims of both parties as to the
12 facts may be presented by affidavits. If the facts are not in
dispute, the parties may file with the hearing officer an agreed
statement of facts for a ruling on the applicable law. From the
14 evidence or statements furnished, the hearing officer shall in a
summary manner decide the merits of the controversy. The hearing
16 officer's decision must be filed in the office of the ~~board~~
agency and a copy, attested by the ~~clerk of the board~~ executive
18 director, mailed promptly to all parties interested or to the
attorney of record of each party. The hearing officer's decision,
20 in the absence of fraud, on all questions of fact is final; but
if the hearing officer expressly finds that any party has or has
22 not sustained the party's burden of proof, that finding is
considered a conclusion of law and is reviewable in accordance
24 with section 322.

26 The hearing officer, upon motion by the petitioning party,
may include a finding in the decree that the employer's refusal
28 to pay the benefits at issue was not based on any rational
grounds developed between the claim and formal hearing. Upon
30 such a finding, the employer shall pay interest to the employee
under section 205, subsection 6 at a rate of 25% per annum from
32 the date each payment was due, instead of 10% per annum.

34 ~~The hearing officer, upon the motion of a party made within~~
~~20 days after notice of the decision or upon its own motion, may~~
36 ~~find the facts specially and state separately the conclusions of~~
~~law and file the appropriate decision if it differs from the~~
38 ~~decision filed before the request was made. These findings and~~
~~conclusions and the revised decision must be filed in the office~~
40 ~~of the board and a copy, attested by the clerk of the board, must~~
~~be mailed promptly to all parties interested. The running of the~~
42 ~~time for appeal is terminated by a timely motion made pursuant to~~
~~this section and the full time for appeal commences to run from~~
44 ~~the filing of these findings and conclusions and the revised~~
~~decision.~~

46
48 ~~Clerical mistakes in decrees, orders or other parts of the~~
~~record and errors arising from oversight or omission may be~~
corrected by the board at any time of its own initiative, at the
50 request of the hearing officer or on the motion of any party and

2 after-notice-to-the-parties.--During-the-pendency-of-an-appeal,
these-mistakes-may-be-corrected-before-the-appeal-is-docketed-in
4 the-Law-Court-and-thereafter,-while-the-appeal-is-pending,-may-be
corrected-with-leave-of-the-Law-Court.

6 **Sec. 93. 39-A MRSA §319**, as enacted by PL 1991, c. 885, Pt.
A, §8 and affected by §§9 to 11, is repealed and the following is
8 enacted in its place:

10 **§319. Revision by hearing officer**

12 **1. Findings of fact.** The hearing officer, upon the motion
of a party made within 20 days after notice of the decision or
14 upon the hearing officer's own motion, may find the facts
specially and state separately the conclusions of law and revise
16 the decision if it differs from the decision filed before the
request was made.

18 **2. Motion to reopen.** Upon motion of either party, the
20 hearing officer may reopen and review any compensation payment
scheme, award or decree on the grounds of newly discovered
22 evidence that by due diligence could not have been discovered
prior to the time the payment scheme was initiated or prior to
24 the hearing on which the award or decree was based, or for any
reason for which relief would be available under section 321.
26 The motion must be filed within 30 days after the initiation of
the compensation payment scheme, award or decree.

28 **3. Order on motion.** The hearing officer promptly shall
30 issue a written order either denying the motion and reaffirming
the prior decision, or granting the motion and revising or
32 supplementing the decision. The order, including any revised
decision or supplemental findings or conclusions, must be filed
34 in the office of the agency and a copy, attested by the executive
director, must be mailed promptly to all interested parties. The
36 running of the time for appeal is terminated by a timely motion
made pursuant to this section and the full time for appeal
38 commences to run from the filing of the hearing officer's order.

40 **4. Correction of errors.** Clerical mistakes in decrees,
orders or other parts of the record and errors arising from
42 oversight or omission may be corrected by the hearing officer at
any time at the hearing officer's own initiative or on the motion
44 of any party and after notice to the parties. During the
pendency of an appeal, these mistakes may be corrected before the
46 appeal is docketed in the Law Court; and thereafter, while the
appeal is pending mistakes may be corrected with leave of the Law
48 Court.

2 **Sec. 94. 39-A MRSA §320**, as enacted by PL 1991, c. 885, Pt.
A, §8 and affected by §§9 to 11, is repealed and the following is
enacted in its place:

4 **§320. Review by board**

6 Within 5 days after a decision is filed with the agency, the
8 assigned hearing officer may request that the board review a
10 decision of the hearing officer if the decision involves an issue
12 that is of significance to the operation of the workers'
compensation system. There may not be a review of findings of
fact made by a hearing officer.

14 If review is requested under this section, the time for
16 appeal to the Law Court pursuant to section 322 is stayed and
18 further action may not be taken until a decision of the board has
20 been made. If the board reviews a decision of a hearing officer,
22 any appeal must be from the decision of the board. If the board
denies the request for review, that is a discretionary act not
subject to judicial review, and any appeal must be from the
decision of the hearing officer.

24 If the board votes within 30 days to accept the request for
26 review, the board shall conduct a review of the decision.
28 Otherwise, the board shall promptly issue a written decision
30 denying review. If the board grants review, it must be on the
32 record and on written briefs only. After the review is complete,
34 the board shall issue a written decision affirming, reversing or
36 modifying the hearing officer's decision. The decision of the
38 hearing officer must be affirmed if there is no majority vote for
any other action. The board's decision must be filed in the
office of the agency and a copy, attested by the executive
director, mailed promptly to all parties interested or to the
attorney of record of each party. The board may delegate any
stage of the review process under this section to a panel of
board members including equal numbers of representatives of labor
and management, which shall issue a recommendation to the full
board.

40 **Sec. 95. 39-A MRSA §321**, as enacted by PL 1991, c. 885, Pt.
A, §8 and affected by §§9 to 11, is amended to read:

42 **§321. Reopening for mistake of fact or fraud**

44 **1. Agreements.** Upon the petition of either party at any
46 time, the board agency may annul any agreement that has been
48 approved by the board agency if it finds that the agreement has
50 been entered into through mistake of fact by the petitioner or
through fraud. Except in the case of fraud on the part of the
employee, an employee is not barred by any time limit from filing

2 a petition to have the matters covered by the agreement
determined in accordance with this Act as though the agreement
had not been approved.

4
6 **2. Compensation payment scheme.** A party may petition the
board agency, within one year of after initiation of a payment
scheme, award or decree, to reopen any case in which fraud on the
8 part of the opposing party is alleged. If the board agency finds
that the petitioning party exercised due diligence in
10 investigating the initial claim and further finds that fraud
occurred, the board agency may reopen the case as to any issue
12 that may have been affected by the fraudulent act and the board
agency may terminate or modify an employer's obligation to make
14 payment upon a finding that fraud on the part of a party affected
the employer's obligation to make payment.

16
18 Except in the case of fraud on the part of the employee, an
employee is not barred by any time limit from filing a petition
to have any issues determined in accordance with this Act as
20 though the payment scheme had not been initiated.

22 **Sec. 96. 39-A MRSA §322**, as enacted by PL 1991, c. 885, Pt.
A, §8 and affected by §§9 to 11, is amended to read:

24 **§322. Appeal from decision of hearing officer or board**

26
28 **1. Appeals.** Any party in interest may present a copy of the
decision of a hearing officer or a decision of the board, if the
board has reviewed a decision pursuant to section 320, to the
30 clerk of the Law Court and to the executive director within 20
days after receipt of notice of the filing of the decision by the
32 hearing officer or the board. Within 20 days after the copy is
filed with the Law Court, the party seeking review by the Law
34 Court shall file a petition seeking appellate review with the Law
Court that sets forth a brief statement of the facts, the error
36 or errors of law that are alleged to exist and the legal
authority supporting the position of the appellant. Copies of
38 the petition also must be served on the executive director and on
the other parties to the proceeding.

40
42 **2. Procedures.** The Law Court shall establish and publish
procedures for the review of petitions for appellate review of
44 decisions of the board agency. If the board determines that
appellate review of a hearing officer's decision would promote
the purposes of this Act, the board may file a brief statement
46 with the Law Court in support of the petition. The statement
must be served on all parties to the proceeding.

48
50 **3. Discretionary appeal; action.** Upon the approval of 3 or
more members of a panel consisting of no fewer than 5 Justices of

2 the Law Court, the petition for appellate review may be granted.
3 If the petition for appellate review is denied, the decision of
4 the board agency is final. The petition must be considered on
written briefs only.

6 If the petition for appellate review is granted, the clerk of the
7 Law Court shall notify the parties of the briefing schedule
8 consistent with the Maine Rules of Civil Procedure and in all
9 respects the appeal before the Law Court must be treated as an
10 appeal in an action in which equitable relief has been sought,
11 except that there may be no appeal upon findings of fact. The
12 board has standing to file a brief as an amicus curiae. The Law
13 Court may, after due consideration, reverse, modify or affirm any
14 decision of the board agency.

16 **Sec. 97. 39-A MRSA §323**, as enacted by PL 1991, c. 885, Pt.
17 A, §8 and affected by §§9 to 11, is amended to read:

18 **§323. Enforcement of agency decision**

19
20 Any decision of the board agency is enforceable by the
21 Superior Court by any suitable process, including execution
22 against goods, chattel and real estate and proceedings for
23 contempt for willful failure or neglect to obey the orders or
24 decrees of the court or in any other manner that decrees for
25 equitable relief are enforced. Any party in interest may present
26 copies, certified by the ~~clerk of the board~~ executive director,
27 of any order or decision of the board agency or of any memorandum
28 of agreement approved by the board agency to the clerk of courts
29 for the county in which the injury occurred or, if the injury
30 occurred outside the State, to the clerk of courts for Kennebec
31 County. Any Justice of the Superior Court shall then render a
32 pro forma decision in accordance with the order, decision or
33 memorandum and cause all interested parties to be notified. The
34 decision has the same effect and all proceedings in relation to
35 the decision are the same as though rendered in an action in
36 which equitable relief is sought, duly heard and determined by
37 the court. The decision must be for enforcement of a ~~board an~~ an
38 agency decision, order or agreement. Appeals from a ~~board an~~ an
39 agency decision, order or agreement must be in accordance with
40 section 322.

42
43 **Sec. 98. 39-A MRSA §324, sub-§§1, 2 and 4**, as enacted by PL
44 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
45 read:

46 **§324. Compensation payments; penalty**

47
48 1. **Order or decision.** The employer or insurance carrier
49 shall make compensation payments within 10 days after the receipt
50

2 of notice of an approved agreement for payment of compensation or
3 within 10 days after any order or decision of the board agency
4 awarding compensation. If the board agency enters a decision
5 awarding compensation and an appeal is filed with the Law Court
6 pursuant to section 322, payments may not be suspended while the
7 appeal is pending. The employer or insurer may recover from an
8 employee payments made pending appeal to the Law Court if and to
9 the extent that the Law Court has decided that the employee was
10 not entitled to the compensation paid. The board agency has full
11 jurisdiction to determine the amount of overpayment, if any, and
12 the amount and schedule of repayment, if any. The board agency,
13 in determining whether or not repayment should be made and the
14 extent and schedule of repayment, shall consider the financial
15 situation of the employee and the employee's family and may not
16 order repayment that would work hardship or injustice.

17 **2. Failure to pay within time limits.** An employer or
18 insurance carrier who fails to pay compensation, as provided in
19 this section, is penalized as follows.

20
21 A. Except as otherwise provided by section 205, if an
22 employer or insurance carrier fails to pay compensation as
23 provided in this section, the board agency shall assess
24 against the employer or insurance carrier a forfeiture of up
25 to \$200 for each day of noncompliance. If the board agency
26 finds that the employer or insurance carrier was prevented
27 from complying with this section because of circumstances
28 beyond its control, no forfeiture may be assessed.

29
30 (1) The forfeiture for each day of noncompliance must
31 be divided as follows: Of each day's forfeiture amount,
32 the first \$50 is paid to the employee to whom
33 compensation is due and the remainder must be paid to
34 the board agency and be credited to the Workers'
35 Compensation Board Agency Administrative Fund.

36
37 (2) If a forfeiture is assessed against any employer
38 or insurance carrier under this subsection on petition
39 by an employee, the employer or insurance carrier shall
40 pay reasonable costs and attorney's fees related to the
41 forfeiture, as determined by the board agency, to the
42 employee.

43
44 (3) Forfeitures assessed under this subsection may be
45 enforced by the Superior Court in the same manner as
46 provided in section 323.

47
48 B. Payment of any forfeiture assessed under this subsection
49 is not considered an element of loss for the purpose of
50 establishing rates for workers' compensation insurance.

2 **4. Certificate.** Notwithstanding any other provision of law
or rule of evidence, the certificate of the executive director,
4 ~~under seal of the board,~~ must be received in any court in this
State as prima facie evidence of facts pertaining to insurance
6 coverage records contained in the certificate or within the
documents attached to the certificate.

8
 Sec. 99. 39-A MRSA §325, sub-§§1 to 3, as enacted by PL 1991,
10 c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

12 **1. Costs and attorney's fees.** Except as otherwise provided
by law, by the Maine Rules of Civil Procedure or by rule of
14 court, each party is responsible for the payment of the party's
own costs and attorney's fees. In the event of a disagreement as
16 to those costs or fees, an interested party may apply to the
board executive director for a hearing under section 315.

18 **2. Restriction on attorney's fees.** An attorney
20 representing an employee in a proceeding under this Act may
receive a fee from that client for an activity pursuant to the
22 Act only as provided in this section. The fees and payment of
fees to all attorneys for services provided to employees under
24 this Act are subject to the approval of the board agency. The
board agency may approve the payment of attorney's fees by the
26 employee for services provided to the employee pursuant to this
Act. Any attorney who violates this section must forfeit any fee
28 in the case and is liable in a court suit to pay damages to the
client equal to 2 times the fee charged to that client.

30 **3. Rules.** The board shall adopt rules to prescribe maximum
32 attorney's fees and the manner in which the amount is determined
and paid by the employee. The maximum attorney's fees prescribed
34 by the board in a case tried to completion may not exceed 30% of
the benefits accrued, after deducting reasonable expenses
36 incurred on behalf of the employee, or be based on a weekly
benefit amount after coordination that is higher than 2/3 of the
38 state average weekly wage at the time of injury. The board may
by rule allow attorney's fees to be increased above or decreased
40 below the amount specified in the rule when in the discretion of
the board agency that action is determined to be appropriate.

42 **Sec. 100. 39-A MRSA §329,** as enacted by PL 1999, c. 202, §1,
44 is amended to read:

46 **§329. Interpreter required**

48 An employee whose native language is not English and who
does not understand the English language to the degree necessary

2 to reasonably understand and participate in proceedings that
3 affect the employee's rights is entitled to have an interpreter
4 present at all proceedings before the ~~board or a hearing officer~~
5 agency relating to that employee's rights. The ~~board~~ agency
6 shall provide and pay the cost of the interpreter. To the extent
7 possible, the ~~board~~ agency shall seek advice from the Department
8 of Labor in locating appropriate interpreters to meet the needs
9 of employees in the workers' compensation system.

10 **Sec. 101. 39-A MRSA §351**, as enacted by PL 1991, c. 885, Pt.
11 A, §8 and affected by §§9 to 11, is amended to read:

12 **§351. Nonresidents**

13 If an employee receiving weekly payments under this Act
14 ceases to reside in the State or if the employee's residence at
15 the time of the injury is in another state, the ~~board~~ executive
16 director upon application of either party ~~may,--in-its~~ has the
17 discretion, having regard to the welfare of the employee and the
18 convenience of the employer, to authorize payments to be made
19 monthly or quarterly instead of weekly.

20 **Sec. 102. 39-A MRSA §352**, as amended by PL 1997, c. 654, §§2
21 and 3, is further amended to read:

22 **§352. Lump-sum settlements**

23 **1. Agreement.** An insurer, self-insurer or self-insured
24 group and an employer and employee may by agreement discharge any
25 liability for compensation, in whole or in part, by the
26 employer's payment of an amount to the employee if:

27 A. The insurer, the employer, the employee or the
28 employee's dependents petition the ~~board~~ executive director
29 for an order commuting all payments for future benefits to a
30 lump sum;

31 B. Six months' time has elapsed from the date of an injury;
32 and

33 C. The provisions of this section have been met and the
34 agreement has been approved by the ~~board~~ executive director.

35 **2. Policy.** The board shall by rule adopt policies
36 establishing the circumstances under which lump-sum payments may
37 be approved under this section. The circumstances must be at
38 least as restrictive as those set forth in this section.

2 **3. Review.** Before approving any lump-sum settlement, the
3 **board executive director** shall review the following factors with
4 the employee:

5 A. The employee's rights under this Act and the effect a
6 lump-sum settlement would have on those rights, including,
7 if applicable, the effect of the release of an employer's
8 liability for future medical expenses;

9 B. The purpose for which the settlement is requested;

10 C. The employee's post-injury earnings and prospects,
11 considering all means of support, including the projected
12 income and financial security resulting from proposed
13 employment, self-employment or any business venture or
14 investment and the prudence of consulting with a financial
15 or other expert to review the likelihood of success of these
16 projects;

17 D. Any other information, including the age of the employee
18 and of the employee's dependents, that would bear upon
19 whether the settlement is in the best interest of the
20 claimant;

21 E. The existence of a child support debt of which
22 notification has been sent pursuant to Title 19-A, section
23 2360-A.

24 **4. Procedure.** The **board executive director** shall initiate
25 the review within 14 days of receipt of a request for a
26 settlement review. An employer is considered a party for the
27 purposes of this section.

28 **5. Approval.** The **board executive director** may not approve
29 any lump-sum settlement unless there is an agreement pursuant to
30 subsection 1 or, in the event the employer refuses to agree to
31 the settlement, the **board executive director** has reviewed the
32 proposed agreement and finds it to be in the best interests of
33 the parties, and unless:

34 A. The employee has fully participated in the review
35 process, except in circumstances amounting to good cause;

36 B. The **board executive director** finds the settlement to be
37 in the employee's best interest in light of the factors
38 reviewed with the employee under subsection 3; and

39 C. In the case of a lump-sum settlement that requires the
40 release of an employer's liability for future medical
41 expenses of the employee, the **board executive director** finds
42

2 that the parties would be unlikely to reach agreement on the
amount of the lump-sum payment without the release of
4 liability for future medical expenses.

6 **6. Monitoring of lump-sum settlement recipients.** The board
agency shall establish and maintain a program to monitor the
8 postsettlement employment experience of employees who settle
their claims pursuant to this section to help develop future
10 policy. The Department of Labor shall cooperate with the board
agency in the establishment and operation of this monitoring
12 program.

14 **Sec. 103. 39-A MRSA §354, sub-§3,** as amended by PL 1999, c.
354, §9, is further amended to read:

16 **3. Subrogation.** Any insurer determined to be liable for
benefits under subsection 2 must be subrogated to the employee's
18 rights under this Act for all benefits the insurer has paid and
for which another insurer may be liable. Apportionment decisions
20 made under this subsection may not affect an employee's rights
and benefits under this Act. The board agency has jurisdiction
22 over proceedings to determine the apportionment of liability
among responsible insurers, which may be resolved by petition
24 pursuant to section 307. The executive director has the
discretion to set the matter for hearing without referral to
26 mediation.

28 **Sec. 104. 39-A MRSA §354, sub-§4,** as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

30 **4. Consolidation.** The board agency may consolidate some or
all proceedings arising out of multiple injuries.

32 **Sec. 105. 39-A MRSA §355, first ¶,** as enacted by PL 1991, c.
34 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

36 If an employee who has completed a rehabilitation program
under section 217, whether implementation is approved or ordered
38 by the board agency, subsequently sustains a personal injury
arising out of and in the course of employment and that injury,
40 in combination with the prior injury, results in a reduction in
earning capacity that is substantially greater in duration or
42 degree, or both, than that which would have resulted from the
subsequent injury alone, taking into account the age, education,
44 employment opportunities and other factors related to the
employee, the employer at the time of the subsequent injury is
46 entitled to reimbursement from the Employment Rehabilitation
Fund, referred to in this section as the "fund," as provided in
48 this section.

2 **Sec. 106. 39-A MRSA §355, sub-§1**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

4 **1. Fund administration and contributions.** There is
6 established a special fund, known as the Employment
Rehabilitation Fund, for the sole purpose of making payments in
8 accordance with this Act. The fund is administered by the ~~board~~
executive director. The Treasurer of State is the custodian of
10 the fund. All money and securities in the fund must be held in
trust by the Treasurer of State for the purpose of making
12 payments under this Act and are not money or property for the
general use of the State. The fund does not lapse.

14 The Treasurer of State may disburse money from the fund only upon
written order of the ~~board~~ agency. The Treasurer of State shall
16 invest the money of the fund in accordance with law. Interest,
income and dividends from the investments must be credited to the
18 fund.

20 **Sec. 107. 39-A MRSA §355, sub-§3, ¶B**, as enacted by PL 1991,
c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

22 B. The ~~board~~ executive director shall order a reduction,
24 suspension or termination of reimbursement of an employer
under this section if the ~~board~~ executive director finds
26 that the employer has not made a bona fide effort to return
the employee to continuing suitable employment.

28 **Sec. 108. 39-A MRSA §355, sub-§4, ¶A**, as enacted by PL 1991,
30 c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

32 A. If insurers disagree on the apportionment of liability
in a case under this section, the matter must be considered
34 by the ~~board~~ executive director before an insurer may file a
petition under section 354. The ~~board~~ executive director
36 shall encourage agreement between the insurers and, if
agreement can not be achieved, shall make a recommendation
38 on the apportionment of liability.

40 **Sec. 109. 39-A MRSA §355, sub-§6, ¶¶A to D**, as enacted by PL
1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to
42 read:

44 A. The subsequent employer must file an application for a
wage credit by providing the ~~board~~ executive director,
46 within 2 weeks after the close of the first 90 days of
employment of the employee, with a statement of the total
48 direct wages, earnings or salary the employer paid to the

2 employee for the first 90 days of employment along with such
3 verification as may be required by rule ~~of~~ adopted by the
4 board. Within 2 weeks after the close of the first 180 days
5 of employment, the subsequent employer must provide to the
6 board executive director a supplemental report of the direct
7 wages, earnings and salary for the 2nd 90-day period, along
8 with the required verification.

10 B. The board executive director shall compute the wage
11 credit, which consists of a sum equal to 50% of the average
12 weekly direct wages, earnings or salary for the 90-day
13 period listed in the subsequent employer's application or
14 statement, but may not exceed the amount of workers'
15 compensation benefits that the employee did not receive
16 because of the employment but would have been entitled to
17 for the wage credit period, based on the average weekly
18 workers' compensation benefits during the most recent 60-day
19 period in which the employee did receive benefits preceding
20 the employee's hiring by the employer.

22 (1) On adequate verification of the application or
23 statement, the board executive director shall pay the
24 amount for each 90-day period in a lump sum to the
25 subsequent employer within 30 days of receiving the
26 application or statement.

28 (2) The board executive director shall bill these sums
29 to the insurer or self-insurer that was responsible for
30 payment of the compensation received by the employee
31 immediately before the employee's hiring by the
32 subsequent employer. When the sum is received from the
33 insurer or self-insurer, the board executive director
34 shall deposit it in the fund.

36 C. If the employment with the subsequent employer is
37 terminated by the employer without good cause before the
38 completion of 12 consecutive months of employment, the
39 subsequent employer shall return to the board executive
40 director all wage credits received by the employer for that
41 employee and all sums paid into the fund by the insurer or
42 self-insurer must be returned to that insurer or
43 self-insurer.

44 D. When the wage credit is paid from the fund to an
45 employer, the insurer or self-insurer who paid the sum into
46 the fund has no further obligation to pay any sums into the
47 fund for any future reemployment of that employee, except as
48 provided in paragraph E.

2 (1) Total wage credit payments under a plan may not
exceed a period of 180 days, not including periods
subject to refunds under paragraph C.

4 (2) The ~~board~~ executive director shall inform
6 subsequent employers of the number of days of wage
credits available, if it is less than 180 days.

8
10 **Sec. 110. 39-A MRSA §355, sub-§§7 to 9**, as enacted by PL 1991,
c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

12 **7. Plan implementation costs; payment; reimbursement.** The
actual and direct costs of implementing plans ordered by the
14 ~~board~~ agency under section 217, subsection 2 must be paid from
the fund. Payments must be made directly to the rehabilitation
16 providers or other persons who provide services under the plan.
Upon an order of recovery of plan implementation costs under
18 section 217, subsection 3, the ~~board~~ executive director shall
assess the employer who refused to agree to implement the plan
20 under section 217 an amount equal to 180% of the costs paid from
the fund under this subsection. An employer ~~may--appeal that~~
22 contests the imposition or amount of this assessment ~~to the board~~
may file a petition pursuant to section 307. The employee may
24 not be a party to this appeal proceeding.

26 **8. Jurisdiction.** The ~~board~~ agency has jurisdiction over
all claims brought against the fund. Claims that can not be
28 resolved informally must be referred for hearing pursuant to
section 315.

30
32 A. The fund is not bound as to any question of law or fact
by reason of any award or any adjudication to which the fund
was not a party or in relation to which the fund was not
34 notified, at least 21 days prior to the award or
adjudication, that the fund might be subject to liability
36 for the injury or death of an employee.

38 B. An employer shall notify the ~~board~~ executive director of
any possible claim for subsequent injury reimbursement
40 against the fund as soon as practicable, but in no event
later than one year after the injury or death of an
42 employee. Failure to provide timely notice bars the claim.

44 **9. Legal representation.** The Attorney General shall
provide legal representation for any claim made under this
46 section, including the enforcement of an assessment made under
subsection 7 or the defense of an employer's appeal of that
48 assessment.

2 A. The reasonable expense of prosecution or defense by the
4 Attorney General of assessments to or claims against the
fund, subject to the approval of the board executive
director, are payable out of the fund.

6 B. The Attorney General may not prosecute an assessment
8 against the State or defend the fund against any claim
brought by the State. The board executive director may
10 hire, using money from the fund, private counsel for this
purpose.

12 **Sec. 111. 39-A MRSA §355, sub-§14, ¶¶A, D and E**, as enacted by
PL 2001, c. 448, §4, are amended to read:

14 A. The board executive director may levy an assessment when
16 the balance in the fund is insufficient to meet obligations
of the fund under this section. The assessment must be
18 levied on each insurer based on its actual paid losses
during the previous calendar year.

20 D. The State Tax Assessor or the State Tax Assessor's duly
22 authorized agent ~~or~~, the board or the executive director,
for the purpose of determining the truth or falsity of any
24 statement or return made by the insurer, may:

26 (1) Enter any place of business of an insurer to
inspect any books or records of the insurer;

28 (2) Notwithstanding any other provision of law,
30 inspect any records or reports filed by an insurer with
the Superintendent of Insurance; and

32 (3) Delegate these powers to the Superintendent of
34 Insurance or the superintendent's deputies, agents or
employees.

36 E. Whenever any insurer fails to pay any assessment due
38 under this subsection within the time specified by the board
executive director, the Attorney General shall enforce
40 payment by civil action against that insurer for the amount
of the assessment in the Superior Court in ~~and--for~~ the
42 county or the District Court in the division in which that
insurer has the insurer's place of business, or in the
44 Superior Court of Kennebec County.

46 **Sec. 112. 39-A MRSA §355-B, sub-§9**, as enacted by PL 2001, c.
448, §5, is amended to read:

48 **9. Agency proceedings.** Neither the fund nor the committee
50 has standing or authority to participate directly or indirectly

2 in any proceeding before the board agency regarding the level or
duration of benefits payable to an employee.

4 **Sec. 113. 39-A MRSA §355-C, sub-§§3 and 4**, as enacted by PL
2001, c. 448, §5, are amended to read:

6
8 **3. Determinations.** The committee shall review requests for
reimbursement within 14 days ~~of~~ after receipt of the request or
10 within a longer period of time if mutually acceptable to the
parties. The committee shall issue a final determination,
12 designated as such, to each insurer or self-insurer that has
requested reimbursement. An insurer or self-insurer may petition
14 the board executive director for ~~a hearing before a hearing~~
~~officer~~ review of the committee's decision within 30 days after
16 the issuance of notice of the determination. If the executive
director is unable to resolve the dispute informally, the
18 executive director promptly shall refer the matter for hearing in
accordance with section 315. Review by the board agency is
20 limited to errors of law and abuse of discretion.

22 **4. Effect of agency decrees.** The fund and the committee
are bound to the same extent as the employee and insurer or
24 self-insurer by decrees of the board agency.

26 **Sec. 114. 39-A MRSA §356, sub-§1-A, ¶¶C, D and E**, as enacted by
PL 2001, c. 448, §6, are amended to read:

28 C. An assessment against ~~insurers must be based on premiums~~
~~charged to employers pursuant to section 154, subsection 3,~~
30 ~~paragraph B-1.~~ insurance companies must be
stated as a percentage of each employer's premium base.
32 ~~Insurers~~ Insurance companies shall apply the percentage to
premiums collected beginning on July 1st. If a
34 supplementary assessment is levied, the committee shall
notify ~~insurers~~ insurance companies of the new percentage
36 and the ~~insurers~~ insurance companies shall apply the new
percentage to premiums written beginning on the 31st day
38 following notification.

40 (1) The total value of assessments collected from
~~insurers~~ insurance companies pursuant to this section
42 paragraph must be credited to the fund. Each ~~insurer~~
insurance company that collects workers' compensation
44 premiums or assessments shall file with the committee
on a form prescribed by the committee a return
46 certified by the ~~insurer's~~ insurance company's chief
financial officer specifying assessment collections
48 relating to the calendar quarter next preceding the
15th day of April, July, October and January of each
50 year in which an assessment is applicable. Affiliated
~~insurers~~ insurance companies may consolidate payments

2 made to the fund if each carrier is licensed and
premium reports respecting that insurer insurance
4 company are individually reported within the
consolidated return. Payment of amounts collected
6 pursuant to this section must be remitted to the fund
at the time the premium return is filed with the
committee.

8
10 (1-A) An employer's premium base for assessment
12 purposes is defined as payroll times the filed manual
14 rate applicable to the employer times the employer's
16 current experience modification factor, if applicable.
18 The calculation may not include any deductible credit
20 other than credits for the \$1,000 and \$5,000 indemnity
22 deductibles and the \$250 and \$500 medical deductibles
24 established pursuant to Title 24-A, sections 2385 and
26 2385-A, respectively. For policies written using
retrospective rating, the premium base must be
calculated in accordance with this paragraph regardless
of the actual retrospective premium calculation. The
employer's premium base is subject to the final audit
requirements of Chapter 470 of the Bureau of Insurance
Rules. If the audit results in a change in premium
base, the amount of the assessment must be adjusted
accordingly.

28 (2) The Department of Professional and Financial
Regulation, Bureau of Insurance shall report to the
board agency, the committee and any service agent all
30 newly authorized workers' compensation carriers in
order to facilitate notification to those carriers of
32 their obligation under this section.

34 (3) Any insurance carrier subject to this section that
willfully fails to pay an assessment in accordance with
36 this section commits a civil violation for which a
forfeiture of not more than \$500 may be adjudged for
38 each day following the due date for which the payment
is not made.

40 D. Except for newly approved workers' compensation
42 self-insurers, each self-insurer must be assessed a dollar
amount based on the proportion that the self-insurer's
44 aggregate benefits paid as reported pursuant to section 154,
subsection 5 bears to the aggregate benefits paid by all
46 self-insurers as so reported. If a supplementary assessment
is levied, the committee shall notify self-insurers 30 days
48 prior to the date upon which the assessment is due.

50 (1) The total value of assessments collected from
self-insured employers under this section paragraph
52 must be credited to the fund. Each self-insurer shall

2 file with the committee on a form prescribed by the
committee a return certified by the self-insurer's
4 chief financial officer attesting to the accuracy of
the amount owed to the fund. Payment of the assessment
6 must be remitted to the fund at the time the return is
filed with the committee. The form and payment are due
8 on the later of July 1st and 30 days after the
committee levies the assessment.

10 (2) The Department of Professional and Financial
Regulation, Bureau of Insurance shall report to the
12 board agency, the committee and any service agent all
newly approved workers' compensation self-insurers in
14 order to facilitate notification to those self-insurers
of their obligation under this section. A newly
16 approved self-insurer that has ~~historically purchased a
policy or policies of workers' compensation covering
18 workers' compensation exposures in this State was not
continuously authorized to self-insure throughout the
preceding calendar year~~ shall pay assessment to the
20 fund based on its current annual standard premium,
22 using the assessment percentage applicable to insurers
~~until the self-insurer has paid benefits for 12 months~~
24 insurance companies.

26 (3) A self-insurer subject to this section that
willfully fails to pay an assessment in accordance with
28 this section commits a civil violation for which a
forfeiture of not more than \$500 may be adjudged for
30 each day following the due date for which the payment
is not made.

32 E. Rates and premiums charged for workers' compensation
34 policies may not be considered excessive if because a
surcharge calculated pursuant to this section is made to
36 recoup assessments paid to the fund. Any surcharge so made
must be specifically identified upon the policies or other
38 evidence of coverage. Such surcharges are not subject to
premium taxes.

40 **Sec. 115. 39-A MRSA §356, sub-§6,** as enacted by PL 1991, c.
42 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

44 **6. Civil action.** Whenever any insurer fails to pay any
assessment due under this section within the time limit, the
46 Attorney General shall enforce payment by civil action against
that insurer for the amount of the assessment in the Superior
48 Court in ~~and for~~ the county or the District Court in the division
in which that insurer has ~~the insurer's~~ its place of business, or
50 in the Superior Court ~~of~~ in Kennebec County.

2 **Sec. 116. 39-A MRSA §357, sub-§1**, as enacted by PL 1991, c.
3 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

4
5 **1. Completion of forms.** Every insurance company insuring
6 employers under this Act shall fill out any blanks and answer all
7 questions submitted that may relate to policies, premiums, amount
8 of compensation paid and such other information as the ~~board~~
9 agency or the Superintendent of Insurance may determine
10 important, either for the proper administration of this Act or
11 for statistical purposes.

12 **Sec. 117. 39-A MRSA §358-A**, as amended by PL 1997, c. 649,
13 §1, is further amended to read:

14
15 **§358-A. Reports and data collection**

16
17 **1. Workers' compensation system annual report.** The ~~board~~
18 executive director, with the approval of the board and in
19 consultation with the Superintendent of Insurance, and the
20 Director of the Bureau of Labor Standards within the Department
21 of Labor, referred to in this section as the "Director of the
22 Bureau of Labor Standards," shall submit an annual report to the
23 Governor and the joint standing committees of the Legislature
24 having jurisdiction over labor and banking and insurance matters
25 by February 15th of each year regarding the status of the
26 workers' compensation system. At a minimum, the report must
27 include an assessment of the ~~board's~~ agency's implementation of
28 the following provisions:

29
30 A. The number of individual cases monitored to ensure the
31 provision of benefits in accordance with law, pursuant to
32 section ~~152~~ 152-A, subsection ~~10~~ 11;

33
34 B. The number of cases monitored to ensure the payments are
35 initiated within the time limits of sections 205 and 324 and
36 the adequacy of compensation provided pursuant to section
37 153, subsection 1;

38
39 C. The number of investigations performed pursuant to
40 section 153, subsection 7;

41
42 D. The number of lump-sum ~~settlements~~ settlement cases
43 monitored and a summary of postsettlement employment
44 experience pursuant to section 352, subsection 6;

45
46 E. The number of audits performed and an assessment of
47 compliance with this Act based on audit results pursuant to
48 section 359, subsection 1;

49
50

2 F. The number of penalties assessed and the reasons for the
3 assessments pursuant to section 205, subsection 3; section
4 313, subsection 4; section 324, subsections 2 and 3; section
5 359, subsection 2; and section 360; and

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

10 The report must contain specific data regarding compliance,
11 including benchmarks measuring individual ~~insurer's,~~
12 ~~self-insurer's, --- or --- 3rd party --- administrator's~~ insurers',
13 self-insurers', or 3rd-party administrators' compliance with the
14 provisions of this Act and any penalties assessed. Benchmarks
15 must be developed by the ~~board~~ executive director with input from
16 insurers, self-insurers and 3rd-party administrators and other
17 parties the ~~board~~ executive director considers appropriate. The
18 ~~board~~ executive director shall also report on the utilization of
19 troubleshooters, advocates and, retained legal counsel and
20 hearing officers, with correlating outcomes.

22 **2. Data collection and interpretation.** The Director of the
23 Bureau of Labor Standards ~~within the Department of Labor,~~ the
24 Superintendent of Insurance and the ~~board's~~ executive director
25 shall meet at least 3 times a year with appropriate staff and
26 other state agencies to review the areas of data collection
27 pertaining to the workers' compensation system, as well as to
28 interpret and coordinate appropriate data collection programs to
29 carry out the purposes of this Act. The Director of the Bureau
30 of Labor Standards shall chair this group.

32 The Director of the Bureau of Labor Standards, the Superintendent
33 of Insurance and the ~~board's~~ executive director shall provide
34 jointly or individually any further occasional reports that they
35 consider necessary to the improved function and administration of
36 this Act and the occupational disease laws.

38 **3. Occupational injuries and illnesses.** The Director of the
39 Bureau of Labor Standards ~~within the Department of Labor~~ shall
40 provide an annual report concerning the number and character of
41 occupational injuries and illnesses and their effects, as
42 required under Title 26, section 42.

44 The ~~board's~~ executive director shall assist the Director of the
45 Bureau of Labor Standards to ensure that necessary information
46 regarding the administrative processes, costs and other factors
47 related to this Act and the occupational disease laws are
48 included in the report. The Commissioner of Human Services and
the Director of the Bureau of Health shall provide the Director

2 of the Bureau of Labor Standards with any information in their
3 possession related to occupational injuries and illnesses.

4 **4. Loss costs data.** The Superintendent of Insurance shall
5 provide the following information to the Director of the Bureau
6 of Labor Standards ~~within the Department of Labor~~ on an annual
7 basis:

8 A. A tabulation of premium and loss costs paid and incurred
9 on an accident-year basis regarding those insurance
10 companies authorized by the Bureau of Insurance to write
11 workers' compensation in the State; and

12 B. Similar data for self-insurance workers' compensation
13 plans regulated by the Bureau of Insurance.

14 **5. Rehabilitation data.** The ~~board~~ agency shall develop a
15 system for collecting rehabilitation data and provide any reports
16 considered necessary for the improved function and administration
17 of rehabilitation under this Act.

18 **Sec. 118. 39-A MRSA §359**, as enacted by PL 1991, c. 885, Pt.
19 A, §8 and affected by §§9 to 11, is amended to read:

20 **§359. Audits; penalty; monitoring**

21 **1. Audits.** The ~~board~~ agency shall audit claims, including
22 insurer, self-insurer and 3rd-party administrator claim files, on
23 an ongoing basis to determine whether insurers, self-insured
24 employers and 3rd-party administrators have met their obligations
25 under this Act and to identify the disputes that arose, the
26 reasons for the disputes, the method and manner of their
27 resolution, the costs incurred, the reasons for attorney
28 involvement and the services rendered by the attorneys.

29 If as a result of an examination and after providing the
30 opportunity for a hearing under the Maine Administrative
31 Procedure Act the ~~board~~ agency determines that any compensation,
32 interest, penalty or other obligation is due and unpaid to an
33 employee, dependent or service provider, the ~~board~~ agency shall
34 issue a notice of assessment detailing the amounts due and unpaid
35 in each case and shall order the amounts paid to the unpaid party
36 or parties.

37 **2. Penalty.** In addition to any other penalty assessment
38 permitted under this Act, the ~~board~~ agency may assess civil
39 penalties not to exceed \$10,000 upon finding, after hearing, that
40 an employer, insurer or 3rd-party administrator for an employer
41 has engaged in a pattern of questionable claims-handling
42 techniques or repeated unreasonably contested claims. The ~~board~~
43

2 agency shall certify its findings to the Superintendent of
Insurance, who shall take appropriate action so as to bring any
4 such practices to a halt. This certification by the ~~board~~ agency
is exempt from the provisions of the Maine Administrative
6 Procedure Act.

8 **3. Monitoring.** No later than July 1, 1993 the ~~board~~ agency
shall implement a monitoring program to evaluate and compare the
10 cost, utilization and performance of the workers' compensation
system for each calendar year beginning with 1988. The
12 information compiled must include the number of injuries
occurring and claims filed as compared to employment levels, the
14 type and cost of the benefits provided, attorney involvement and
litigation levels, and the long-term, postinjury economic status
16 of injured workers, as well as any other data that is actuarially
valid and can be utilized to accomplish the purposes of this Act,
18 including rulemaking and recommending legislation.

20 **Sec. 119. 39-A MRSA §360,** as enacted by PL 1991, c. 885, Pt.
A, §8 and affected by §§9 to 11, is amended to read:

22 **§360. Penalties**

24 **1. Reporting violations.** The ~~board~~ agency may assess a
civil penalty not to exceed \$100 for each violation on any person:

26 A. Who fails to file or complete any report or form
28 required by this Act or rules adopted under this Act; or

30 B. Who fails to file or complete such a report or form
32 within the time limits specified in this Act or rules
adopted under this Act.

34 **2. General authority.** The ~~board~~ agency may assess, after
hearing, a civil penalty in an amount not to exceed \$1,000 for an
36 individual and \$10,000 for a corporation, partnership or other
legal entity for any willful violation of this Act, fraud or
38 intentional misrepresentation. The ~~board~~ agency may also require
that person to repay any compensation received through a
40 violation of this Act, fraud or intentional misrepresentation or
to pay any compensation withheld through a violation of this Act,
42 fraud or misrepresentation, with interest at the rate of 10% per
year.

44 **3. Appeal.** Imposition of a penalty under this section is
46 deemed to be final agency action subject to appeal to the
Superior Court, as provided in Title 5, chapter 375, subchapter
48 VII. Notwithstanding Title 5, section 11004, execution of a
penalty assessed under this section is stayed during the pendency
50 of any appeal under this subsection. The Attorney General shall

2 represent the board agency in any appeal under this subsection or
the board agency may retain private counsel for that purpose.

4 **4. Enforcement and collection.** Penalties assessed under
6 this section are in addition to any other remedies available
under this Act and are enforceable by the Superior Court under
section 323.

8
10 A. The Attorney General shall prosecute any action
12 necessary to recover penalties assessed under this section
or the board agency may retain private counsel for that
purpose.

14 B. If any person fails to pay any penalty assessed under
16 this section and enforcement by the Superior Court is
necessary:

18 (1) That person shall pay the costs of prosecuting the
20 action in Superior Court, including reasonable
attorney's fees; and

22 (2) If the failure to pay was without due cause, any
24 penalty assessed on that person under this section must
be doubled.

26 C. All penalties assessed under this section are payable to
28 the General Fund.

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

34 **Sec. 120. 39-A MRSA §361**, as enacted by PL 1993, c. 145, §6,
36 is amended to read:

38 **§361. Payment to the Workers' Compensation Agency Administrative
Fund**

40 All penalties assessed under this Act are payable to the
42 Workers' Compensation Board Agency Administrative Fund, unless
otherwise provided by law. Upon certification by the board that
44 certain amounts in the Workers' Compensation Board Agency
Administrative Fund attributable to penalties assessed pursuant
46 to this Act are not required to support the activities of the
board agency, the Treasurer of State shall transfer funds in the
amount certified by the board to the General Fund.

48
50 **Sec. 121. 39-A MRSA §401, sub-§4**, as amended by PL 1999, c.
364, §6, is further amended to read:

2 **4. Liability of landowner.** A landowner subject to this Act
4 who contracts to have wood harvested from the landowner's
6 property by a contractor who, as an employer, is subject to this
8 Act and who has not complied with the provisions of this section
10 and who does not comply with the provisions of this section prior
12 to the date of an injury or death for which a claim is made is
14 liable to pay to any person employed by the contractor in the
16 execution of the work any compensation under this Act that the
18 landowner would have been liable to pay if that person had been
20 immediately employed by the landowner.

22 A landowner is not liable for compensation if at the time the
24 landowner enters into the contract with the contractor, the
26 landowner applies for and receives a predetermination of the
28 independent status of the contractor as set forth in section 105,
30 the landowner requests and receives a certificate of independent
32 status, issued by the board executive director on an annual basis
34 to a contractor, certifying that the contractor harvests forest
products in a manner that would not make the contractor an
employee of the landowner or the landowner requests and receives
a certificate of insurance, issued by the contractor's insurance
carrier, certifying that the contractor has obtained the required
coverage and indicating the effective dates of the policy, and if
the landowner requests and receives at least annually similar
certificates indicating continuing coverage during the
performance of the work. A landowner who receives a
predetermination of the contractor's status as independent
contractor or a certificate of independent status is only
relieved of liability under this paragraph if the contract for
wood harvesting expressly states that the independent contractor
will not hire any employees to assist in the wood harvesting
without first providing the required certificate of insurance to
the landowner.

36 Notwithstanding section 105, subsection 1, paragraph A, a
38 predetermination under section 105 related only to a person
40 engaged in harvesting forest products is a conclusive presumption
42 that the determination is correct and section 105, subsection 2
44 does not apply to that determination. Each party involved in or
46 affected by the predetermination must be provided information on
the workers' compensation laws and the effect of independent
contractor status in relation to those laws. A predetermination
under section 105 related to a person engaged in harvesting
forest products is effective for one calendar year or the
duration of the contract, whichever is shorter.

48 A landowner required to pay compensation under this section is
50 entitled to be indemnified by the contractor and may recover the
amount paid in an action against that contractor. A landowner

2 may demand that the contractor enter into a written agreement to
reimburse the landowner for any loss incurred under this section
4 due to a claim filed for compensation and other benefits. The
employee is not entitled to recover at common law against the
6 landowner for any damages arising from such injury if the
employee takes compensation from that landowner.

8 Landowners willfully acting to circumvent the provisions of this
section by using coercion, intimidation, deceit or other means to
10 encourage persons who would otherwise be considered employees
within the meaning of this Act to pose as contractors for the
12 purpose of evading this section are liable subject to the
provisions of section 324, subsection 3. Nothing in this section
14 may be construed to prohibit an employee from becoming a
contractor subject to the provisions of section 102, subsection
16 13.

18 **Sec. 122. 39-A MRSA §403, sub-§1**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

20 **1. Insuring under workers' compensation insurance policy.**
The employer may comply with this section by insuring and keeping
22 insured the payment of such compensation and other benefits under
a workers' compensation insurance policy. The insurance company
24 shall file with the board agency notice, in the form required by
the board agency, of the issuance of any workers' compensation
26 policy to an employer. The insurance may not be cancelled within
the time limited in such policy for its expiration until at least
28 30 days after the insurance company mails to the board agency and
to the employer a notice of the cancellation of the insurance.
30 In the event that the employer has obtained a workers'
compensation policy from another insurance company, or has
32 otherwise secured compensation as provided in this section, and
such insurance or other security becomes effective prior to the
34 expiration of the 30-day notice period, cancellation takes effect
on the effective date of the other insurance or on receipt of
36 security.

38 **Sec. 123. 39-A MRSA §403, sub-§3**, as amended by PL 2001, c.
44, §11 and affected by §14, is further amended by amending the
40 first paragraph to read:

42 **3. Proof of solvency and financial ability to pay; trust.**
The employer may comply with this section by furnishing
44 satisfactory proof to the Superintendent of Insurance of solvency
and financial ability to pay the compensation and benefits, and
46 depositing cash, satisfactory securities, irrevocable standby
letters of credit issued by a qualified financial institution or
48 a surety bond with the board agency, in such sum as the
superintendent may determine pursuant to subsection 8, the bond
50 to run to the Treasurer of State and to be conditional upon the

2 faithful performance of this Act relating to the payment of
3 compensation and benefits to any injured employee. In case of
4 cash or securities being deposited, the cash or securities must
5 be placed in an account at interest by the Treasurer of State,
6 and the accumulation of interest on the cash or securities so
7 deposited must be credited to the account and may not be paid to
8 the employer to the extent that the interest is required to
9 support any present value discounting in the determination of the
10 amount of the deposit. Any security deposit must be held by the
11 Treasurer of State in trust for the benefit of the self-insurer's
12 employees for the purposes of making payments under this Act. If
13 the superintendent determines that the self-insurer has
14 experienced a deterioration in financial condition that adversely
15 affects the self-insurer's ability to pay obligations under this
16 Act, the security amount may be in excess of the minimum amount
17 required by this Title.

18 **Sec. 124. 39-A MRSA §403, sub-§3, ¶B,** as repealed and replaced
19 by PL 1995, c. 398, §2, is amended to read:

20
21 B. The Superintendent of Insurance shall prescribe the form
22 of the surety bond that may be used to satisfy, in whole or
23 in part, the self-insurer's responsibility under this
24 section to post security. The bond must be continuous, be
25 subject to nonrenewal only upon not less than 60 days notice
26 to the superintendent, cover payment of all present and
27 future liabilities incurred under this Act while the bond is
28 in force and cover payments that become due while the bond
29 is in force that are attributable to injuries incurred in
30 prior periods and otherwise unsecured by cash, irrevocable
31 standby letters of credit or acceptable securities. A bond
32 must be held until all payments secured by the bond have
33 been made or until the bond has been replaced by other
34 eligible security approved by the superintendent that covers
35 all outstanding liabilities. Payments The bond must provide
36 that payments under the bond are due within 30 days after
37 notice has been given to the surety by the ~~board~~ executive
38 director that the principal has failed to make a payment
39 required under the terms of an award, agreement or governing
40 law. A trust established to satisfy the requirements of
41 this section may not be funded by a surety bond.

42
43 **Sec. 125. 39-A MRSA §403, sub-§3, ¶¶F and G,** as enacted by PL
44 1995, c. 398, §2, are amended to read:

45
46 F. An employer may be eligible for approved self-insurance
47 status pursuant to this Act if the employer submits a
48 written guarantee of the obligations incurred pursuant to
49 this Act, the guarantee to be issued by a United States or
50 Canadian corporation that is a member of an affiliated group

2 of which the employer is a member, and which corporation is
3 solvent and demonstrates an ability to pay the compensation
4 and benefits, and the guarantee is in a form acceptable to
5 the Superintendent of Insurance. The guarantor shall
6 provide audited annual financial statements and such other
7 information as the superintendent may require, including
8 quarterly financial statements, and the employer shall
9 provide a cash deposit, satisfactory securities, irrevocable
10 standby letters of credit issued by a qualified financial
11 institution or a surety bond as otherwise required by this
12 Act in an amount not less than \$100,000. The guarantor is
13 deemed to have submitted to the jurisdiction of the board
14 agency and the courts of this State for purposes of
15 enforcing the guarantee. The guarantor, in all respects, is
16 bound by and subject to the orders, findings, decisions or
17 awards rendered against the employer for payment of
18 compensation and any penalties or forfeitures provided under
19 this Act. The superintendent, following hearing, may revoke
20 the self-insured status of the employer if at any time the
21 assets of the guarantor become impaired or encumbered or are
22 otherwise found to be inadequate to support the guarantee.

23
24 G. A subsidiary employer may be eligible for approved
25 self-insurance status pursuant to this Act if: the
26 subsidiary employer files an application jointly with a
27 qualified parent corporation that has direct ownership of a
28 majority voting interest of the subsidiary employer; the
29 parent corporation and subsidiary employer submit an
30 irrevocable contract of assignment, on a form approved by
31 the Superintendent of Insurance, of the subsidiary
32 employer's obligations incurred pursuant to this Act; the
33 parent corporation is solvent and demonstrates an ability to
34 pay the compensation and benefits of the subsidiary
35 employer; and the subsidiary employer meets all other
36 requirements for application and qualification as a
37 self-insurer under this chapter and under any applicable
38 rules adopted by the superintendent. If the parent
39 corporation is not a United States corporation, the
40 superintendent may, in the superintendent's sole discretion,
41 establish the conditions of any approval of the foreign
42 parent corporation or deny the application of the foreign
43 parent corporation. As part of its application for
44 approval, a foreign parent corporation must provide the
45 following information to the superintendent: evidence that
46 its country of domicile has substantially similar laws with
47 respect to submission to the jurisdiction of the board
48 agency and the courts of this State for the purposes of
49 payment of workers' compensation claims of the subsidiary
50 employer; audited financial statements, as otherwise
required by this Act, prepared in the English language by a

2 certified public accountant licensed in a state in the
United States in accordance with generally accepted auditing
standards as prescribed by the American Institute of
4 Certified Public Accountants; and security, as otherwise
required by the Act, in United States currency. The
6 irrevocable contract of assignment and application must be
signed by a duly authorized officer of each corporation and
8 the application must include a board of directors'
resolution from each entity as evidence of each officer's
10 authority to enter into the contract. The superintendent
may determine the subsidiary employer's eligibility for
12 self-insurance authority and the amount of required security
based upon the parent corporation's consolidated financial
14 statement, as long as the employer complies with paragraph
H. A subsidiary employer currently authorized to
16 self-insure need not pay the application fee required of a
new applicant in order to file an application to qualify
18 under this subsection, but the subsidiary employer and
parent corporation must provide all information required
20 under this subsection as if they were a new applicant. Once
the subsidiary employer becomes authorized to self-insure
22 under this section, the parent corporation assumes liability
for all prior workers' compensation liabilities incurred by
24 the subsidiary employer during the period of self-insurance
prior to the date of authorization under this subsection,
26 unless the subsidiary employer files an alternative plan
approved by the superintendent. The parent corporation and
28 the subsidiary employer must both be named on the
certificate of ~~authorization--for~~ self-insurance authority.
30 Upon issuance of a certificate of ~~authorization~~
self-insurance authority pursuant to this subsection, the
32 following applies.

34 (1) The parent corporation is deemed to have submitted
to the jurisdiction of the ~~board~~ agency and the courts
36 of the State for the purposes of payment of workers'
compensation claims of the subsidiary employer and is
38 deemed to have submitted to the jurisdiction of the
superintendent for purposes of implementation of this
40 Act. The parent corporation, in all respects, is bound
by and subject to all orders, findings, decisions or
42 awards rendered against the subsidiary employer for
payment of compensation and any penalties or
44 forfeitures provided under this Act.

46 (2) A subsidiary employer authorized under this
subsection and the parent corporation are considered
48 one employer for the purposes of membership in the
Maine Self-Insurance Guarantee Association. In the
50 event of termination, transfer, insolvency, dissolution

2 or bankruptcy of a subsidiary employer qualifying under
3 this subsection, the parent corporation assumes all
4 assessment obligations of the subsidiary employer for
5 its period of self-insurance and is not considered a
6 new member of the association.

8 (3) If the subsidiary employer fails for any reason to
9 pay compensation and benefits as required under this
10 Act, the parent corporation stands in the place of the
11 subsidiary employer and is deemed to be the employer,
12 subject to all requirements and provisions of this
13 Act. For the purposes of payment of benefits and
14 compensation under this Act, an employee of the
15 subsidiary employer is deemed to be concurrently
16 employed by both corporations. Concerning notification
17 of injury to an employee of the subsidiary employer,
18 notice to or knowledge of the occurrence of the injury
19 on the part of the subsidiary employer is deemed notice
20 or knowledge on the part of the parent corporation.
21 The transfer, insolvency, dissolution or bankruptcy of
22 a subsidiary employer qualifying under this subsection
23 does not relieve the parent corporation from payment of
24 compensation for injuries or death sustained by an
25 employee during the time the subsidiary employer was
26 approved for self-insurance authority under this
27 subsection and the parent corporation continues to be
28 deemed an employer until such time as all outstanding
29 workers' compensation claims have been discharged.

30 (4) The transfer, insolvency, dissolution or
31 bankruptcy of a parent corporation causes the
32 termination of the subsidiary employer's authorization
33 to self-insure and a termination plan must be filed
34 pursuant to subsection 14.

36 **Sec. 126. 39-A MRSA §403, sub-§4,** as amended by PL 1997, c.
37 126, §8, is further amended to read:

38 **4. Group self-insurers; application.** Except for the
39 provision relating to individual public employer self-insurers,
40 subsection 3 is equally applicable in all respects to group
41 self-insurers. Any employer or group of employers desiring to
42 become a self-insurer shall submit to the Superintendent of
43 Insurance with an application for self-insurance, in a form
44 prescribed by the superintendent, the following:

45 A. A payroll report for each participating employer of the
46 group for the 3 preceding annual fiscal periods;

- 2 B. A report of compensation losses incurred, payments plus
reserves, by each participating employer of the group for
the periods described in paragraph A;
- 4
- 6 C. A sworn itemized statement of the group's assets and
liabilities; satisfactory proof of financial ability to pay
compensation for the employers participating in the group
8 plan; and the group's reserves, their source and assurance
of continuance;
- 10
- 12 D. A description of the safety organization maintained by
the employer or group for the prevention of injuries;
- 14
- 16 E. A statement showing the kind of operations performed or
to be performed;
- 18
- 20 F. An indemnity agreement in a form prescribed by the
superintendent that jointly and severally binds the group
and each member to comply with the provisions of this Act;
and
- 22
- 24 G. Any other agreements, contracts or other pertinent
documents relating to the organization of the employers in
the group.

26 ~~If, upon examination of the sworn financial statement and other~~
28 ~~data submitted, the superintendent is satisfied as to the ability~~
of the employer or group to make current compensation payments
and that the employer's or group's tangible assets make
30 reasonably certain the payment of all obligations that may arise
under this Act, the application must be granted subject to the
32 terms and conditions setting out the exposure of cash deposits or
securities or an acceptable surety bond, as required by the
34 superintendent. Security against shock or catastrophe loss must
be provided either by depositing securities with the board in
36 such amount as the superintendent may determine or by filing with
the superintendent and the board an insurance carrier's
38 certificate of a standard self-insurer's reinsurance contract
issued to the self-insurer or group in a form approved by the
40 superintendent, providing coverage against losses arising out of
one injury in such amounts as the superintendent may determine,
42 or a combination of the foregoing, satisfactory to the
superintendent. Notwithstanding any provision of this chapter,
44 no specific or aggregate reinsurance may be required of any
individual public employer that is self-insured and qualifies for
46 the alternative security requirements of subsection 3, paragraph
D.

48

50 ~~Yearly reports in a form prescribed by the superintendent must be
filed by each self-insurer or group. The superintendent may, in~~

2 addition, -- require -- the -- filing -- of -- quarterly -- financial -- status
3 reports -- whenever -- the -- superintendent -- has -- reason -- to -- believe -- that
4 there -- has -- been -- a -- deterioration -- in -- the -- financial -- condition -- of
5 either -- an -- individual -- or -- group -- self -- insurer -- that -- adversely -- affects
6 the -- individual's -- or -- group's -- ability -- to -- pay -- expected -- losses. -- The
7 reports -- must -- be -- filed -- within -- 30 -- days -- after -- the -- superintendent's
8 request -- or -- at -- such -- time -- as -- the -- superintendent -- shall -- otherwise -- set.

9
10 After --- approving --- any --- application --- for --- self --- insurance, --- the
11 superintendent --- shall --- promptly --- notify --- the --- board --- and --- forward --- to --- it
12 copies --- of --- the --- application --- and --- all --- supporting --- materials.

13
14 **Sec. 127. 39-A MRSA §403, sub-§4-A is enacted to read:**

15 4-A. Approval of application. If, upon examination of the
16 sworn financial statement and other data submitted in support of
17 an application filed under subsection 3 or 4, the Superintendent
18 of Insurance is satisfied as to the ability of the employer or
19 group to make current compensation payments and that the
20 employer's or group's tangible assets make reasonably certain the
21 payment of all obligations that may arise under this Act, the
22 application must be granted subject to the terms and conditions
23 setting out the exposure of cash deposits or securities or an
24 acceptable surety bond, as required by the superintendent.
25 Security against shock or catastrophe loss must be provided
26 either by depositing securities with the agency in such amount as
27 the superintendent may determine or by filing with the
28 superintendent and the agency an insurance carrier's certificate
29 of a standard self-insurer's reinsurance contract issued to the
30 self-insurer or group in a form approved by the superintendent,
31 providing coverage against losses arising out of one injury in
32 such amounts as the superintendent may determine, or a
33 combination of the foregoing, satisfactory to the
34 superintendent. Notwithstanding any provision of this chapter,
35 specific or aggregate reinsurance may not be required of any
36 individual public employer that is self-insured and qualifies for
37 the alternative security requirements of subsection 3, paragraph
38 D.

39
40 Yearly reports in a form prescribed by the superintendent must be
41 filed by each individual or group self-insurer. The
42 superintendent may, in addition, require the filing of quarterly
43 financial status reports whenever the superintendent has reason
44 to believe that there has been a deterioration in the financial
45 condition of either an individual or group self-insurer that
46 adversely affects the individual's or group's ability to pay
47 expected losses. The reports must be filed within 30 days after
48 the superintendent's request or at such time as the
49 superintendent shall otherwise set.
50

2 After approving any application for self-insurance, the
3 superintendent shall issue the individual or group self-insurer a
4 certificate of self-insurance authority and shall promptly notify
5 the agency and forward copies of the application and all
6 supporting materials.

7 **Sec. 128. 39-A MRSA §403, sub-§5, ¶A,** as amended by PL 1995,
8 c. 594, §2, is further amended to read:

10 A. Any group of employers may adopt a plan for
11 self-insurance, as a group, for the payment of compensation
12 under this Act to their employees. A group may not be
13 approved to operate a self-insurance plan in the form of a
14 corporation, partnership or limited liability company.
15 Under a group self-insurance plan the group shall assume the
16 liability of all the employers within the group and pay all
17 compensation for which the employers are liable under this
18 chapter. When the plan is adopted, the group shall furnish
19 satisfactory proof to the Superintendent of Insurance of its
20 financial ability to pay the compensation for the employers
21 in the group and its revenues, their source and assurance of
22 continuance. The superintendent shall require the deposit
23 with the board agency of such securities as the
24 superintendent determines necessary of the kind prescribed
25 in subsection 9 or the filing of a bond issued by a surety
26 company authorized to transact business in this State, in an
27 amount to be determined to secure its liability to pay the
28 compensation of each employer as above provided in
29 accordance with subsection 9. The surety bond must be
30 approved as to form by the superintendent. The
31 superintendent may also require that any agreements,
32 contracts and other pertinent documents relating to the
33 organization of the employers in the group be filed with the
34 superintendent at the time the application for group
35 self-insurance is made. The application must be on a form
36 prescribed by the superintendent. The superintendent has the
37 authority to deny the application of the group to pay the
38 compensation for failure to satisfy any applicable
39 requirement of this section. The superintendent shall
40 approve or disapprove an application within 90 days. The
41 group qualifying under this paragraph is referred to as a
42 self-insurer.

44 **Sec. 129. 39-A MRSA §403, sub-§5, ¶¶B, C and D,** as enacted by
45 PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended
46 to read:

48 B. An employer participating in group self-insurance is not
49 relieved from the liability for compensation prescribed by
50 this chapter, except by the payment of the compensation by

2 the group self-insurer or by the employer. As between the
employee and the group self-insurer, notice to or knowledge
4 of the occurrence of the injury on the part of the employer
is deemed notice or knowledge, as the case may be, on the
part of the group self-insurer; jurisdiction of the employer
6 is, for the purpose of this chapter, jurisdiction of the
group self-insurer and the group self-insurer is in all
8 things bound by and subject to the orders, findings,
decisions or awards rendered against the participating
10 employer for the payment of compensation under this chapter.
The insolvency or bankruptcy of a participating employer
12 does not relieve the group self-insurer from the payment of
compensation for injuries or death sustained by an employee
14 during the time the employer was a participant in group
self-insurance. The group self-insurer shall promptly notify
16 the Superintendent of Insurance and the board agency, on a
prescribed form, of the addition of any participating
18 employer or employers. The approval of the superintendent is
not necessary in order to add participating employers to the
20 group self-insurer. Notice of termination of a
participating employer is not effective until at least 10
22 days after notice of that termination, on a prescribed form,
has been filed in the offices of the superintendent and the
24 board agency or sent to both offices by registered mail. The
group self-insurer shall give notice of the termination of
26 any participating member to all other participating members
at least quarterly each year. Written notice must be given
28 to any new participating member at the time of admission
that the specific membership of the group and its members as
30 prescribed in this section is not affected by the group's
failure to provide its members with prior or immediate
32 notice of changes in the membership of the group if notice
is given at least quarterly, as long as the termination or
34 admission of members was effected in compliance with all
group agreements and bylaws and this section and the rules
36 adopted pursuant to it.

38 C. Each group self-insurer, in its application for
self-insurance, shall set forth the names and addresses of
40 its officers, directors, trustees and general manager.
Notice of any change in the officers, directors, trustees or
42 general manager must be given to the Superintendent of
Insurance and the board agency within 10 days of the change.
44 An officer, director, trustee or employee of the group
self-insurer may not represent or participate directly or
46 indirectly on behalf of an injured worker or the worker's
dependents in any workers' compensation proceeding. All
48 employees of employers participating in group self-insurance
are deemed to be included under the group self-insurance
50 plan.

2 D. If for any reason the status of a group self-insurer
4 under this paragraph is terminated, the securities, the
6 surety bond, the letter of credit or the deposit required by
8 this section continues to be held by the Treasurer of State
10 and remains subject to the control of the beard agency until
12 all claims secured by the securities, surety bond, letter of
14 credit or deposit have been discharged. When all such claims
16 have been discharged or after such period as the
18 Superintendent of Insurance determines proper, the
20 superintendent may accept in lieu thereof, and for the
22 additional purpose of securing such further and future
24 contingent liability as may arise from prior injuries to
26 workers and be incurred by reason of any change in the
condition of such workers warranting the beard agency making
subsequent awards for payment of additional compensation, a
policy of insurance furnished by the group self-insurer, its
successor or assigns or other entity carrying on or
liquidating such self-insurance group. The policy must be in
a form approved by the superintendent and issued by any
insurance company licensed to issue this class of insurance
in the State. It may only be issued for a single complete
premium payment in advance by the group self-insurer. It
must be given in an amount determined by the superintendent
and when issued is noncancellable for any cause during the
continuance of the liability secured and so covered.

28 **Sec. 130. 39-A MRSA §403, sub-§15**, as amended by PL 1993, c.
30 349, §73, is further amended to read:

32 **15. Confidentiality of information.** All written, printed
34 or graphic matter or any mechanical or electronic data
36 compilation from which information can be obtained, directly or
38 after translation into a form susceptible of visual or aural
40 comprehension, all information contained in the minutes of
trustee meetings and all information relating to individual
compensation cases, that a self-insurer is required to file with
or make available to the superintendent under this section,
section 404 or rules adopted pursuant to it are confidential and
are not public records.

42 The confidential nature of this information does not limit or
44 affect its use by the superintendent in administering this Act,
46 including, but not limited to, communications with the service
agent, the Workers' Compensation Beard Agency or the Maine
Self-Insurance Guarantee Association.

48 **Sec. 131. 39-A MRSA §404, sub-§3**, as enacted by PL 1991, c.
50 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

2 **3. Board of directors.** The board of directors of the
3 association consists of at least 7 persons serving terms as
4 established in the plan of operation pursuant to subsection 5.
5 The members of the board of directors must be selected by the
6 member self-insurers, subject to the approval of the
7 Superintendent of Insurance. Vacancies on the board of directors
8 must be filled for the remaining period of the term in the same
9 manner as initial appointments, except that vacancies may be
10 filled by majority vote of the remaining directors, subject to
11 the approval of the superintendent, until the next annual meeting
12 of the members.

13
14 In approving selections to the board of directors, the
15 superintendent shall consider among other things whether all
16 member self-insurers are fairly represented.

17
18 Members of the board of directors may be reimbursed from the
19 assets of the association for expenses incurred by them as
20 members of the board of directors.

21 **Sec. 132. 39-A MRSA §404, sub-§4, ¶C**, as amended by PL 2001,
22 c. 224, §2, is further amended to read:

23 C. The following pertains to postinsolvency assessment.

24
25 (1) In the event the assets of the fund are not
26 sufficient to pay the obligations of the association,
27 the association shall make an additional assessment as
28 follows.

29
30 (a) Each individual self-insurer must be assessed
31 an amount not in excess of 4% each year of the
32 annual standard premium that would have been paid
33 by the individual self-insurer during the prior
34 calendar year. The assessments of each member
35 individual self-insurer must be in the proportion
36 that the annual standard premium of the individual
37 self-insurer for the preceding calendar year bears
38 to the annual standard premium of all member
39 self-insurers for the preceding calendar year.

40
41 (b) Each group self-insurer must be assessed an
42 amount not in excess of .2% each year of the total
43 annual standard premium that would have been paid
44 by all the members of that group self-insurer
45 during the prior calendar year. The assessments
46 of each member group self-insurer must be in the
47 proportion that the annual standard premium of the
48 group self-insurer for the preceding calendar year

2 bears to the annual standard premium of all member
self-insurers for the preceding calendar year.

4 (2) Each member self-insurer must be notified of the
assessment no later than 30 days before it is due.

6 (3) The association may exempt or defer, in whole or
8 in part, the assessment of any member self-insurer, if
the assessment would cause that member's financial
10 statement to reflect liabilities in excess of assets.

12 (4) Delinquent assessments, except as provided in
subparagraph (3), must bear interest at the rate to be
14 established by the board of directors, but not exceed
the discount rate of the Federal Reserve Bank, Boston,
16 Massachusetts, on the due date of the assessment, plus
4% annually, computed from the due date of the
18 assessment.

20 (5) The association shall establish in the plan of
operations a mechanism to calculate the assessments
22 required by subparagraph (1) by a simple and equitable
means to convert from policy or fund years that are
24 different from a calendar year.

26 **Sec. 133. 39-A MRSA §404, sub-§12**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

28
30 **12. Stay of proceedings.** All proceedings under this Act to
which the insolvent ~~insurer~~ self-insurer is a party either before
the ~~board~~ agency or a court in this State and the running of all
32 time periods against either the insolvent self-insurer or the
association under this Act are stayed for 60 days from the date
34 of notice to the association of the insolvency in order to permit
the association to investigate, prosecute or defend properly any
36 petition, claim or appeal under this Act. The payment of weekly
compensation for incapacity under former Title 39, section 54,
38 54-A, 54-B, 55, 55-A, 55-B, 56, 56-A, or 56-B or under section
212 or 213 must be made during the time periods in which
40 proceedings affecting the payment of weekly compensation are
stayed.

42
44 **Sec. 134. 39-A MRSA §406**, as enacted by PL 1991, c. 885, Pt.
A, §8 and affected by §§9 to 11, is amended to read:

46 **§406. Notices of assent to be posted**

48 A notice in a form as the ~~board~~ agency approves, stating
that the employer has conformed to this Act, together with other
50 information as the ~~board~~ agency determines, must be posted by the

2 employer and kept posted by the employer in each of the
3 employer's mills, factories or places of business. The notice
4 must be conspicuous and posted in a place accessible to the
5 employer's employees.

6 **Sec. 135. 39-A MRSA §611**, as enacted by PL 1991, c. 885, Pt.
7 A, §8 and affected by §§9 to 11, is amended to read:

8 **§611. Impartial medical advice**

9
10 On request of a party or on ~~its-own~~ the executive director's
11 motion, the ~~board~~ executive director may in occupational disease
12 cases appoint one or more competent and impartial physicians.
13 Upon order of the ~~board~~ executive director, the fees and expenses
14 of the health care provider or health care providers must be paid
15 by the employer. These appointees shall examine the employee and
16 inspect the industrial conditions under which the employee has
17 worked in order to determine the nature, extent and probable
18 duration of the occupational disease, the likelihood of its
19 origin in the industry and the date of incapacity. Section 207
20 applies to the filing and subsequent proceedings on the report of
21 the appointees and to examinations and treatments by the employer.

22
23 If a claim is made for death from an occupational disease,
24 an autopsy may be ordered by the ~~board~~ executive director under
25 the supervision of impartial appointees. All proceedings for or
26 payments of compensation to any claimant refusing to permit such
27 an autopsy when ordered are suspended on and during the
28 continuance of such a refusal.

29 **Sec. 136. Transition.**

30
31 The following provisions apply to the transition of powers
32 and duties of the Workers' Compensation Board to the Workers'
33 Compensation Agency.

34
35 **1. Powers.** The Workers' Compensation Agency, under the
36 governance of the Workers' Compensation Board, is the successor
37 in every way to the former powers, duties and functions of the
38 Workers' Compensation Board specifically transferred by this Act.

39
40 **2. Contracts.** All existing contracts, agreements and
41 compacts involving the Workers' Compensation Board remain in
42 effect.

43
44 **3. Rules.** All rules adopted by the Workers' Compensation
45 Board remain in effect and, until amended to conform with this
46 Act, must be construed so as to effectuate the purposes of this
47 Act.

2 **4. Certification.** Certifications made by or on behalf of
the Executive Director of the Workers' Compensation Agency after
4 the effective date of this Act have the same effect as
certifications made by or on behalf of the Clerk of the Workers'
6 Compensation Board.

8 **5. Records.** All records, property and equipment belonging
to or allocated for the use of the Workers' Compensation Board on
10 the effective date of this Act become part of the property of the
Workers' Compensation Agency.

12 **6. Forms.** The Workers' Compensation Agency shall use all
existing forms, letterheads and similar items bearing the name of
14 or referring to the "Workers' Compensation Board" until existing
supplies of those items are exhausted.

16 **7. Workers' Compensation Board Administrative Fund; use of
18 reserve.** The Workers' Compensation Board Administrative Fund is
renamed the Workers' Compensation Agency Administrative Fund.
20 The Workers' Compensation Agency is authorized to make all
expenditures from the fund to the extent of any authorization
22 previously granted to the Workers' Compensation Board. In
addition, \$260,000 of the reserve fund created pursuant to the
24 former Maine Revised Statutes, Title 39-A, section 154,
subsection 6 is transferred upon the effective date of this Act
26 from the Workers' Compensation Agency Administrative Fund to a
special technology fund that may be spent on technological
28 improvement projects in accordance with a plan to be developed no
later than January 1, 2003 by the Workers' Compensation Board in
30 consultation with the Commissioner of Labor and the Commissioner
of Administrative and Financial Services and interested parties.
32 The remainder of the reserve fund is merged into the Workers'
Compensation Agency Administrative Fund and any balance
34 anticipated by the Executive Director of the Workers'
Compensation Agency to be remaining as of July 1, 2003 is to be
36 applied for purposes of reducing the assessment for fiscal year
2003-04 in accordance with Title 39-A, section 154, subsection
38 6-A. Any unused balance in the special technology fund upon
completion of the technology improvement plan reverts to the
40 Workers' Compensation Agency Administrative Fund and must be
applied to reduce the next assessment to be levied.

42 **8. Employees of the Workers' Compensation Board.** All
44 employees of the Workers' Compensation Board are transferred to
the Workers' Compensation Agency on the effective date of this
46 Act. The Executive Director of the Workers' Compensation Board
serves as Acting Executive Director of the Workers' Compensation
48 Agency until a successor is confirmed and takes office. All
positions formerly authorized or allocated to the Workers'
50 Compensation Board are authorized or allocated to the Workers'

2 Compensation Agency. Employees in classified positions on the
3 effective date of this Act continue in those positions under the
4 Workers' Compensation Agency on the same terms and conditions of
5 employment subject to the Civil Service Law and the State
6 Employees Labor Relations Act. All unclassified employees of the
7 Workers' Compensation Board who are transferred to the Workers'
8 Compensation Agency become classified employees unless otherwise
9 provided in this Act. Employees serving as hearing officers on
10 the effective date of this Act continue in those positions for
11 the remainder of their current terms of appointment on the same
12 terms and conditions of employment except as otherwise expressly
13 provided in this Act.

14 **9. Board membership.** The reconfiguration of membership of
15 the Workers' Compensation Board effected by the enactment of the
16 Maine Revised Statutes, Title 39-A, section 151-C must be
17 achieved by attrition; the labor representative position and the
18 management representative position expiring on February 1, 2002
19 must be filled with representatives of the public, appointed by
20 the Governor. The Governor shall select a 3rd representative of
21 the public. Notwithstanding Title 39-A, section 151-C,
22 subsection 1, the Governor shall appoint one public member to a
23 term that expires February 1, 2004; one public member to a term
24 that expires February 1, 2005 and one public member to a term
25 that expires February 1, 2007. Upon the appointment of the
26 public members, the labor representative and the management
27 representative whose terms expired on February 1, 2002 cease to
28 be members of the board. The other members representing labor
29 and management hold their membership for the remainder of their
30 current terms. The voting requirements of Title 39-A, section
31 151, subsection 5 continue to apply until the first 3 public
32 members have been appointed and confirmed.

34 **10. Assessment for fiscal year 2002-03.** Notwithstanding
35 the Maine Revised Statutes, Title 39-A, section 154, subsection
36 6-A, the Executive Director of the Workers' Compensation Agency
37 shall calculate assessment percentages for the assessment that
38 must be collected from insured and self-insured employers for
39 fiscal year 2002-03 in the same manner as in the former Title
40 39-A, section 154, subsection 6. Insurers shall file annual and
41 quarterly returns for fiscal years 2001-02 and 2002-03 under the
42 former provisions of Title 39-A, section 154, subsection 3,
43 paragraph D. The executive director shall calculate assessments
44 designed to produce an aggregate assessment not to exceed
45 \$7,227,000 for fiscal year 2002-03 unless the executive director
46 determines that those assessment levels do not differ materially
47 from the assessment levels previously established for that fiscal
48 year. This assessment level applies retroactively to all of
49 fiscal year 2002-03 and is not subject to further adjustment.
50 Assessments on insured employers must be paid for the full year

2 of coverage on all policies issued or renewed with effective
4 dates between July 1, 2002 and June 30, 2003. The assessment on
6 a midterm replacement for any such policy must be paid on a pro
8 rata basis for the period of coverage up to the anniversary date
10 of the policy. If the assessment level determined pursuant to
12 this subsection is different from the assessment level determined
14 before the effective date of this Act, the executive director
shall notify all insurers and self-insurers of the adjustment
within 30 days after the effective date of this Act. For
employers whose assessments are affected by this adjustment, the
adjustment must be implemented as a credit or charge in an
insured employer's next premium bill or a self-insurer's next
assessment.

16 **11. Assessment for fiscal year 2003-04.** For the Workers'
18 Compensation Agency Administration Fund assessment payment due
20 June 1, 2003 for fiscal year 2003-04, the Workers' Compensation
22 Agency shall levy the assessment directly on insurance
24 companies. Except for midterm policy replacements as provided in
26 subsection 10, policies issued or renewed after July 1, 2003 may
28 not be surcharged. Insurers choosing to adjust their premiums
30 for policies issued on or after July 1, 2003 to reflect the new
assessment mechanism shall promptly file notice of the rate
revision with the Superintendent of Insurance. For each policy
that is in force on or after July 1, 2003 and subject to
surcharge pursuant to subsection 10, the insurer is entitled to
credit against its assessment for fiscal year 2003-04 the pro
rata share of the surcharge that is attributable to the period of
coverage beginning on July 1, 2003.

32 **12. Budget; allocation of fund.** The Executive Director of
34 the Workers' Compensation Agency shall submit with the agency's
36 biennial budget for fiscal years 2003-04 and 2004-05 a strategic
38 operational plan and a technology plan pursuant to the Maine
40 Revised Statutes, Title 39-A, section 152-A, subsection 1,
paragraph G containing sufficient detail to identify the
estimated administrative and staff efficiencies identified in the
biennial budget submission. Allocations of the Workers'
Compensation Agency Administrative Fund may not exceed \$8,600,000
in fiscal years 2003-04 and 2004-05.

42 **Sec. 137. Appropriations and allocations.** The following
44 appropriations and allocations are made.

46 **WORKERS' COMPENSATION AGENCY**

48 **Administration - Workers' Compensation Agency**

2 Initiative: Provides funds to meet the operational
 requirements of the Workers' Compensation Agency as a result of
 reorganization.

4

6	Other Special Revenue Funds	2001-02	2002-03
8	Personal Services	\$0	\$764,294
	All Other	<u>0</u>	<u>381,471</u>
10	Other Special Revenue Funds Total	\$0	\$1,145,765

12 **Special Technology Fund - Workers'
 Compensation Agency**

14 Initiative: Provides funds for technology to achieve
 operational efficiencies consistent with reorganization.
 16 Notwithstanding any other provision of law, any balance
 remaining on June 30th of each fiscal year may carry forward to
 18 be allotted by financial order for the same purposes upon
 recommendation of the State Budget Officer and approval of the
 20 Governor.

22

24	Other Special Revenue Funds	2001-02	2002-03
	All Other	\$0	\$160,000
	Capital Expenditures	<u>0</u>	<u>100,000</u>
26	Other Special Revenue Funds Total	\$0	\$260,000

28 **Workers' Compensation Board**

30 Initiative: Provides funds for one additional board member.

32

34	Other Special Revenue Funds	2001-02	2002-03
	Personal Services	\$0	\$5,000
	All Other	<u>0</u>	<u>94</u>
36	Other Special Revenue Funds Total	\$0	\$5,094

38 **WORKERS' COMPENSATION AGENCY
 AGENCY TOTALS**

40		2001-02	2002-03
	OTHER SPECIAL REVENUE FUNDS	\$0	\$1,410,859
42	AGENCY TOTALS - ALL FUNDS	\$0	\$1,410,859

44 **JUDICIAL DEPARTMENT**

46 **Courts - Supreme, Superior and District**

48 Initiative: Provides funds for the cost of approved collective
 bargaining.

	Other Special Revenue Funds	2001-02	2002-03
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2	Personal Services	\$0	\$4,249
4	JUDICIAL DEPARTMENT		
4	DEPARTMENT TOTALS	2001-02	2002-03
6	OTHER SEPCIAL REVENUE FUNDS	\$0	\$4,249
8	DEPARTMENT TOTAL	\$0	\$4,249
10	SECTION TOTALS	2001-02	2002-03
10	OTHER SPECIAL REVENUE FUNDS	\$0	\$1,415,108
12	SECTION TOTAL - ALL FUNDS	\$0	\$1,415,108

14 **SUMMARY**

16 This bill implements the recommendations of the advisory
 18 committee established to study the governance and administrative
 structure of this State's workers' compensation system.

20 The Legislature, through Resolve 2001, chapter 49,
 22 commissioned an advisory committee to work with the Department of
 Administrative and Financial Services in conducting a feasibility
 24 study of the governance and administrative structure of this
 State's workers' compensation system to determine if greater
 26 efficiencies could be gained in the operational structure and
 processes of the Workers' Compensation Board and to identify
 28 advantages and disadvantages, if any, of a closer alignment of
 the board with other agencies in State Government.

30 The department issued its governance study report on
 32 December 15, 2001. While finding many noteworthy achievements,
 the report also found areas needing improvement, identifying the
 following as its most significant findings:

34 1. Governance of the board should be changed to help board
 36 members and management better focus on carrying out the mission
 of the board;

38 2. Fiscal accountability should be improved and the use of
 40 reserves should be clarified;

42 3. A more predictable revenue model for the board should be
 developed and implemented;

44 4. Efficiencies could be realized through better use of
 46 information technology; and

2 5. Business process improvements should be designed and
3 implemented to better utilize board staff.

4 This bill implements these recommendations through 2 major
5 initiatives:

6 1. The establishment of the Workers' Compensation Agency,
7 with a realigned 9-member Workers' Compensation Board as its
8 governing board and a gubernatorially appointed executive
9 director as its chief executive officer; and
10

11 2. A restructured assessment mechanism that establishes a
12 fixed assessment in advance of each fiscal year and eliminates
13 the need for the reserve fund.
14

15 In addition, although some of the improvements recommended
16 by the governance study are executive or managerial rather than
17 legislative in nature, the bill provides infrastructure and
18 resources to carry out those improvements, including the
19 allocation of a substantial portion of the existing reserve fund
20 towards the necessary information technology upgrades. The bill
21 also makes miscellaneous technical corrections, such as
22 clarifying the references to the board in the self-insurance
23 guaranty fund laws.
24

25 The bill renames the governmental agency currently referred
26 to as the Workers' Compensation Board to become the Workers'
27 Compensation Agency. This is not intended as a substantive
28 change. The Workers' Compensation Board remains the agency
29 governing board and there will be continuity of staff,
30 facilities, operations, employment status and collective
31 bargaining rights. The reason for this change in nomenclature is
32 to alleviate the substantial confusion that has resulted from the
33 use of the same name to refer to 2 very different organizations:
34 the board itself and its staff. The bill implements this change
35 through transitional language similar to the corresponding
36 provisions of the Maine Workers' Compensation Act of 1992 that
37 created the Workers' Compensation Board as successor to the
38 former Workers' Compensation Commission.
39

40 The major substantive changes the bill makes with regard to
41 governance and administration are the realignment of the board
42 and the strengthened role of the Executive Director of the
43 Workers' Compensation Agency. The current 8-member structure,
44 with 4 labor representatives and 4 management representatives,
45 was designed to foster consensus building. Unfortunately, as the
46 advisory committee reported in the governance study, what has
47 actually happened is that the structure "causes gridlock on
48 contentious issues and makes it difficult for the WCB Board of
49 Directors to operate well." Therefore, as recommended in the
50

2 governance study, the number of members is changed to an odd
3 number. This change is accomplished through the addition of 3
4 public members and the elimination of one management
5 representative and one labor representative.

6 There will be 3 labor representatives, 3 management
7 representatives and 3 representatives of the public at large who
8 may not be chosen from among the nominees for labor or management
9 positions. Any member may serve as chair. The labor and
10 management positions whose terms expired February 1, 2002 will be
11 eliminated by attrition and, to preserve continuity, the other 6
12 current board members will continue in office and serve out the
13 balance of their terms.

14 While the board will remain as the governing board of the
15 agency, with policy-making and oversight responsibilities for the
16 implementation of the Maine Workers' Compensation Act of 1992,
17 the bill clarifies and strengthens the role of the Executive
18 Director of the Workers' Compensation Agency as the chief
19 executive officer of the agency. There are several provisions
20 designating the executive director as the person accountable for
21 a variety of agency actions, including administrative
22 responsibility for the agency's budget. The governance study
23 recommended that the staff should work under the direction of the
24 executive director and emphasized the importance of having a
25 single individual with accountability for such matters as dispute
26 prevention and compliance programs. To provide a workable line
27 of accountability in personnel matters, confidential employees of
28 the agency, including the general counsel, will serve at the
29 pleasure of the executive director rather than at the pleasure of
30 the board; however, the number of levels of management exempt
31 from the Civil Service Law will be reduced.

34 To provide for the necessary accountability and to implement
35 the governance study's recommendation for closer alignment with
36 the rest of the executive branch, the executive director will be
37 appointed by the Governor subject to legislative confirmation.
38 The appointment will be for a fixed and renewable term, like
39 those terms of the commissioners of the Public Utilities
40 Commission and the Superintendent of the Bureau of Financial
41 Institutions and the Superintendent of Insurance, with a term of
42 office of 5 years.

44 The Workers' Compensation Board retains policy making and
45 oversight responsibilities. Responsibility for recommending
46 legislative changes remains within the board's policy making
47 authority. The board also retains ultimate responsibility for
48 rulemaking and for administrative adjudication with the exception
49 of hearings relating to contested claims, in which the board
50 retains its appellate role and has notice and opportunity to be

2 heard as an amicus curiae in the judicial review process. The
3 board also retains responsibility for administering the
4 provisions of law governing partial impairment benefits.

6 The governance study emphasized the importance of increased
7 fiscal accountability and a balanced budget. The bill includes
8 provisions clarifying that the agency is subject to the same
9 budgeting process as other agencies of State Government.

10 The governance study also suggested the provision of a
11 predictable revenue stream. Currently, the board is funded by
12 assessments that are levied upon employers through a complex
13 process that requires insurers to collect premium surcharges from
14 insured employers that may be adjusted up to 3 times a year in
15 response to revised revenue estimates. If there is a shortfall,
16 the board must obtain authorization to draw on its reserve fund,
17 while excess collections are either added to the reserve fund,
18 credited against subsequent assessments or refunded to
19 policyholders, depending on the amount collected.

20 The bill revises the assessment mechanism so that the amount
21 collected is a sum certain, beginning with the assessment to be
22 levied in the spring of 2003 for fiscal year 2003-04. To
23 accomplish this, the assessment will be levied directly on
24 insurers and therefore will be included within the premium rather
25 than billed as a separate surcharge. Insurers will be allowed to
26 adjust rates to incorporate amounts formerly collected as
27 surcharges. The assessment will continue to be a uniform
28 percentage of premium for all insurers, but will be based on the
29 prior calendar year premium, which is already known at the time
30 the assessment is collected, rather than the subsequent fiscal
31 year premium, which must be estimated. As a result, the
32 executive director will know exactly how much to assess in order
33 to meet the agency's budget. The mechanism for assessing
34 self-insurers already meets that criterion and therefore will not
35 be changed. The bill also preserves the statutory cap on
36 assessments, as updated to reflect current agency needs and
37 economic conditions.

40 Finally, the governance study called for more clarity
41 regarding the board reserve fund, while acknowledging the
42 importance of having resources available in reserve. Because the
43 fixed assessment mechanism enables the currently authorized 10%
44 contingency margin to provide an adequate reserve, there will no
45 longer be a need for a separate accumulating reserve fund.
46 Therefore, any amounts accruing in the Workers' Compensation
47 Agency Administrative Fund beyond the agency's needs will be
48 applied to reduce the assessment for the following fiscal year.
49 A portion of the existing reserve fund will be dedicated to the
50 technology improvement projects recommended by the governance

2 study, and the remainder will be credited against the assessment
for fiscal year 2003-04 as an excess fund balance.

4 The bill also includes several transitional provisions,
including provisions on the budget and human resource issues and
6 technical revisions to various statutory provisions for
conformity with the changes in nomenclature and administrative
8 structure.

10 Several provisions of the Maine Revised Statutes, Title 39-A
have been amended to clarify the adjudicatory process and
12 timetables, including a nonsubstantive reorganization of
provisions of Title 39-A, sections 318 to 321 relating to
14 post-hearing procedures.

16 Title 39-A, section 105 clarifies that the executive
director has jurisdiction over predeterminations of independent
18 contractor status and clarifies the hearing procedure when there
is a dispute.

20 Title 39-A, section 356 is amended to clarify the assessment
22 process for the Supplemental Benefits Fund and to incorporate
relevant language from a repealed provision of section 154 that
24 is cross-referenced by the current law. The structure of the
Supplemental Benefits Oversight Committee and the assessment
26 formula and procedures are not changed.