

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 453-End

AND AT THE

FIRST SPECIAL SESSION
September 6, 1983 to September 7, 1983
Chapters 583-588

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

sion, it shall also order the Secretary of State to delete any record of the suspension.

C. Any suspension issued under paragraph B shall run concurrently with any suspension ordered by a court upon conviction or adjudication of any violation of section 1312-B or 1312-C or Title 15, section 3103, subsection 1, paragraph F.

D. Following the expiration of 1/2 of the total period of suspension imposed pursuant to paragraph B, the Secretary of State may issue a provisional license, subject to the conditions, restrictions or terms he deems advisable, to the person if he receives written notice that the person has satisfactorily completed the alcohol education program of the Department of Human Services and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

E. Any suspension pursuant to paragraph B or provisional license reissued after suspension pursuant to paragraph D may extend beyond the person's 20th birthday to allow for completion of the total suspension period or to continue the period of conditions, restrictions or terms imposed on a license reissued pursuant to paragraph D.

F. The Secretary of State may promulgate whatever rules are necessary to carry out the purposes of this section.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 23, 1983.

CHAPTER 479

H.P. 1019 - L.D. 1322

AN ACT to Reform the Workers'
Compensation System.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Workers' Compensation System in Maine suffers from structural problems which cause

higher costs to Maine employers and delays in benefits due Maine's injured workers; and

Whereas, these problems should be addressed as soon as possible; and

Whereas, the implementation of these changes should be phased in over a period of time; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §2511, as amended by PL 1981, c. 514, §1, is further amended to read:

§2511. Companies taxable; rate

Every life insurance company or association, organized under the laws of this State, in lieu of all other taxation, shall be taxed as follows: First, its real estate and personal property shall be taxed by the municipality in which such real estate or personal property is situated, in the same manner as other real estate is taxed therein; 2nd, it shall pay a tax of 1% upon all gross direct premiums written, including annuity considerations, whether in cash or notes absolutely payable, received from residents of this State, first deducting therefrom all return premiums and all dividends paid to policyholders in this State on account of ~~said~~ these premiums or considerations. Every other insurance company or association organized under the laws of this State, except those mentioned in section 2517, including surety companies and companies engaged in the business of credit insurance or title insurance shall pay a tax of 1% upon all gross direct premiums written whether in cash or in notes absolutely payable on contracts made in the State for fire, casualty and other risks, except workers' compensation, as provided in section 2523, less return premiums thereon and less all dividends paid to policyholders and less all premiums and assessments on policies of insurance issued on farm property.

Every insurance company, association or group self-insurer issuing workers' compensation insurance policies covering the payment of compensation and benefits as provided for in Title 39 shall pay an additional tax of .05% upon all gross direct premiums

written whether in cash or in notes absolutely payable on contracts made in the State for workers' compensation, less return premiums thereon and less all dividends paid to policyholders. This tax shall be payable only for the calendar year 1982.

Every individual self-insurer which self-insures the payment of compensation and benefits as provided for in Title 39 shall pay a tax of .05%, payable only for the calendar year 1982. This tax shall be based on the premium rate which would have been payable for each \$100 of salary.

Sec. 2. 36 MRSA §2521-B, as enacted by PL 1981, c. 706, §25, is repealed.

Sec. 3. 36 MRSA §2523 is enacted to read:

§2523. Taxation of workers' compensation insurers

1. Tax on insurance companies. Every insurance company or association organized under the laws of this State, issuing workers' compensation insurance policies covering the payment of compensation and benefits, as provided for in Title 39, shall pay a tax of 1% upon all gross direct premiums written, whether in cash or in notes absolutely payable on contracts made in the State for workers' compensation, less return premiums thereon and less all dividends paid to policyholders.

Every other insurance company or association which does business or collects premiums or assessments for workers' compensation insurance in this State shall, for the privilege of doing business in this State and in addition to any other taxes imposed for that privilege, pay a tax of 2% upon all gross direct premiums written, whether in cash or in notes absolutely payable on contracts written on risks located or resident in the State for workers' compensation insurance, less return premiums thereon and less all dividends paid to policyholders.

The tax levied under this section is in lieu of the taxes levied under sections 2511 and 2513, insofar as those taxes are based on workers' compensation insurance premiums.

2. Returns. Insurance companies and associations shall file a separate return under section 2521-A for the tax levied by this section.

3. Fund. Taxes collected under this section shall be paid forthwith by the State Tax Assessor to the General Fund.

Sec. 4. 39 MRSA §2, sub-§3, as amended by PL 1977, c. 612, §1, is repealed and the following enacted in its place:

3. Commission; commissioner. "Commission" means the Workers' Compensation Commission created by section 91. "Commissioner" means any member of the commission, including the chairman, appointed under section 91 to hear and determine cases.

Sec. 5. 39 MRSA §2, sub-§3-A is enacted to read:

3-A. Compensation payment scheme. "Compensation payment scheme" means the procedure whereby an employer is required to provide compensation or other benefits under this Act to an employee. The term "compensation payment scheme" includes a decree of the commission, payment under the early-pay system provided in section 51-B, and, in case of injuries prior to January 1, 1984, an approved agreement.

Sec. 6. 39 MRSA §51-A, as enacted by PL 1979, c. 142, §1, is repealed.

Sec. 7. 39 MRSA §51-B is enacted to read:

§51-B. Early-pay system

1. Applicability. The compensation payment scheme created by this section shall apply to all claims arising out of injuries occurring after December 31, 1983. Nothing in this section abrogates the rights of a claimant relative to an injury on or before that date.

2. Prompt and direct payment. Compensation under this Act shall be paid promptly and directly to the person entitled to that compensation at his mailing address, or at any other place he designates, without an award, except where the claim to compensation is controverted by the employer.

3. First payment due. The first payment of compensation, other than compensation for impairment under section 56 or 56-A, is due within 14 days after the employer has notice or knowledge of the injury or death. In cases where the employee did not lose time from work within 5 scheduled work days following the injury, compensation is due and payable within 14 days of the date the employee asserts to the employer that that lost time is related to the injury or from the date a request is made for medical expenses or other benefits payable under the Act, whichever occurs first. On or before the 14th day, all compen-

sation then due shall be paid. Subsequent incapacity compensation benefit payments shall be made weekly and in a timely fashion.

4. Compensation for impairment. Compensation for impairment under sections 56 and 56-A shall not be payable prior to the date on which the injured employee reaches the stage of maximum medical improvement. It shall become due and payable within 14 days after the employer has notice that maximum medical improvement has been attained. For the purpose of this subsection, "maximum medical improvement" means the date after which further recovery and further restoration of function can no longer be reasonably anticipated, based upon reasonable medical probability.

5. Memorandum of payment. Upon making the first payment of compensation or upon making a payment of compensation for impairment, the employer shall immediately forward to the commission a memorandum of payment on forms prescribed by the commission. This information shall 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
- D. The initial weekly compensation rate.

6. Information. If the employer is making compensation payments under this section, the employer shall file with the commission a statement of the employee's average weekly wage, as defined in section 2, within 30 days after the initial payment, together with a wage statement or wage statements in the case of multiple employment. A copy of this information shall be mailed to the person receiving payments.

7. Notice of controversy. If the employer, prior to making payments under subsection 3, controverts the claim to compensation, he shall file with the commission, within 14 days after an event which gives rise to an obligation to make payments under subsection 3, a notice of controversy in a form prescribed by the commission. The notice shall indicate the name of the claimant, name of the employer, date of the alleged injury or death and the grounds upon which the claim to compensation is controverted. The employer shall promptly furnish the employee with a copy of the notice.

If, at the end of the 14-day period, the employer has not filed the notice required by this subsection, he shall begin payments as required under subsection 3. He may cease payments and file with the commission a notice of controversy, only as provided in this subsection, no later than 44 days after an event which gives rise to an obligation to make payments under subsection 3. Failure to file the required notice of controversy prior to the expiration of the 44-day period constitutes acceptance by the employer of the compensability of the injury or death.

If, at the end of the 44-day period, the employer has not filed a notice of controversy, or if pursuant to a proceeding before the commission, the employer is required to make payments, the payments may not be decreased or suspended, except as provided in section 100.

8. Effect of payment. If, within the 44-day period established in subsection 7 and after the payment of compensation without an award, the employer elects to controvert the claim to compensation, the payment of compensation shall not be considered to be an acceptance of the claim or an admission of liability. Notwithstanding the provisions of section 99-C, the acceptance of compensation in any case, except by decision or agreement, by the injured employee or his dependents shall not be considered an admission by the employee or his dependents as to the nature and scope of the employer's liability or a waiver of the right to question the amount of compensation or the duration of the same or the nature of the injury and its consequences.

9. Commission to take action upon notice of controversy. Upon receipt of information from any person claiming compensation, or from the employer, that the claim to compensation is controverted, or that payment of compensation has been suspended or reduced, the commission shall, whether or not a petition for award has been filed, promptly take any action it considers necessary to protect the rights of all parties, including, without limitation, investigating the circumstances surrounding the claim, requiring medical examinations, holding hearings, and making determinations and awards. Notwithstanding the absence of a dispute between the parties, in any case in which payments are being made without an award, the commission may, upon its own initiative, or upon the petition of a party, and at any time, take any of the actions described in this subsection.

10. Penalty for nonpayment. If a claim to compensation has not been controverted and any payment of compensation payable without an award is not paid

within 7 days after it becomes due, the commission shall assess a penalty equal to 10% of the amount due.

The penalties provided in this subsection shall be assessed against the insurer or self-insurer, whichever the case may be. The penalties shall be paid to the Second Injury Fund created by section 57. No penalty under this subsection may be assessed where it is shown to the commission that the delay in payment or filing resulted from conditions over which the insurer or self-insurer has no control if the insurer or self-insurer proves that it acted in good faith and with reasonable diligence.

11. Subsequent periods of incapacity. In case of subsequent periods of incapacity, the date from which the times for payment or controversy shall be computed is the date the employer has notice or knowledge of the incapacity.

Sec. 8. 39 MRSA §54, first ¶, as amended by PL 1981, c. 483, §1, is further amended to read:

While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to $\frac{2}{3}$ his average gross weekly wages, earnings or salary, but not more than $166\frac{2}{3}\%$ of the average weekly wage in the State as computed by the Employment Security Commission; nor less than \$25 weekly; and such weekly compensation shall be adjusted annually ~~on July 1st~~ so that it continues to bear the same percentage relationship to the average weekly wage in the State as computed by the Employment Security Commission, as it did at the time of the injury. In the following cases it shall, for the purposes of this Act, be conclusively presumed that the injury resulted in permanent total incapacity; the total and irrevocable loss of sight of both eyes, the loss of both hands at or above the wrist, the loss of both feet at or above the ankle, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the arms or legs or an injury to the skull resulting in incurable imbecility or insanity. In the event of such permanent total incapacity, the employer shall pay the employee a weekly compensation equal to $\frac{2}{3}$ his average gross weekly wage, earnings or salary, but not more than $166\frac{2}{3}\%$ of the average weekly wage in the State as computed by the Employment Security Commission; nor less than \$25 weekly; and such weekly compensation shall be adjusted annually ~~on July 1st~~ so that it continues to bear the same percentage relationship to the average weekly wage in the State as computed by the Employment Security Commission, as it did at the time of

the injury. If the totally incapacitated employee dies, as a result of this injury, leaving dependents who were dependent upon his earnings at the time of his injury, then payments shall be made to the dependents in accordance with the procedures established by section 58. The annual adjustments required by this section shall be made on the anniversary date of the injury, except that, where the injury occurred prior to July 1, 1983, or where the effect of the 166 2/3% maximum is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment shall be made annually on July 1st.

Sec. 9. 39 MRSA §55, as amended by PL 1981, c. 483, §2, is further amended to read:

§55. Compensation for partial incapacity

While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to 2/3 the difference, due to the injury, between his average gross weekly wages, earnings or salary before the injury and the weekly wages, earnings or salary which he is able to earn thereafter, but not more than 166 2/3% of the average weekly wage in the State as computed by the Employment Security Commission; and such weekly compensation shall be adjusted annually ~~on July 1st~~ so that it continues to bear the same percentage relationship to the average weekly wage in the State as computed by the Employment Security Commission, as it did at the time of the injury. The annual adjustment required by this section shall be made on the anniversary date of the injury, except that, where the injury occurred prior to July 1, 1983, or where the effect of the 166 2/3% maximum is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment shall be made annually on July 1st.

Sec. 10. 39 MRSA §58, first ¶, as amended by PL 1981, c. 483, §3, is further amended to read:

If death results from the injury, the employer shall pay the dependents of the employee, dependent upon his earnings for support at the time of his injury, a weekly payment equal to 2/3 his average gross weekly wages, earnings or salary, but not more than 166 2/3% of the average weekly wage in the State as computed by the Employment Security Commission; nor less than \$25 weekly; from the date of death, until such time as provided for in the following paragraph. Such weekly compensation shall be adjusted annually ~~on July 1st~~ so that it continues to bear the same percentage relationship to the average weekly

wage in the State as computed by the Employment Security Commission, as it did at the time of the injury. The annual adjustment required by this section shall be made on the anniversary date of the injury, except that, where the injury occurred prior to July 1, 1983, or where the effect of the 166 2/3% maximum is to reduce the amount of compensation to which the dependents would otherwise be entitled, the adjustment shall be made annually on July 1st.

Sec. 11. 39 MRSA §68, 2nd ¶, as repealed and replaced by PL 1969, c. 84, is amended to read:

If the injured employee elects to claim compensation and benefits under this Act, any employer having paid such compensation or benefits or having become liable therefor under any ~~decree or approved agreement~~ compensation payment scheme shall have a lien for the value of compensation paid on any damages subsequently recovered against the third person liable for the injury. If the employee or compensation beneficiary fails to pursue his remedy against the third party within 30 days after written demand by an employer or compensation insurer in interest, the employer or compensation insurer shall be subrogated to the rights of the injured employee and shall be entitled to enforce liability in their own name or in the name of the injured party; the accounting for the proceeds to be made on the basis provided.

Sec. 12. 39 MRSA §69 is amended to read:

§69. Preference of claims

A claim for compensation under this Act, and any ~~decree or approved agreement~~ compensation payment scheme therefor, shall be entitled to a preference over the unsecured debts of the employer to the same amount as the wages of labor are preferred by the laws of this State. Nothing herein shall be construed as impairing any lien which the employee may have acquired.

Sec. 13. 39 MRSA §71, 2nd ¶ is amended to read:

Upon payment of any lump sum approved by the commission, the employer shall be discharged from all further liability on account of ~~said~~ the injury or death and be entitled to a duly executed release; upon filing which, or other due proof of payment, the liability of such employer under ~~any agreement, award or decree~~ this Act shall be discharged of record, and the employee accepting the lump sum settlement shall receive no further compensation or other benefits on account of ~~said~~ the injury or death under this Act.

Sec. 14. 39 MRSA §91, as amended by PL 1981, c. 698, §192, is repealed and the following enacted in its place:

§91. Workers' Compensation Commission

1. Membership; term. The Workers' Compensation Commission, as established in this section, shall consist of 9 members, who shall be persons learned in the law and members of good standing of the bar of this State. They shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary and to confirmation by the Legislature. One of the commissioners, to be designated by the Governor as chairman, shall be appointed for the term of 5 years and the other commissioners for a term of 4 years each.

2. Vacancies; removal. Commissioners shall hold office for the terms provided in subsection 1, unless removed, and until their successors are appointed and qualified. They shall be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may be removed by the Governor, only with the review and concurrence of the joint standing committee of the Legislature having jurisdiction over judiciary upon hearing in executive session, or by impeachment. Before removing a commissioner, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives of the removal, and the reasons for the removal. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place he takes, subject to removal. In case the office of chairman becomes vacant, the senior appointed commissioner shall act as chairman until the Governor makes an appointment to fill the vacancy.

3. Salary; expenses. Salaries of commissioners are as provided in Title 2, section 7, subsection 2. Members of the commission shall receive their actual, necessary, cash expenses while away from their offices on official business of the commission. Title 4, section 103, providing for compensation upon retirement of Justices of the Superior Court and to benefits for their spouses and surviving minor children, is made applicable to workers' compensation commissioners. Prior service by full-time commissioners holding office on July 1, 1983, shall be included for purposes of this section. Service on any court of this State and service on the commission shall all be credited to the retiree.

4. Practice. Each commissioner and chairman

shall devote full time to the duties of his office and shall not hold any other public office or public employment. He shall not practice law during his term of office, nor shall he during that term be the partner or associate of any person in the practice of law.

5. Headquarters; regional offices. The commission shall have its central office in Augusta, and 4 district offices to be located in Androscoggin, Aroostook, Cumberland and Penobscot Counties. The commission may hold sessions at any place within the State.

6. Seal. The commission shall have a seal bearing the words "Workers' Compensation Commission of Maine."

Sec. 15. 39 MRSa §91-A, as enacted by PL 1979, c. 548, §5, is repealed.

Sec. 16. 39 MRSa §92, as amended by PL 1979, c. 548, §6, is repealed and the following enacted in its place:

§92. Authority of chairman; administration

1. Rules. The chairman of the commission shall have general supervision over the administration of this Act, and responsibility for the efficient and effective management of the commission and its employees. Subject to any applicable requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, after obtaining the advice of the commissioners, the chairman shall make rules, prescribe forms and make suitable orders as to procedure adopted to assure a speedy, efficient and inexpensive disposition of all proceedings.

2. Employees. The chairman shall appoint, supervise and direct, subject to the Personnel Law, a director of administrative services, full-time or part-time reporters, and such legal and clerical assistance as may be necessary.

3. Data system; reports. The chairman is responsible for development and administration of the commission data system. The chairman shall report quarterly to the Governor, the President of the Senate and the Speaker of the House of Representatives on each commissioner's caseload and progress, and the number of instances in which each commissioner has exceeded the 30-day rule contained in section 99-B.

4. Booklets; information. In order to ensure

that both employers and employees are fully informed as to their rights and responsibilities under this Act, the chairman shall prepare, publish and distribute an illustrated booklet explaining, in informal and readily understandable language, those rights and responsibilities. The chairman shall be responsible for periodic revision of the booklet.

5. Active retired commissioners. Any commissioner having retired from the commission is eligible for appointment as an active retired commissioner. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary and to confirmation by the Legislature, may, upon being notified of the retirement of a commissioner, appoint that commissioner to be an active retired commissioner for a term of 4 years, unless sooner removed, and subject to reappointment. An active retired commissioner shall have the same powers as before retirement, except that he shall act only in those cases and at times and places as directed by the chairman, and except that an active retired commissioner may not be a member of a panel of the appellate division.

An active retired commissioner who performs the services of a commissioner at the direction and assignment of the chairman shall be compensated at a rate established by the chairman, provided that the total per diem compensation and retirement pension received by an active retired commissioner may not exceed the annual salary of a regular commissioner. In addition, the active retired commissioner shall receive reimbursement for his expenses actually and reasonably incurred in the performance of his duties.

6. Office of Employee Assistants. The chairman shall provide adequate funding for an Office of Employee Assistants and shall, subject to the Personnel Law, appoint the assistants to staff the Augusta office and district offices. Assistants are not attorneys, but should demonstrate a level of expertise roughly equivalent to that of insurance claims' analysts. The purpose of employee assistants is to provide advice and assistance to employees under this Act, and particularly to assist employees in preparing for and assisting at informal conferences under section 94-B.

No employee of the Office of Employee Assistants may represent before the commission any insurer, self-insurer, group self-insurer, adjusting company or self-insurance company for a period of 2 years after terminating employment with the office.

The chairman shall appoint 6 employee assistants. After January 1, 1984, the chairman may appoint up to

4 additional assistants if, in the chairman's judgment, the additional assistants are necessary to effectuate the purposes of this subsection.

Employee assistants shall be paid a salary equal to that paid to state employees in professional and technical range 21.

7. Budget. The chairman shall administer the budget of the commission.

Sec. 17. 39 MRSA §93, sub-§6 is enacted to read:

6. Case administration. The commission shall assume an active and forceful role in the administration of this Act to ensure that the system operates efficiently and with maximum benefit to both employers and employees. It shall continually monitor individual compensation cases to ensure that injured employees or their dependents receive the full amount of compensation to which they are entitled under this Act.

Sec. 18. 39 MRSA §94, first ¶, as amended by PL 1977, c. 709, §3, is repealed and the following enacted in its place:

Subject to section 94-B, in the event of a controversy as to the responsibility of an employer for the payment of compensation, any party in interest may file in the office of the commission a petition for award of compensation, setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the knowledge of the employer or notice of the occurrence thereof, the character and extent of the injury and the claims of the petitioner with reference thereto, together with such other facts as may be necessary and proper for the determination of the rights of the petitioner.

Sec. 19. 39 MRSA §§94-A and 94-B are enacted to read:

§94-A. Commission actions

In addition to other actions required of or permitted to the commission under this Act, in order to assure just and efficient administration of claims, the commission shall perform the actions required by this section.

1. Inform employee. Immediately upon receipt of the employer's notice of injury required by section 106, the commission shall contact the employee and provide information explaining the compensation sys-

tem and the employee's rights. The commission shall advise the employee how to contact the commission for further assistance and shall provide that assistance.

2. Monitor payments. The commission shall monitor cases in order to assure that:

A. Either payments are initiated or notice of controversy is filed by the end of 14 days after an event which gives rise to an obligation to make payments under section 51-B, subsection 3; and

B. Payments to the claimant provide the full amount of compensation to which he is entitled, and are properly indicated on the memorandum of payment.

3. Liberal construction. In interpreting this Act, the commission shall construe it liberally and with a view to carrying out its general purpose. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

4. Information. The commission shall require the employee, employer or insurer to provide it with any information it reasonably deems necessary to monitor cases, including, but not limited to, pre-injury and post-injury wage statements.

§94-B. Procedure upon notice of controversy; informal conference

1. Conference scheduled; waiver. Upon filing of a notice of controversy, and instead of proceeding by way of a petition, the matter shall be referred to a commissioner, who shall schedule an informal conference to be held no later than 3 weeks from the date of that filing. The provisions of section 98 with regard to place and transportation costs apply equally to informal conferences.

Upon agreement of the parties, an informal conference may be waived and a formal hearing scheduled.

2. Conference procedure. The commissioner shall make every effort to resolve any controversies or misunderstandings and shall render an advisory opinion at the conference. The commissioner is not bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry in such manner as is best calculated to ascertain the substantial rights of the parties and carry out the spirit of this Act.

3. Representation. In preparation for and at the conference, the commission shall assure that com-

petent technical staff from the Office of Employee Assistants is available to provide advice and assistance to the employee.

If at this stage the employer or insurer elects to be represented by legal counsel, the employee is entitled to be similarly represented by legal counsel of his choice, with all reasonable attorney fees to be assessed against the employer. If no adverse party elects to be so represented, the employee retains the right to secure legal counsel at his own expense.

4. Action upon opinion. Within 7 days of the conference, the employer may file with the commission a memorandum of payment evidencing the initiation of compensation payments or, if there is further controversy, any party may then file a petition as provided in this Act.

Sec. 20. 39 MRSA §97, 2nd ¶, as enacted by PL 1971, c. 388, is amended to read:

Except that, for good cause shown, a single commissioner may permit the late filing of any pleading permissible under this Act. If the subject of the petition has been considered in an informal conference under section 94-B, the period for filing and mailing of answers shall be 7 days.

Sec. 21. 39 MRSA §98, as amended by PL 1977, c. 613, §1, is repealed and the following enacted in its place:

§98. Time and place of formal hearing

Upon filing of a petition, the matter shall be referred to a single commissioner or, in a case under section 94-B, to the same commissioner, who shall fix a time for hearing upon at least a 5-day notice given to all the parties or to the attorney of record of each party. The matter need not be assigned to the same commissioner if that commissioner is unavailable due to illness, death or similar reason. The commissioner may not be replaced for reason of caseload or because he presided at the informal conference. All hearings shall be held at such towns and cities geographically distributed throughout the State as the commission shall designate. In case the place of hearing so designated is more than 10 miles distant from the place where the injury occurred, the employer shall provide transportation or reimburse the employee for reasonable mileage in traveling within the State to and from the hearing. The amount allowed for travel shall be determined by the commissioner or commission and awarded separately in the decree. If the case has had an informal conference

under section 94-B, the hearing shall be held within 30 days of the filing of the petition.

Sec. 22. 39 MRSA §99-B, as enacted by PL 1979, c. 490, §2, is amended to read:

§99-B. Prompt decision required

The commissioner who hears a case pursuant to section 99 shall render his decision no later than 30 days after each party has completed presenting its case. Whenever the commissioner exceeds the limit contained in this section, compensation to him shall be forfeited effective the day after the 30th day and for each day until the decision has been issued; provided that this provision shall not apply in any case for which the commissioner has shown just cause, as determined by the ~~committee on judicial responsibility and disability~~ established pursuant to ~~Title 4, section 9-B~~ rules of the commission made pursuant to section 92, subsection 1, for delay beyond 30 days.

Sec. 23. 39 MRSA §99-C, as enacted by PL 1981, c. 185, is amended to read:

§99-C. Petition for reopening

Upon the petition of either party, a single commissioner may reopen and review any approved agreement compensation payment scheme, award or decree upon the grounds of newly discovered evidence which by due diligence could not have been discovered prior to the time the agreement was approved payment scheme was initiated or prior to the hearing on which the award or decree was based. The petition must be filed within 30 days of the agreement payment scheme, award or decree.

Sec. 24. 39 MRSA §100, sub-§4, ¶A, as enacted by PL 1981, c. 514, §4, is repealed and the following enacted in its place:

A. The employer and the employee file an agreement with the commission; or

Sec. 25. 39 MRSA §100-A, as amended by PL 1977, c. 696, §407, is further amended to read:

§100-A. Orders or agreements for trial work periods

The ~~Workers' Compensation Commission~~ commission may approve an agreement of the parties to a trial work period at a specified job for a period not to exceed 3 months. During ~~such~~ this trial work period and the payment of wages therefor, the payment of compensation under ~~decree or approved agreement~~ a

compensation payment scheme shall be suspended. Such That suspension shall cease and weekly compensation shall be restored in the amount being paid prior to the commencement of the trial work period immediately upon the filing of a petition by the employee stating that he has attempted a trial work period and was unable to adequately perform during the same period.

Sec. 26. 39 MRSA §101, as amended by PL 1977, c. 709, §4, is repealed.

Sec. 27. 39 MRSA §104-A, sub-§1, as amended by PL 1981, c. 698, §§200 and 201, is further amended to read:

1. Order or decision. Within With regard to injuries occurring prior to January 1, 1984, within 10 days after the receipt of notice of an approved agreement for payment of compensation, or with regard to injuries occurring after December 31, 1983, within the time limits specified in section 51-B, or within 10 days after any order or decision of the commission awarding compensation. Payment shall not be suspended thereafter in the event of appeal to the Appellate Division as provided in section 103-B or, if the division finds that the employee is entitled to compensation, in the event of appeal to the Law Court from a decision of the division as provided in section 103-C, except that the commission shall retain jurisdiction, pending the decision on appeal, to enter orders or decisions as provided in section 100. If the commission, after a review of incapacity under section 100, issues an order or decision denying compensation to an employee, compensation shall be suspended from the date of the commission's order or decision, notwithstanding any appeal of that order or decision to the division as provided in section 103-B, or any report or appeal to the Law Court as provided in sections 103-C and 103-D. The employer or insurer may recover from an employee payments made pending appeal to the Appellate Division or pending report or appeal to the Law Court if and to the extent that the Appellate Division or the Law Court has decided that the employee was not entitled to the compensation paid. The commission shall have full jurisdiction to determine the amount of overpayment, if any, and the amount and schedule of repayment, if any. The commission, in determining whether or not repayment should be made and the extent and schedule of repayment, shall consider the financial situation of the employee and his family and shall not order repayment which would work hardship or injustice.

Sec. 28. 39 MRSA §104-A, sub-§2, as amended by PL 1981, c. 291, §2, is further amended to read:

2. Failure. ~~In~~ Except as otherwise provided by section 51-B, subsection 9, in the event of failure by the employer or insurance carrier to pay compensation as provided in this section a forfeiture not to exceed \$25 for each day of noncompliance shall be assessed against the employer or the insurance carrier.

If any employer, who is required to secure the payment to his employees of the compensation provided for by this Act, fails to do so, he shall be guilty of a Class D crime. Failure of any employer, after imposition of the foregoing penalty, to secure the payment of compensation under this Act after notice by the commission to that employer to do so shall, as to each such notice, be deemed a further violation in respect thereof and the same punishment shall be imposed. If that employer is a corporation, the president or treasurer, or both, shall be liable for that punishment.

Sec. 29. 39 MRSA §106-A, as amended by PL 1979, c. 541, Pt. A, §283, is further amended to read:

§106-A. Notice by the commission

Within 90 15 days of receipt of an employer's notice of injury, as required by section 106, unless it has received a petition for award ~~or approved an agreement for~~ of compensation relating to the injured employee, the commission shall take reasonable steps to notify the employee that unless the employer disputes the claim, the employer is required to pay compensation within 14 days after , an event which gives rise to an obligation to make payments under section 51-B, subsection 3; that a petition for award may be filed; section 110 of the Act provides for the payment of attorney's fees under certain circumstances; and rights under the Act may not be protected unless a petition of award or approved agreement memorandum of payment is on file with the commission within 2 years of the injury.

Sec. 30. 39 MRSA §110, as amended by PL 1979, c. 132, §2, is further amended to read:

§110. Witness and attorney's fees allowable

When the commission or commissioner finds that an employee has instituted proceedings under this chapter on reasonable grounds and in good faith or that the employer through or under his insurance carrier has instituted proceedings under this chapter, the ~~said~~ commission or commissioner may assess the employer costs of witness fees and a reasonable attorney's fee, when in the commission's or commis-

sioner's judgement judgment the said witnesses and the services of the said attorney were necessary to the proper and expeditious disposition of the case. The employer may not be assessed costs of an attorney's fee attributable to services rendered prior to one week after the informal conference under section 94-B or, if the informal conference is waived, services rendered prior to the date of that waiver, unless a party adverse to the employee was so represented at that stage.

No attorney representing an employee in a proceeding under this ~~Title shall~~ Act may receive any fee from that client for an appearance before the commission, including preparation for that appearance, except as provided in section 94-B, subsection 3. Any attorney who violates this paragraph shall lose his fee and shall be liable in a court suit to pay damages to the client equal to 2 times the fee charged for that client.

Notwithstanding any other provision of this section, the employer may be assessed a reasonable attorney's fee for services rendered to the employee in executing an agreement under section 100, subsection 4, paragraph A.

Sec. 31. Study commission. There is established a special commission to review and make recommendations to the Governor and the Legislature concerning workers' compensation alternative systems. The commission shall evaluate the impact of reserving practices, return on investments and profitability on workers' compensation ratemaking and structural alternatives, such as state funds.

The commission shall be composed of 3 persons, appointed by the Governor: A chairman without any ties to an interest group, a representative of business and a representative of labor. Advisory, non-voting representation from the insurance industry and the Department of Business Regulation may be provided. For purposes of this study, the commission shall have the same powers as those provided to the Superintendent of Insurance under Title 24-A, chapter 3, to garner information from insurers and individual and group self-insurers.

The commission may employ an actuary and such other staff as may be required. The 3 commission members shall be entitled to receive \$150 per day, plus expenses for each day actually spent conducting business of the commission.

The commission shall report its full findings to the Governor, the President of the Senate and the

Speaker of the House of Representatives, together with any recommended legislation, no later than April 30, 1984.

Sec. 32. Appropriation. The following funds are appropriated from the General Fund to carry out the study provided in section 32.

1983-84

COMMISSION TO STUDY
WORKERS' COMPENSATION INSURANCE

Personal services	\$30,000
All Other	<u>70,000</u>
Total	\$100,000

Sec. 33. Data system funds. Notwithstanding any other provision of this Act, all moneys previously appropriated to the Workers' Compensation Commission for the study, acquisition and implementation of a data system shall be retained for that use by the commission. These funds shall not lapse to the General Fund.

Emergency clause. In view of the emergency cited in the preamble, sections 2, 4, 5, 8 to 13, 22, 24, 31 and 33 of this Act shall take effect when approved. Sections 1, 3, and 14 to 16 shall take effect on July 1, 1983. The remaining sections shall take effect on January 1, 1984.

Effective June 24, 1983, unless otherwise indicated.

CHAPTER 480

S.P. 622 - L.D. 1760

**AN ACT to Make Corrections of Errors
and Inconsistencies in the Laws of Maine.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and