LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND THIRTEENTH LEGISLATURE

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

and the

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1988

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST AND SECOND SPECIAL SESSIONS

and

SECOND REGULAR SESSION

of the

ONE HUNDRED AND THIRTEENTH LEGISLATURE

1987

CHAPTER 559

S.P. 704 — L.D. 1929

AN ACT to Improve the Maine 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, there is a statutory requirement that all employers in the State provide workers' compensation coverage; and

Whereas, most, if not all, of the insurance carriers writing such workers' compensation insurance in the State are withdrawing from the business; and

Whereas, comprehensive legislative reform is urgently needed as it is the only possibility for saving the private insurance market for workers' compensation, without which employers cannot operate; 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:

PART A

Sec. 1. 24-A MRSA §2302, sub-§3, as repealed and replaced by PL 1985, c. 372, Pt. B, §2, is amended to read:

3. Workers' compensation shall first be subject to chapter 25, subchapter ~~H~~ II-A, but any other parts of this ~~chapter and Title 39~~ subchapter not inconsistent with those sections shall also apply.

Sec. 2. 24-A MRSA §2303, sub-§1, ¶C, as amended by PL 1985, c. 372, Pt. B, §3, is further amended to read:

C. Due consideration shall be given:

(1) To past and prospective loss experience within and outside this State;

(2) To the conflagration and catastrophe hazards;

(3) To a reasonable margin for underwriting profit and contingencies;

(4) To dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;

(5) To past and prospective expenses both countrywide and those specially applicable to this State;

(6) To all other relevant factors within and outside this State;

(6-A) In the case of workers' compensation rates, consideration shall be given to the information required to be filed under ~~Title 39, section 22-D, subsections 4 and 5~~ section 2363; and

(7) In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

Sec. 3. 24-A MRSA c. 25, sub-c. II, as amended, is repealed.

Sec. 4. 24-A MRSA c. 25, sub-c. II-A is enacted to read:

SUBCHAPTER II-A

WORKERS' COMPENSATION RATES

§2361. Title

This subchapter shall be known and may be cited as the "Workers' Compensation Competitive Rating Act."

§2362. Workers' compensation rates

Workers' compensation rates and classifications shall be approved, modified, or disapproved by the superintendent subject to this chapter. Rates determined by the superintendent are maximum rates. Premium rates less than those approved may be used if filed with the superintendent within 5 days after commencing use. If the superintendent has reason to believe that the filing produces rates which are inadequate or unfairly discriminatory, he may disapprove them under chapter 23 and chapter 25, subchapter I.

§2363. Approval of insurance policies and rates

The following provisions apply to workers' compensation insurance policies and rates.

1. Policies. Every insurance company issuing workers' compensation insurance policies covering the payment of compensation and benefits provided for in this subchapter shall use only policy forms approved pursuant to section 2412.

2. Determination of rates. Every insurer issuing workers' compensation insurance policies shall file with the superintendent its classification of risks and maximum premium rates, which may not take effect until the superintendent has approved them. The superintendent shall apply the procedures and standards of this section in investigating, reviewing and determining just and

reasonable rates. The superintendent may:

A. Require the filing of specific rates for workers' compensation insurance, including classification of risks, experience or any other rating information from insurance companies authorized to transact insurance in this State;

B. Make or cause to be made investigations as he deems necessary to satisfy himself that the rates to be promulgated are just and reasonable; and

C. At any time, after public hearing, withdraw his approval of a previously approved rate filing.

3. Notice of filing. At least 20 days prior to any filing for rates under this section, a person filing shall notify the superintendent in writing of the intention to file and shall disclose the approximate amount of a requested increase or decrease and a description of major rating rule changes to be proposed. Within 10 days of receipt, the superintendent shall notify the public by publication in a newspaper of general circulation and notify the Public Advocate that a rate filing is to be made. Restrictions on ex parte communications, as provided for in Title 5, section 9055, shall be applicable on the date the superintendent receives the notice of intention to file.

4. Contents of filing. A rate filing shall include:

A. For each of the 3 calendar years immediately preceding the date of the filing including, in the case of a filing made by a rating organization, data for each year from each insurer which had 1% or more of the total written premium for that year:

(1) The actual direct earned premium allocable to the coverage of risks in this State;

(2) Unearned premium, earned premium, loss and loss expense reserve and capital and surplus subject to investment, allocable to the coverage of risks in this State;

(3) For the investment corresponding to the liabilities and capital and surplus referred to in subparagraph (2):

(a) The amount of investments;

(b) The types of investments; and

(c) The annual income amounts, before taxes, generated by the aggregate of these investments;

(4) The gross rate of return on admitted assets;

(5) The amount of dividends or the equivalent allowed or returned to policyholders;

(6) The aggregate annual expenses allocable to the coverage of risks in this State, including acquisition and field supervision expenses, taxes, licenses and fees, other than federal income tax and general expenses, each stated separately. Safety engineering expense and loss control services' expense shall be stated separately under general expense;

(7) The aggregate annual losses and loss adjustment expenses allocable to the coverage of risks in this State; and

(8) The changes and improvements instituted in loss control and employee safety engineering;

With respect to rate filings made before July 1, 1988, the information required by subparagraphs (1) to (8) shall be required only for each of the 3 calendar years immediately preceding the date of the filing for which financial information is available;

B. For each risk classification:

(1) The rate presently applicable to the classification;

(2) The rate proposed for the classification;

(3) Loss experience in this State for each of the 3 most recent years available, including, in each classification, payroll, number of serious workers' compensation cases, number of nonserious cases, the losses, including medical expense incurred with respect to each type of case, loss adjustment expense and the total of all losses and expenses incurred; and

(4) The information required by this paragraph shall be presented in tabular form;

C. If data reported is determined by percentage factors, rather than actual expense, an explanation of the basis of the factors used;

D. Statements or exhibits that reasonably substantiate assumptions, methodology or calculations used in support of the proposed rates or to generate the information or data in the filing and identification of any of those that are known or believed to be contrary to established policy of the superintendent; and

E. Any other information required to be included by the superintendent.

5. Aggregate data. Aggregate expense data, annual losses, loss adjustment expense data and loss experience data required to be reported under subsection 4, paragraph A, subparagraphs (6) and (7), and paragraph B, subparagraph (3), shall be based on expense and experience data pertaining to this State, except as otherwise provided in this subsection. The rate of return on capital and surplus used in establishing the rates requested, the rate of return on the investment allocable to the coverage of risks in this State and the facts, assumptions and calculations employed to derive each rate of return shall also

be reported in the aggregate.

A. To the extent that the State expense and experience data is not fully credible, the superintendent may allow reporting of and consider data from outside this State.

B. Aggregate loss experience data shall:

(1) Include and be categorized as required in subsection 4, paragraph B, subparagraph (3); and

(2) Be presented in tabular form. The tables shall indicate, with respect to each classification, the relative weight given to experience in this State and to national experience in determining the applicable rate.

6. Additional information. The superintendent may require, at any time, any additional information he deems necessary and may reasonably extend the time periods established in subsection 9 to allow time to provide that information.

A. Within 30 days of receipt of a filing, the superintendent shall determine if the filing is complete.

(1) If the filing is incomplete, the superintendent shall notify the applicant and all parties in writing of those deficiencies.

(2) An applicant shall complete or amend the filing within 30 days of that written notice. Upon motion by the applicant made within the 30-day period and upon a showing of good cause, the superintendent may extend the 30-day period as he deems appropriate.

(3) An action or inaction by the superintendent under this paragraph does not constitute a substantive finding that the information in the filing is sufficient to establish that any action or relief should be granted or that any facts have been proven or limit the superintendent's authority to request further information or data.

B. If the applicant fails to furnish the information within the time prescribed, the superintendent may issue an order dismissing the filing.

C. For all purposes, the date of completing the filing shall be deemed the date on which the last document that made the filing complete was received by the superintendent, except that the superintendent may treat the day that the incomplete filing was filed as the filing date if the incompleteness is found to be immaterial or not to have delayed, impeded or interfered with the ability of the superintendent, bureau or any party to respond to, investigate or process the filing.

7. Standard for approval. This subsection applies to determination of just and reasonable rates for a filing.

A. The superintendent shall establish rates, based on the filing and sworn testimony, which are, in addition to any other requirements:

(1) Just and reasonable and not excessive, inadequate or unfairly discriminatory; and

(2) Based only on a just and reasonable profit.

B. In establishing just and reasonable rates, the superintendent shall consider:

(1) The reasonableness of any return on capital and surplus allocable to the coverage of risks in this State;

(2) The reasonableness of the amounts of capital and surplus allocable to the coverage of risks in this State;

(3) The reported investment income earned or realized from funds generated from business in this State;

(4) The reported loss reserves, including the methods and the interest rates used in determining the present value for reported reserves and the use of those reserves in the determination of the proposed rates;

(5) The reported annual losses and loss adjustment expenses;

(6) The measures taken to contain costs, including loss control, loss adjustment and employee safety engineering programs;

(7) The relationship of the aggregate amount of operating expenses reported by all companies to the annual operating expenses reported in the filing and the annual insurance expense exhibits filed by each company with the superintendent;

(8) The impact of operating and management efficency of the companies on expense levels and the effect of variations in expense levels on rates; and

(9) Any premium surcharges or credits ordered by the superintendent pursuant to section 2367.

C. The justness and reasonableness of rates shall be determined for the period in which the rates are in effect. Losses in the residual market in any preceding year may not be included in the determination of rates.

D. The filer shall have the burden of proving that the rates meet the requirements of this chapter and chapter 23.

E. The superintendent may not approve an increase or decrease in rates unless he finds that the information supplied in the filing and sworn testimony is ac-

curate and sufficient to meet the requirements of this section.

F. For the introduction of a new rate for a new classification or the adjustment of a single rate for an existing classification, the requirements of paragraph A, subparagraph (1); subsection 2; subsection 4, paragraphs B to E; and subsections 8, 10, 13 and 14 shall apply. The superintendent shall establish the new rate at a level which is not unfairly discriminatory in relation to the currently approved rates for other classifications.

8. Public record. A rate filing shall be a public record and shall be available for public review and inspection.

9. Public Advocate participation. The Public Advocate shall participate as follows.

A. The Public Advocate, as appointed under Title 35-A, section 1701, shall be a party to the proceeding resulting from each rate filing made under this section. A copy of the filing shall be served on the Public Advocate at the same time as it is filed with the superintendent.

B. A party filing for a rate change under this section shall pay to the superintendent at the time of filing a filing fee of $50,000, which the superintendent shall immediately credit to the Public Advocate. The fee shall be segregated and expended for the purpose of employing outside consultants and of paying other expenses to fulfill the requirements of this subsection. Any portion of the fee not so expended shall be returned to the filer.

10. Information for parties and intervenors. A party or intervenor may make written application to the superintendent for an order that a filer produce information relevant to whether the filing meets the requirements of this Title, except for information relating to a particular claim or information which is unduly burdensome or repetitious. If the party filing fails to furnish the information within the time prescribed by the superintendent, the party or intervenor making the request may make written application to the superintendent for an order dismissing the filing. If, after a hearing, the superintendent determines that the failure to furnish the information was without good cause, he shall issue an order for dismissal of the filing.

11. Public hearing. The superintendent shall hold a public hearing as provided in sections 229 and 235 on each filing. The public hearing shall be conducted no sooner than 30 days and no later than 60 days of the date the rate filing is deemed complete by the superintendent, unless the superintendent extends these limits under subsection 6. The superintendent shall establish just and reasonable rates and state his findings in a written order issued within 90 days from the date the filing is completed, unless he extends this limit under subsection 6. If the superintendent denies or dismisses a filing, any further filing shall be deemed to be a new filing, subject to this public hearing requirement.

12. Subsequent filing. A person may not file a rate filing within 180 days of receiving a rate increase or decrease. If a filing has been disapproved by the superintendent, the requirements of this subsection shall not operate to delay a new filing and the data required by subsection 4, paragraph A, shall only be required for each of the 3 most recent calendar years for which data are available.

13. Procedure; rules. Subject to the applicable requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, the superintendent may adopt rules establishing procedures for the administration of this section, including, procedures governing submission of petitions for intervenor status, prefiling of testimony and exhibits, information requests, subpoenas, prehearing conferences and conduct of hearings.

14. Costs. For the purpose of determining whether a filing meets the requirements of this section, the superintendent may employ outside consultants. The organization or insurer making the filing shall be responsible for the reasonable costs related to the review of workers' compensation rate filings, including conduct of the hearing.

§2364. Uniform classification system; experience and merit rating plans

1. Uniform plans. Every workers' compensation insurer, including self-insurers, shall adhere to a uniform classification system and uniform experience rating plan filed with the superintendent by an advisory organization. An insurer may develop subclassifications of the uniform classification system on which a rate may be made provided that:

A. A subclassification must be filed with the superintendent 30 days prior to its use; and

B. The superintendent may disapprove a subclassification if:

(1) The insurer fails to demonstrate that the data produced may be reported consistent with the uniform statistical plan and classification system; or

(2) The proposed subclassification:

(a) Is not reasonably related to the exposure;

(b) Is not adequately defined;

(c) Has not been shown to distinguish among insured based on the potential for or hazard of loss; or

(d) Is likely to be unfairly discriminatory.

2. Statistical advisory organization. The superintendent shall designate an advisory organization to assist in gathering, compiling and reporting relevant statistical information. Every workers' compensation insurer shall record and report its workers' compensation experience to the designated advisory organization as set forth in the uniform statistical plan. The organization designated pursuant to section 2371, subsection 1, shall collect and compile data for employers who are self-insured.

3. Manual rules. The designated advisory organization shall develop and file manual rules, subject to the approval of the superintendent, which are reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan and uniform classification system.

4. Experience and merit rating plans. An experience or merit rating plan shall contain reasonable eligibility standards and provide adequate incentives for loss prevention and for sufficient premium differentials to encourage safety. The experience rating plan shall provide reasonable and equitable limitations on the ability of policyholders to avoid the impact of past adverse claims experience through change of ownership, control, management or operation.

A. The uniform experience rating plan shall be the exclusive means for providing prospective premium adjustments based upon the past claim experience of an individual insured.

B. Insurers may file rating plans that provide for retrospective premium adjustments based on an insured's past experience. Except as provided in section 2366, subsection 7, in both the voluntary market and the residual market, retrospective rating plans shall be voluntary and shall not be used without the prior consent of the insured.

C. If an insured is not eligible for an experience rating plan, a merit rating plan shall be applied using the following guidelines.

(1) A plan shall provide for the following minimum credits or maximum debits to be applied to the otherwise applicable manual premium, based on the number of lost-time claims of the insured during the most recent 3-year period for which statistics are available:

(a) No claims or a loss ratio of less than 1.0, an 8% credit;

(b) One claim resulting in a loss ratio greater than 1.0, no credit or debit; and

(c) Two or more claims resulting in a loss ratio greater than 1.0, an 8% debit.

(2) The insurer shall notify the insured of the premium adjustment and the reason for the adjustment.

D. The superintendent shall report to the joint standing committee of the Legislature having jurisdiction over insurance by January 30, 1989, regarding the operation of the merit rating plan in paragraph C. The report shall include the number of insureds using the merit rating plan, the number receiving either a debit or credit, and any recommendations on ways to improve the effectiveness of the merit rating law.

§2365. Optional deductibles

1. Optional deductible. Each insurer transacting or offering to transact workers' compensation insurance in this State shall offer optional deductibles to employers not subject to section 2366, subsection 6, which may be used upon election by the insured.

A. Deductibles shall be available for indemnity benefits in amounts of $1,000 and $5,000 a claim and such other reasonable amounts as may be approved by the superintendent.

B. The deductible form shall provide that the claim shall be paid by the applicable insurer, which shall then be reimbursed by the employer for any deductible amounts paid by the carrier. The employer shall be liable for reimbursement up to the limit of the deductible.

C. An insurer shall not be required to offer a deductible to an employer if, as a result of a credit investigation, the insurer determines that the employer is not sufficiently financially stable to be responsible for the payment of deductible amounts.

§2366. Workers' compensation insurance residual market mechanism

1. Participation. All insurers authorized to write workers' compensation and employers' liability insurance in this State shall participate in the workers' compensation insurance residual market mechanism, which is composed of an Accident Prevention Account and a Safety Pool. The residual market mechanism is not a state fund and the State shall have no proprietary interest in it or in any contributions made to it. This mechanism shall be exempt from any budgetary control or supervision by state agencies, except to the extent an insurance company is supervised or controlled by state agencies.

2. Accident Prevention Account; eligibility. Eligibility for insurance from the Accident Prevention Account shall be as follows.

A. The Accident Prevention Account shall be an insurance plan that provides for the equitable apportionment among insurers of insurance which may be

afforded applicants who are entitled to, but unable to, procure that insurance through ordinary methods because of their demonstrated accident frequency problem, measurably adverse loss ratio over a period of years or demonstrated attitude of noncompliance with safety requirements.

B. An employer is eligible for insurance from the Accident Prevention Account if:

(1) The employer has a loss ratio greater than 1.00 over the last 3 years for which data is available; and

(2) The employer has attempted to obtain insurance in the voluntary market and has been refused by at least 2 insurers which write that insurance in this State. For the purpose of this section, an employer shall be considered to have been refused if offered insurance only under a retrospective rating plan or plans.

3. Safety Pool; eligibility. Eligibility under the Safety Pool shall be as follows.

A. The Safety Pool is an insurance plan that provides for an alternative source of insurance for employers with good safety records and is intended to operate within the framework of the voluntary insurance market.

B. An employer shall be eligible for the Safety Pool if that employer:

(1) Has had no more than one lost-time claim in the last 3 years for which data is available, regardless of the resulting loss ratio;

(2) Has a loss ratio which does not exceed 1.0 over the last 3 years for which data is available; or

(3) Has been in business for less than 3 years, provided that the eligibility shall terminate if his loss ratio exceeds 1.0 at the end of any year.

C. A member of the Safety Pool who fails to meet eligibility requirements under paragraph B shall be ordered to leave the Safety Pool after notice under Title 39, section 23, subsection 1.

4. Plan of operation. The superintendent shall adopt rules pursuant to Title 5, chapter 375, subchapter II, establishing a plan of operation for the residual market mechanism. The plan of operation shall contain those terms which the superintendent in his discretion deems necessary.

A. The plan shall include an experience rating system and merit rating plan providing that the premium of each employer in the account is modified either prospectively or retrospectively. An experience modification shall only be applied to the manual rate of the plan. The sensitivity of a rating system may vary by size of the risk involved.

B. The plan shall provide for premium surcharges for employers in the Accident Prevention Account based on their specific loss experience within a specified period or other factors which are reasonably related to their risk of loss.

(1) Premium surcharges apply to a premium that is experience or merit rating modified.

(2) Premium surcharges shall not exceed 10% prior to January 1, 1989.

(3) Premium surcharges shall be based on an insured's adverse deviation from expected incurred losses in this State. The surcharge shall be based on the ratio of "A" to "B" where:

(a) "A" is the actual incurred losses of a risk during the previous 3-year experience period as reported; and

(b) "B" is the expected incurred losses of a risk during that period as calculated under the uniform experience or merit rating plan multiplied by the risk's current experience or merit rating modification factor.

(4) The premium surcharge shall be as follows:

Ratio of "A" to "B"	Surcharge
Less than 1.20	None
1.20 or greater, but less than 1.30	5%
1.30 or greater, but less than 1.40	10%
1.40 or greater, but less than 1.50	15%
1.50 or greater	20%

C. Commissions under a plan shall be established at a level that is neither an incentive nor a disincentive to place an employer in the residual market.

D. In addition to factors in paragraphs A to C, any servicing contract shall be approved on the basis of acceptable price and performance.

E. If after notice and hearing the superintendent determines that insurers are unwilling to provide services which are reasonably necessary for the operation of the plan, the superintendent may award service contracts within various areas of the State on the basis of acceptable price and performance. If the superintendent chooses to award such contracts, the specifications shall give special consideration to loss control, safety engineering and any other factor that affects safety.

F. The superintendent shall report to the joint standing committee of the Legislature having jurisdiction

over insurance by January 30, 1989, regarding the servicing fee and performance of the servicing insurer. The report shall include recommendations regarding the institution of a bidding process to award servicing contracts.

5. Rates. Rate filings for rates in the Accident Prevention Account and the Safety Pool shall be made together and shall be subject to section 2363.

A. A rate filing for the residual market shall include experience and merit rating plans. The experience rating plan shall be the uniform experience rating plan. The merit plan shall provide the maximum credits possible to Safety Pool members on the basis of individual loss experience, including frequency and severity, consistent with this chapter and sound actuarial principles.

B. The superintendent shall review the rates, rating plans and rules, including rates for individual classifications and subclassifications, in the Accident Prevention Account and the Safety Pool at least once every 2 years and may review rates more frequently if necessary.

6. Mandatory deductible. A deductible shall apply to all workers' compensation insurance policies issued to employers in the Accident Prevention Account which meet the following qualifications:

A. A net annual premium of $12,000 or more subject to adjustment pursuant to this section in this State; and

B. A premium not subject to retrospective rating;

The deductible shall be $1,000 a claim but shall apply only to wage loss benefits paid on injuries occurring during the policy year. In no event may the sum of all deductibles in one policy year exceed the lesser of 15% of net annual premium or $25,000. Each loss to which a deductible applies shall be paid in full by the insurer. After the policy year has expired, the insurer shall be reimbursed by the amount of the deductibles by the employer. This reimbursement shall be considered as premium for purposes of cancellation or nonrenewal.

For purposes of calculations required under this section, losses shall be evaluated 60 days from the close of the policy year.

The superintendent shall report to the joint standing committee of the Legislature having jurisdiction over insurance by January 30, 1989, regarding the appropriateness of the initial premium level set in paragraph A.

After any adjustment of the premium level in 1989 in response to the superintendent's report, the superintendent may adjust the premium level through rulemaking if inflationary factors or rate increases warrant any changes.

This subsection shall take effect on the effective date of the first approved rate filing after the effective date of this Act.

7. Mandatory retrospective rating. The superintendent may impose retrospective rating plans under the following circumstances:

A. The superintendent shall by rule establish standards governing the application of retrospective rating plans whereby the superintendent may order, after hearing, a retrospective rating plan for an employer in the Accident Prevention Account who has sufficient size in terms of premium and number of employees to warrant such rating and:

(1) For the 3 most recent years for which data is available, an experience modification factor and a loss ratio which may indicate a serious problem of workplace safety; or

(2) A demonstrated record of repeated serious violations of workplace health and safety regulations adopted under the Maine Revised Statutes, Title 26, chapter 6, or the United States Code, Title 29, Chapter 15, whichever is applicable.

B. In no event may the maximum premium, including any applicable surcharge under this section, exceed 150% of standard premium.

8. Contracts; consultants. The superintendent may, in its discretion, enter into contracts for the provision of any services necessary or appropriate to the operation of the residual market mechanism and may retain consultants to provide such other technical and professional services as he may require for the discharge of his duties.

9. Report. Beginning in 1989, the superintendent shall annually issue a report on or before April 1st, to the Governor, the President of the Senate and the Speaker of the House of Representatives. The report shall include at least the following information relating to the Safety Pool:

A. The percentage of total insured premium in this State written in the Safety Pool;

B. The percentage of all insured employers in this State written in the Safety Pool;

C. The number of employers in the Safety Pool and the number who have entered or left;

D. The total earned premium, paid losses, reserves and incurred losses; and

E. The investment income of the Safety Pool and its method of allocation or determination.

§2367. Workers' compensation rates; annual surcharges and credits

Beginning in 1990, the superintendent shall annually determine, after hearing but on or before February 15th of each year, whether premiums collected from risks in the residual market and investment income allocable to those premiums are greater or less than the incurred losses and expenses associated with that market. In establishing surcharges under this section, the superintendent may approve application of surcharges to policies issued on or after January 1st, but prior to the date of his order, provided that the policies contain language approved by the superintendent which is sufficient to notify policyholders that they may be subject to surcharges approved after the effective date of their policies. For purposes of this section, the residual market shall be the Accident Prevention Account and the Safety Pool. For purposes of this section, "deficit" means the amount by which incurred losses and expenses associated with the residual market exceed premiums collected from risks in that market and investment income allocable to those premiums. The superintendent shall also determine whether insurers have in good faith made their best efforts to maximize the number of risks in the voluntary market for workers' compensation insurance in the State. The superintendent may make timely and appropriate requests for any data deemed necessary by the superintendent to make these determinations.

In making the determinations required by this section, the superintendent shall apply statutory insurance accounting standards and utilize sound actuarial principles. In making these determinations, no losses for policies issued prior to January 1, 1988, shall be considered. Each review shall be on a policy-year basis and apply to the policy year prior to the year in which the review is being made and all other prior policy years beginning on or after January 1, 1988. The calculations and determinations required of the superintendent shall be made on a cumulative basis for each policy year under consideration such that each year's determination shall be based on all available data relating to a given policy year. For each year under review, the superintendent shall determine the following.

1. Premium surplus. If the superintendent determines that premiums collected from the insureds in the residual market and investment income allocable to those premiums are greater than the incurred losses and expenses attributable to the risks in that market, the superintendent shall order an appropriate credit applied to the premiums paid by policyholders in the residual market.

2. Premium deficit. Payment of any premium deficit shall be determined in the following manner.

A. If the superintendent determines that premiums and investment income attributable to those premiums are less than incurred losses and expenses in the residual market, the superintendent shall then determine the rate of return for the insurance industry in the entire Maine workers' compensation market. If the rate of return is found, considering all relevant factors, to be less than reasonable, the superintendent shall order a surcharge on premiums paid by insureds in both the voluntary and involuntary markets.

B. Any deficit determined by the superintendent pursuant to paragraph A shall not be the responsibility of the insurers on an individual or collective basis but shall rather be the financial obligation of all insured employers in the State. The surcharge shall be an amount at least to offset the adverse cash flows resultant from the deficiency, provided that the application of such surcharge does not produce a rate of return in excess of a just and reasonable profit in the entire Maine workers' compensation market.

C. Voluntary market maintained. Beginning in 1991, the superintendent, after hearing and only if the rates in the entire workers' compensation market are inadequate to produce a reasonable rate of return, shall determine as of November 15th of each year whether insurers have in good faith made their best efforts to maximize the number of risks in the voluntary market. If the superintendent's determination is affirmative, the surcharge in paragraph A shall be applied.

If the determination is negative, then the superintendent shall determine the percentage of workers' compensation insurance, by premium volume, that has been written voluntarily statewide. If the premium volume in the voluntary market is greater than or equal to the amount specified in the table below, then the surcharge in paragraph A shall be applied.

Policy Year	Premium Volume
1989	50%
1990	60%
1991 and later	70%

If the superintendent determines that the percentage of premium in the voluntary market is less than the percentage in the table above, the deficit collectible from insured employers shall be reduced as follows: For each reduction of 5%, or part thereof, below the required percentage, the total deficit amount shall be reduced by 10% subject to a maximum reduction of 50% of the deficit.

3. Application of credit or surcharge. Credits or surcharges ordered by the superintendent shall apply to policies issued or renewed during the calendar year after the order of the superintendent is issued or for such other period as the superintendent may order.

4. Rules regarding distribution of deficit. The superintendent shall promulgate rules which provide for the equitable distribution among insurers of the portion of any deficit not surcharged to insured employers, provided that the regulations shall give due consideration to efforts by individual insurers to underwrite risks in the voluntary market.

5. Review of market. The superintendent shall review, on an annual basis, the operation of the entire

market to determine the effectiveness of section 2367. The superintendent may make such recommendations, on a prospective basis, to the joint standing committee of the Legislature having jurisdiction over insurance as he deems appropriate.

6. Report regarding self-insurers and other employers. The superintendent shall report to the joint standing committee of the Legislature having jurisdiction over insurance by January 30, 1989, regarding the feasibility of including self-insurers in the payment of any deficit pursuant to subsection 2 and the feasibility of including or excluding certain employers in the payment of any deficit for reasons of fairness.

§2368. Safety groups

A safety group shall be an insured plan that provides for an alternative source of insurance for members of an organization or association. An insurer may issue a workers' compensation and employers' liability policy or policies insuring a safety group if the following requirements are met.

1. Filings. The organization or association shall file with the superintendent:

A. A copy of its articles of incorporation and bylaws or its agreement of association and rules governing the conduct of its business, all certified by the custodian of the originals;

B. An agreement that only members of the organization or association shall be eligible for insurance as a member of the group and that it will notify its insurers within 10 days if any member fails to remain a member in good standing in accordance with the standards and rules of the organization or association;

C. A description of the operation and makeup of a safety committee which, by means of education and otherwise, will seek to reduce the incidence and severity of accidents or claims; and

D. If a group policy, an agreement in writing duly executed guaranteeing that, if the insurer notifies the safety group of the nonpayment of a premium by an insured member within 60 days after the premium was due, the safety group will pay to the insurer the amount of any past due premium which does not exceed the amount of the dividends that are due the safety group or its members from the insurer. The safety group shall promptly notify the insurer of the known insolvency of any member of the group and shall request, upon learning of the insolvency, the removal of the member from the group. A copy of the resolution of the governing superintendent of the group authorizing the execution of the guarantee agreement shall be filed with the superintendent and with the insurer issuing the group policy.

2. Advance premium discounts. Any advance premium discount for any new or existing safety group shall be filed with the superintendent not later than 5 days after the effective date.

3. Management. The safety group shall designate a person to act as the manager or authorized representative of the group. The manager or representative may be remunerated by the members for expenses, including all ordinary operating expenses of the group, but in no instance shall the amount charged to members exceed 10% of earned premiums.

4. Dividends. Dividends or returned premiums paid or credited to a safety group shall be paid or credited to the individual members of the group, except that the indebtedness for any unpaid premium shall be first deducted from any dividend or premium returned.

5. Other requirements. Any safety group formed or operating under this section shall be subject to the requirements of sections 2931 to 2940, except that the safety group or the insurer may establish reasonable underwriting standards regarding eligibility for acceptance and continued membership of the safety group. These underwriting standards shall be filed with the superintendent and may be disapproved by the superintendent if they unreasonably limit membership in the safety group.

§2369. Examinations

1. Examination. The superintendent may examine an insurer, rating organization or advisory organization as he deems necessary to ascertain compliance with this subchapter.

2. Records. Every insurer, rating organization and advisory organization shall maintain reasonable records of the type and kind reasonably adapted to its method of operation, containing its experience or the experience of its members, including the data, statistics or information collected or used by it in its activities.

A. These records shall be available at all reasonable times.

B. These records shall be maintained in an office within this State or shall be made available to the superintendent at his office on reasonable notice.

3. Cost. The reasonable cost of an examination shall be paid by the examined party on presentation of a detailed account of these costs.

4. Report. In lieu of an examination, the superintendent may accept the report of an examination by the insurance supervisory official of another state, made pursuant to the laws of that state.

§2370. Report regarding report on unsafe work site

The Bureau of Insurance and the Department of Labor

shall study the feasibility of instituting a program allowing an employee to report unsafe work conditions to the Department of Labor in order to improve safety. This report shall be made to the joint standing committee of the Legislature having jurisdiction over insurance by January 30, 1988.

§2371. Statistical recording and reporting

1. Collection and reporting system. The statistical advisory organization designated pursuant to section 2364, subsection 2 shall develop and file with the superintendent a plan which will include a comprehensive data collection and reporting system for insurers. The superintendent shall designate an organization to collect and report, to the extent applicable, the data for self-insurers required by this section. The purpose of the system is to permit the superintendent, in a timely manner, to analyze insurance rates and claims practices of insurers and self-insurers.

2. Data collected. The data collection and reporting system shall contain, at a minimum, the following.

A. Basic information on each claim, including:

(1) Name, address and identification information of the employee, employer and insurer or self-insurer;

(2) File identification number or numbers, insurance policy number, occupation and classification codes;

(3) Date of hire, age of employee at injury and employee's prior workers' compensation claim history; and

(4) Attorney, if any, and date of involvement.

B. Claim history information on each claim, including:

(1) Date of injury or exposure to disease, date of first report, type of injury or exposure disclosure and affected body part;

(2) Preinjury wage history, date of initial payment and date of notice of controversy, if any, together with the reason for denial;

(3) Date of maximum medical improvement and independent medical examiner finding or findings;

(4) Identification of cumulative or reopened claims; and

(5) Duration of wage loss period or periods.

C. Information concerning Workers' Compensation Commission proceedings, including:

(1) As to each informal conference, the date; commissioner; attorney involvement, if any, employer or insurer offer; employee expectation; and resolution, if any; and

(2) As to each hearing, the date, commissioner, attorney involvement, employer or insurer's offer, employee's demand and commissioner's decision.

D. Cost of payment information on each claim, identified as open or closed, including:

(1) Payments to date to any physician, hospital, medical rehabilitation provider or other medical provider, together with a description of the services, name of the provider and amount of payment;

(2) Payments made to date for weekly compensation, impairment benefits, death benefit, funeral expense, employee legal expense, employer legal expense, lump sum, witness fees, penalties, vocational rehabilitation services with a description of services and name of rehabilitation provider and any other type of payments under Title 39;

(3) With respect to open claims, an estimate of outstanding liability, including anticipated payments, separately stated, for physician, hospital, other medical, weekly compensation, impairment benefits, vocational rehabilitation, employee legal expense, employer legal expense, witness fees and any other type of payment; and

(4) Identification, both on payments and outstanding liabilities, of benefit offsets for Social Security, unemployment insurance, employer provided pension and any other source.

3. Medical and health care expenses; system. The statistical advisory organization shall create and maintain a system to monitor charges for medical fees, including hospital inpatient fees, hospital outpatient fees and services performed by physicians, dentists, podiatrists, chiropractors, psychologists, psychiatrists and other medical practitioners whose fees are covered under Title 39.

4. Other data collection systems. The statistical advisory organization may rely on data collected and reported by other data gathering organizations or agencies, such as the Workers' Compensation Commission or the Department of Labor. If the statistical advisory organization is to incorporate data from other sources it shall satisfy itself that the data is sufficiently complete and accurate for the purposes for which it is to be used. The Workers' Compensation Commission and the Department of Labor shall assist the statistical advisory organization in the development and maintenance of a 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.

5. Compliance penalties. The statistical advisory organization shall include as part of its plan a means of monitoring member or subscriber compliance with the reporting requirements and shall include a schedule of monetary penalties for failure to comply with reporting requirements.

6. Reports. Reports from members or subscribers shall be made monthly to the statistical advisory organization and summary reports shall be made available to the superintendent not later than 6 months from the reporting date.

7. Rules. The superintendent shall have the authority to promulgate reasonable rules with respect to the recording and reporting of claim information, including the recording and reporting of expense or experience items which are not specifically applicable to this State but require an allocation of experience or expenses to this State.

8. Confidentiality. Any report of information relating to a particular claim shall be confidential and shall not be revealed by the superintendent, except that the superintendent may make compilations including this experience. Any information provided to the superintendent regarding self-insurance shall be confidential to the extent protected by Title 39, section 23, subsection 10.

9. Accuracy. The statistical advisory organization shall take all reasonable steps to insure the accuracy of the information provided to it and reported by it.

10. Claims covered. This section shall apply to all claims occurring on or after January 1, 1987.

§2372. Periodic profitability reports

1. Applicability. Each insurer with direct written premium of 1% or more of the total workers' compensation market shall submit a quarterly report, as described in this section, to the superintendent.

2. Market share. For purposes of this section, market share shall be determined using the combined direct written premium of all authorized insurers under common management or control or all affiliated companies. For the quarters ending March 31st and June 30th, the market share shall be determined using direct written premium for the year prior to the immediately preceding year. For the quarters ending September 30th and December 31st, the market share shall be determined using direct written premium for the immediately preceding year.

3. Reports. Reports shall be submitted not later than 60 days following the close of a quarter. The quarterly report shall contain the following:

A. Written premium;

B. Earned premium;

C. Paid losses;

D. Paid loss adjustment expenses;

E. Incurred losses;

F. Incurred loss adjustment expenses;

G. Paid underwriting expenses;

H. Incurred underwriting expenses;

I. Investment income allocable to the State workers' compensation insurance for the quarter;

J. Losses outstanding;

K. Loss adjustment expenses outstanding; and

L. Dividend allowed or returned to policyholders.

4. Residual market report. On a quarterly basis not later than 90 days following the end of a quarter, the designated statistical advisory organization shall submit to the superintendent a report containing the following information for the Safety Pool and the Accident Prevention Account:

A. The number of policies issued;

B. The number of policies renewed;

C. The number of policies terminated;

D. Written premium;

E. Earned premium;

F. Paid losses;

G. Incurred losses; and

H. Assessments to members and subscribers to cover pool operating gains or losses.

§2373. Penalty for violations

1. Civil penalties. A person or organization in violation of this chapter shall be assessed by the superintendent a civil penalty not more than $1,000 for each violation, except that where a violation is willful, a civil penalty of not more than $10,000 shall be assessed for each violation. These penalties may be in addition to any other penalty provided by law.

2. Separate violation. For purposes of this section, an insurer using a rate for which that insurer has failed to file the rate, supplementary rate information or supporting information as required by this subchapter, shall have committed a separate violation for each day that failure continues.

3. License. The license of an advisory organization, rating organization or insurer which fails to comply with an order of the superintendent may be suspended or revoked by the Administrative Court.

§2374. Public Advocate

1. Participation and duties. The Public Advocate shall represent the interests of insureds and policyholders in matters under this subchapter within the jurisdiction of the superintendent, including, but not limited to:

A. Rate filings, whether under section 2363 or section 2366;

B. Rulemakings;

C. Petitions by insurers to terminate license authority, or withdrawal plans submitted pursuant to section 415-A;

D. Proceedings by the superintendent concerning the reasonableness and adequacy of the service provided by any insurer;

E. Proceedings by the superintendent concerning the reasonableness and adequacy of the rates charged by any insurer; and

F. Proceedings instituted by the superintendent concerning an insurer's license authority.

The Public Advocate shall have the same right to request data as any other party before the superintendent and may petition the superintendent, for good cause shown, to be allowed such other information as may be necessary to carry out the purposes of this section.

2. Petition. The Public Advocate shall have the right to request that the superintendent investigate the reasonableness of the service provided by, or the rates charged by, insurers.

3. Expert witnesses. The Public Advocate may employ witnesses and pay appropriate compensation and expenses to employ such witnesses. The funds therefor shall be supplied as indicated in sections 2363 and 2366.

4. Appeal from superintendent's orders. The Public Advocate has the same rights of appeal from the superintendent's orders or decisions to which he has been a party as other parties.

Sec. 5. 24-A MRSA §2908, sub-§8, as enacted by PL 1985, c. 671, §1, is amended to read:

8. This section does not apply to any insurance policy that has not been previously renewed if the policy has been in effect less than 60 days at the time notice of cancellation is mailed or otherwise delivered. This section does not apply to any policy subject to the Maine Automobile Insurance Cancellation Control Act, subchapter II. This section does not apply to ~~workers' compensation insurance or~~ any assigned risk program. The superintendent may suspend, in whole or in part, the applicability of this section to any insurer if, in his discretion, its application will endanger the ability of the insurer to fulfill its contractual obligations.

Sec. 6. 39 MRSA §23, sub-§4, ¶B, as amended by PL 1979, c. 577, §4, is further amended to read:

B. Any group of employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees. Under such plan the group shall assume the liability of all the employers within the group and pay all compensation for which the said employers are liable under this chapter. Where such plan is adopted the group shall furnish satisfactory proof to the superintendent of its financial ability to pay such compensation for the employers in the group, its revenues, their source and assurance of continuance. The superintendent shall require the deposit with the Workers' Compensation Commission of such securities as may be deemed necessary of the kind prescribed in paragraphs ~~A~~ B to E or the filing of a bond of a surety company authorized to transact business in this State, in an amount to be determined to secure its liability to pay the compensation of each employer as above provided in accordance with paragraph E. Such surety bond must be approved as to form by the superintendent. The superintendent may also require that any and all agreements, contracts and other pertinent documents relating to the organization of the employers in the group shall be filed with him at the time the application for group self-insurance is made. Such application shall be on a form prescribed by the superintendent. The superintendent shall have the authority to deny the application of the group to pay such compensation or to revoke his consent furnished under this section at any time for good cause shown. For the purposes of this paragraph, "good cause" means the inability to pay, in a timely fashion, present and future compensation and other benefits for which employers are liable under this chapter. The superintendent shall approve or disapprove an application within 90 days. The group qualifying under this paragraph shall be known as a self-insurer.

Sec. 7. Transition provision. The rates, filings and uniform plans in effect on the effective date of this Act shall continue in effect unless and until modified or suspended by actions taken pursuant to this Act. The residual market mechanisms previously established pursuant to the Maine Revised Statutes, Title 24-A, section 2350, shall continue in effect under section 6 of this Act and need not be reestablished. The terms and conditions of this operation shall continue in effect until superseded by rules adopted under this Act.

Sec. 8. Allocation. The following funds are allocated from Other Special Revenue Funds to carry out the purposes of this Act.

	1987-88	1988-89
PROFESSIONAL AND FINANCIAL REGULATIONS, DEPARTMENT OF		
Bureau of Insurance		
All Other	$ 75,000	$75,000
Capital Expenditures	25,000	
Total	$100,000	$75,000
Provides funds for consulting fees and data processing equipment.		
EXECUTIVE DEPARTMENT		
Public Advocate		
All Other	$100,000	
Total	$100,000	
Allocates funds to defray the cost of the Public Advocate's involvement in insurance rate filings.		
TOTAL ALLOCATIONS	$200,000	$75,000

PART B

Sec. 1. 4 MRSA §807, first ¶, as repealed and replaced by PL 1987, c. 402, Pt. A, §8, is amended to read:

No person may practice law or hold himself out to practice law within the State or before its courts, or demand or receive any remuneration for those services rendered in this State, unless he has been admitted to the bar of this State and has complied with section 806-A, or unless he has been admitted to try cases in the courts of this State under section 802. Any person who practices law in violation of these requirements is guilty of the unauthorized practice of law, which is a Class E crime. This section shall not be construed to apply to practice before any Federal Court by any person admitted to practice therein; nor to a person pleading or managing his own cause in court; nor to the officer or employee of a corporation, partnership, sole proprietorship or governmental entity, who is not an attorney, but is appearing for that organization in an action cognizable as a small claim under Title 14, chapter 738; nor to a person who is not an attorney, but is representing a municipality under Title 30, section 2361, subsection 3; Title 30, section 3222, subsection 2; or Title 30, section 4966, subsection 1; or Title 38, section 441, subsection 2; nor to a person who is not an attorney, but is representing the Department of Environmental Protection under Title 38, section 342, subsection 7; nor to a person who is not an attorney, but is representing the Bureau of Employment Security or the Bureau of Taxation under section 807-A; nor to a person who is not an attorney, but is representing a party in any hearing, action or proceeding before the Workers' Compensation Commission as provided in Title 39, section 110-A. In all proceedings, the fact, as shown by the records of the Board of Overseers of the Bar, that that person is not recorded as a member of the bar shall be prima facie evidence that he is not a member of the bar licensed to practice law in the State.

Sec. 2. 5 MRSA §4572, as amended by PL 1987, c. 55, §1, is further amended to read:

§4572. Unlawful employment discrimination

1. Unlawful employment. It shall be unlawful employment discrimination, in violation of this Act, except where based on a bona fide occupational qualification:

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, physical or mental handicap, religion, ancestry or national origin or age, or because of the applicant's previous assertion of a claim or right under Title 39, or because of any such reason to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, or in recruiting of individuals for employment or in hiring them, to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or their previous assertion of a claim or right under Title 39;

(1) This paragraph does not apply to discrimination against any individual after hiring because of that individual's previous or subsequent assertion of a claim or right under Title 39. Such discrimination is governed by Title 39, section 111;

B. For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or the individual's previous assertion of a claim or right under Title 39 or to comply with an employer's request for the referral of job applicants, if such request indicates either directly or indirectly that such employer will not afford full and equal employment opportunities to individuals regardless of their race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or previous assertion of a claim or right under Title 39;

C. For any labor organization to exclude from apprenticeship or membership, or to deny full and equal membership rights, to any applicant for membership, because of race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or the applicant's previous assertion of a claim or right under Title 39, or because of any such reason to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate in any manner with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of

employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organization or by a collective labor agreement or other contract, or to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or because of the member's previous assertion of a claim or right under Title 39 or to cause or attempt to cause an employer to discriminate against an individual in violation of this section, except that it shall be lawful for labor organizations and employers to adopt a maximum age limitation in apprenticeship programs, provided that the employer or labor organization obtains prior approval from the Maine Human Rights Commission of any maximum age limitation employed in an apprenticeship program. The commission shall approve the age limitation if a reasonable relationship exists between the maximum age limitation employed and a legitimate expectation of the employer in receiving a reasonable return upon his investment in an apprenticeship program. The employer or labor organization bears the burden of demonstrating that such a relationship exists;

D. For any employer or employment agency or labor organization, prior to employment or admission to membership of any individual, to:

(1) Elicit or attempt to elicit any information directly or indirectly pertaining to race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or any previous assertion of a claim or right under Title 39, except where a physical or mental handicap is determined by the employer, employment agency or labor organization to be job related; or where some privileged information is necessary for an employment agency or labor organization to make a suitable job referral;

(2) Make or keep a record of race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or any previous assertion of a claim or right under Title 39, except under physical or mental handicap, when an employer requires a physical or mental examination prior to employment, a privileged record of such an examination is permissible;

(3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or any previous assertion of a claim or right under Title 39, except under physical or mental handicap, where it can be determined by the employer that the job or jobs to be filled require such information for the well-being and safety of the individual; nor will this section prohibit any officially recognized agency from keeping necessary records in order to provide free services to individuals requiring rehabilitation or employment assistance;

(4) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, sex, physical or mental handicap, age, ancestry or national origin or any previous assertion of a claim or right under Title 39, except under physical or mental handicap when the text of such printed or published material strictly adheres to this Act; or

(5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or the previous assertion of a claim or right under Title 39 of such group; or

E. For an employer or employment agency or labor organization to discriminate in any manner against any individual because they have opposed any practice which would be a violation of this Act, or because they have made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this Act.

Sec. 3. 5 MRSA §12004, sub-§8, ¶A, sub-¶(19-B) is enacted to read:

(19-B)	Labor	Commission on Safety in the Maine Workplace	Expenses Only	26 MRSA §51

Sec. 4. 5 MRSA §12004, sub-§8, ¶A, sub-¶(26), as enacted by PL 1985, c. 372, Pt. A, §3, is repealed.

Sec. 5. 26 MRSA §42, as amended by PL 1977, c. 615, is further amended to read:

§42. Powers and duties

The bureau shall collect, assort and arrange statistical details relating to all departments of labor and industrial pursuits in the State; to trade unions and other labor organizations and their effect upon labor and capital; to the number and character of industrial accidents and their effect upon the injured, their dependent relatives and upon the general public; to other matters relating to the commercial, industrial, social, educational, moral and sanitary conditions prevailing within the State, including the names of firms, companies or corporations, where located, the kind of goods produced or manufactured, the time operated each year, the number of employees classified according to age and sex and the daily and average wages paid each employee; and the exploitation of such other subjects as will tend to promote the permanent prosperity of the industries of the State. The director is authorized and empowered, subject to the ap-

proval of the Governor, to accept from any other agency of government, individual, group or corporation such funds as may be available in carrying out this section, and meet such requirements with respect to the administration of such funds, not inconsistent with this section, as are required as conditions precedent to receiving such funds. An accounting of such funds and a report of the use to which they were put shall be included in the biennial report to the Governor. Each agency of government shall cooperate fully with the bureau's efforts to compile labor and industrial statistics. The director shall cause to be enforced all laws regulating the employment of minors and women; all laws established for the protection of health, lives and limbs of operators in workshops and factories, on railroads and in other places; all laws regulating the payment of wages, and all laws enacted for the protection of the working classes. He shall, on or before the first day of July, biennially, report to the Governor, and may make such suggestions and recommendations as he may deem necessary for the information of the Legislature. He may from time to time cause to be printed and distributed bulletins upon any subject that shall be of public interest and benefit to the State; and may conduct a program of research, education and promotion to reduce industrial accidents. The director may review various data, such as workers' compensation records, as well as other information relating to any public or private employer's safety experience. When any individual public or private employer's safety experience causes the director to question seriously the safe working environment of that employer, the director may offer any safety education and consultation programs to that employer that may be beneficial in providing a safer work environment. If the employer refuses this assistance or is in serious noncompliance which may lead to injuries, or if serious threats to worker safety continue, then the director shall communicate his concerns to appropriate agencies, such as the United States Occupational Safety and Health Administration. As used in this section, the term "noncompliance" means a lack of compliance with any applicable health and safety regulations of the United States Occupational Safety and Health Administration or other federal agencies.

Sec. 6. 26 MRSA §42-A, sub-§2, ¶A, as enacted by PL 1985, c. 372, Pt. A, §6, is amended to read:

A. The development and application of a statewide safety education and training program to familiarize employers, supervisors, employees and union leaders with techniques of accident investigation and prevention, including education and training assistance to employers and employees under the chemical substance identification law in sections 1715 and 1720;

Sec. 7. 26 MRSA §51 is enacted to read:

§51. Commission on Safety in the Maine Workplace

1. Purpose; members; compensation. The Commission on Safety in the Maine Workplace, established by Title 5, chapter 379, shall consist of knowledgeable citizens who shall examine safety attitudes, programs and procedures in Maine's workplaces; identify initiatives to reduce the frequency, severity and cost of work-related accidents and illnesses; and promote and improve best-practice safety programs.

A. The Governor shall appoint the members of the commission, which shall consist of not more than 12 members, including:

(1) Three members with expertise and professional qualifications in the field of occupational safety and health;

(2) Two members representing workers and 2 members representing private employers, all of whom must be knowledgeable in the area of workplace safety; and

(3) Other members the Governor considers necessary and appropriate to carry out the purposes of this section.

B. Initial appointments shall be made for terms of one, 2, 3 and 4 years such that the terms of approximately 1/4 of the members expire in each year. All subsequent appointments shall be for terms of 4 years. Each member shall hold office until his successor is appointed and qualified.

C. The Governor shall appoint the chairman of the commission and the Commissioner of Labor shall serve as vice-chairman. The commission shall actively seek information and involvement from organized labor, the professional safety community, the various state and federal agencies concerned with safety and interested private citizens, groups and organizations.

D. The appointed members of the board shall be compensated according to Title 5, chapter 379. The commission chairman must approve and countersign all vouchers for expenditures under this paragraph.

2. Duties. The commission shall conduct studies and hold public meetings as necessary to develop findings and recommendations respecting each of the following issues:

A. Evaluation of the effectiveness of current worker safety efforts, practices and programs in the State and the attitudes of employers and workers toward safety;

B. Identification of the best-practice safety programs in the State and elsewhere, whose wide-spread adoption would reduce the incidence, severity and cost of workplace accidents and illnesses;

C. Identification of emerging occupational safety and health issues that will be of importance in the future and assessment of their policy implications; and

D. Determination of existing statistical information on accidents and illnesses and reliability and adequa-

cy to monitor trends and to support effective safety rehabilitation and compensation programs;

The commission shall also review occupational safety loan requests as provided for in section 63.

3. Recommendations. The commission shall make recommendations on a continuing basis to include:

A. Specific recommendations for action by the Governor, the Legislature, educators, the safety profession, employers and workers which will reduce the frequency, severity and costs of work-related accidents and illnesses and which will enhance, promote and improve safety in Maine's workplaces; and

B. Recommendations for actions that will improve employer, worker and public attitudes toward safety in the workplace and that will create a continuing public-private, employer-employee partnership in the area of job safety.

4. Support. The Department of Labor shall provide administrative, clerical and technical support to the commission and act as its fiscal agent unless otherwise provided for. All agencies of the State shall cooperate fully with the commission.

Sec. 8. 26 MRSA §61, sub-§2, as amended by PL 1985, c. 819, Pt. C, §5, is repealed and the following enacted in its place:

2. Source of funds. The commissioner shall annually assess a levy based on actual annual workers' compensation paid losses, excluding medical payments, paid in the previous calendar year by employers under Title 39, the Workers' Compensation Act. As soon as practicable after July lst of each year, the commissioner shall assess upon and collect from each insurance carrier licensed to do workers' compensation business in the State, and each group and individual self-insured employer authorized to make workers' compensation payments directly to their employees, a sum equal to that proportion of the current fiscal year's appropriation, exclusive of any federal funds, for the safety education and training division which the total workers' compensation benefits, exclusive of medical payments, paid by each carrier or each group or individual self-insured employer, bear to the total of the benefits paid by all carriers, and group and individual self-insured employers, during the previous calendar year, except that the total amount levied annually may not exceed 1% of the total of the compensation benefits paid by all carriers, and group and individual self-insured employers during the previous calendar year.

Sec. 9. 26 MRSA §63, sub-§1, ¶¶D and E, as enacted by PL 1985, c. 372, Pt. A, §7, are amended to read:

D. A majority vote of the ~~loan review panel~~ Commission on Safety in the Maine Workplace is necessary to recommend approval of a loan which shall then be transmitted to the department for final disposition in accordance with the policies adopted by the department;

E. Loan applications shall be reviewed by both the ~~loan review panel~~ Commission on Safety in the Maine Workplace and the department for feasibility, such as, for the general reasonableness and safety need for the proposal, whether the applicant has sufficient capital, whether an adequate safety analysis or other counseling requirement has been completed, whether the applicant is credit worthy within the scope of this program and whether the collateral offered to secure the loan is adequate;

Sec. 10. 26 MRSA §63, sub-§2, as enacted by PL 1985, c. 372, Pt. A, §7, is repealed.

Sec. 11. 26 MRSA §63, sub-§2-A is enacted to read:

2-A. Commission on Safety in the Maine Workplace. The Commission on Safety in the Maine Workplace shall review loan proposals under this section. The commission shall meet at least twice yearly for this purpose in Augusta or any other place designated by the chairman.

Sec. 12. 26 MRSA §1720, as amended by PL 1985, c. 170, §1, is further amended to read:

§1720. Chemical Information and Training Assistance Program

1. Assistance to employers. The director shall, upon request, provide assistance to employers in the development and conduct of training programs for employees and local public safety personnel.

~~2. Chemical Information and Training Assistance Fund. The director shall establish by rule a segregated, nonlapsing Chemical Information and Training Assistance Fund which shall be financed by fees levied on employers subject to this chapter. Revenues paid into the fund, including interest, shall be used exclusively for carrying out the purposes of this chapter, including, but not limited to, information and communication with employers, provision of copies of the law, rules, listing of hazardous chemicals and the likelihood of the presence of certain hazardous chemicals in the various industry workplaces. Expenditures from the fund shall be allocated and approved by the Legislature.~~

2-A. Funds transferred. On the effective date of this subsection, any funds in the Chemical Information and Training Assistance Fund, and any obligations of that fund, shall be transferred to the Safety Education and Training Fund established in section 61.

~~3. Fees. Each employer not otherwise exempt under this chapter shall be assessed an annual fee based on the employer's annual average number of employees in accordance with the following schedule.~~

~~Annual Average~~
~~Number of Employees~~

~~Equal to or more than~~	~~Less Than~~	~~Employer's Fee~~
~~0~~	~~4~~	~~$ 0~~
~~4~~	~~25~~	~~15~~
~~25~~	~~50~~	~~50~~
~~50~~	~~100~~	~~150~~
~~100~~	~~300~~	~~200~~
~~300~~	~~500~~	~~250~~
~~500 or above~~		~~300~~

~~The fee is payable prior to July 1st of each calendar year.~~

~~4. Waivers and exemptions from fees. The director shall waive fees under this chapter under the conditions established in section 1724. Employers who have no applicable chemicals in the workplace, employers employing 3 or fewer employees, and state, municipal or quasi-municipal governmental organizations are exempt from fees under this chapter. Any employer who pays a fee and is found to be exempt from that fee shall receive a prompt refund.~~

Sec. 13. 26 MRSA §1724, as amended by PL 1985, c. 170, §2, is further amended to read:

§1724. Report to Legislature

Each year by March 15th the director shall report to the Legislature on the Bureau of Labor ~~Standard's~~ Standards' experience under this chapter, including progress in implementation, the status of the training assistance program, evidence of improved safety records, and any ~~recommendation on fee structure~~ recommendations. ~~Any amount of these fees collected in a year that exceeds the allocation from the Training Assistance Fund for that year shall be applied so as to reduce fees levied on employers under this chapter in the succeeding year.~~

Sec. 14. 39 MRSA §2, sub-§2, ¶B-1 is enacted to read:

B-1. Notwithstanding paragraphs A and B, the average weekly wage of a seasonal worker shall be determined by dividing the employee's total wages, earnings or salary for the prior calendar year by 52.

Sec. 15. 39 MRSA §2, sub-§§14 and 15 are enacted to read:

14. Maximum medical improvement. "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.

15. Permanent impairment. "Permanent impairment" means any anatomic or functional abnormality or loss existing after the date of maximum medical improvement which results from the injury.

Sec. 15-A. 39 MRSA §23, sub-§2, as amended by PL 1987, c. 95, §1, is further amended to read:

2. Proof of solvency and financial ability to pay; trust. By furnishing satisfactory proof to the Superintendent of Insurance of his solvency and financial ability to pay the compensation and benefits, and deposit cash, satisfactory securities or a security bond, with the Workers' Compensation Commission, in such sum as the superintendent may determine pursuant to subsection 6; such bond to run to the Treasurer of State and his successor in office, and to be conditional upon the faithful performance of this Act relating to the payment of compensation and benefits to any injured employee. In case of cash being deposited, it shall be placed at interest by the Treasurer of State, and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. The superintendent may at any time, upon not less than 3 days notice and following hearing, for cause deny to an employer the right to continue in the exercise of the option granted by this section.

As an alternative to the method described in the first paragraph of this subsection, an eligible employer may establish an actuarially funded trust, funded at a level sufficient to discharge those obligations incurred by the employer pursuant to this Act as they become due and payable from time to time, provided that the value of trust assets shall be at least equal to the present value of such incurred claims. The trust asset shall consist of cash or marketable securities of a type and risk character as specified in subsection 7, and shall have a situs in the United States. In all other respects, the trust instrument, including terms for certification, funding, designation of trustee and pay out shall be as approved by the superintendent; provided, that the value of the trust account shall be actuarially calculated at least annually and adjusted to the required level of funding. For purposes of this paragraph, an "eligible employer" is one who is found by the superintendent to be capable of paying compensation and benefits required by this Act and:

A. Has positive net earnings; or

B. Can demonstrate a level of working capital adequate to its operating needs.

Notwithstanding any provision of this section or chapter, any bond or security deposit required of a public employer which is a self-insurer shall not exceed $50,000, provided that such public employer has a state-assessed valuation equal to or in excess of $300,000,000 and either a bond rating equal to or in excess of the 2nd highest standard as set by a national bond rating agency or a net worth equal to or in excess of $25,000,000. If a county, city or town relies upon a bond rating, it shall value or cause to be valued its unpaid workers' compensation claims pursuant to sound accepted actuarial principles. This value shall be incorporated in the annual audit of the county, city or town together with disclosure of funds appropriated to discharge incurred claims expenses. "Public employer" includes the State, the University of Maine System, counties, cities and towns.

In his consideration of a self-insuring entity's application for authorization to operate a plan of self-insurance, the superintendent may require or permit an applicant to employ valid risk transfer by the utilization of primary excess insurance. Standards respecting the application of primary excess insurance shall be contained in a regulation promulgated by the superintendent pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375. Primary excess insurance shall be defined as insurance covering workers' compensation exposures in excess of risk retained by a self-insurer.

As a further alternative to the method described in this subsection, an employer shall be eligible for approved self-insurance status pursuant to this Act if the employer submits a written guarantee of the obligations incurred pursuant to this Act, the guarantee to be issued by a United States or Canadian corporation which is a member of an affiliated group of which the employer is a member, and which corporation is solvent and demonstrates an ability to pay the compensation and benefits, and the guarantee is in a form acceptable to the superintendent. The guarantor shall provide quarterly financial statements, audited annual financial statements and such other information as the superintendent may require, and the employer shall provide a bond as otherwise required by this Act in an amount not less than $1,000,000. Any such guarantor shall be deemed to have submitted to the jurisdiction of the Workers' Compensation Commission and the courts of this State for purposes of enforcing any such guarantee. The guarantor, in all respects, shall be bound by and subject to the orders, findings, decisions or awards rendered against the employer for payment of compensation and any penalties or forfeitures provided under this Act. The superintendent, following hearing, may revoke the self-insured status of the employer if at any time the assets of the guarantor become impaired, encumbered or are otherwise found to be inadequate to support the guarantee.

Sec. 16. 39 MRSA §26, as amended by PL 1979, c. 340, is further amended to read:

§26. Notices of assent to be posted

A notice in such form as the commission approves, stating that the employer has conformed to this Act, together with such further matters as the commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories or places of business, conspicuous and accessible to his employees. Any notice posted pursuant to this section shall set out the provision of section 110 of this Act. ~~For willful failure to post such notices, the employer shall be liable to a forfeiture of $10 for each day of such willful neglect, to be enforced by the commission in a civil action in the name of the State.~~

Sec. 17. 39 MRSA §51-B, sub-§4, as amended by PL 1985, c. 729, §1, is further amended to read:

4. Compensation for impairment; compensation for medical expenses. Compensation for impairment under ~~sections 56 and 56-A~~ section 56-B 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 90 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.~~ Compensation for medical expenses, aids and other services under section 52 is due and payable within 90 days from the date a request is made for payment of these expenses.

Sec. 18. 39 MRSA §51-B, sub-§7, as amended by PL 1983, c. 682, §5, is further amended to read:

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. If the employer, prior to making payments under subsection 4, controverts the claim to compensation, he shall file with the commission, within 90 days after an event which gives rise to an obligation to make payments under subsection 4, 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 in subsection 3 or the 90-day period in subsection 4, the employer has not filed the notice required by this subsection, he shall begin payments as required under those subsections. In the case of compensation for incapacity 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, in the case of compensation under subsection 3, constitutes acceptance by the employer of the compensability of the injury or death. Failure to file the required notice of controversy does not constitute such an acceptance by the employer when it is shown that the failure was due to employee fraud or excusable neglect by the employer, except when payment has been made and a notice of controversy is not filed within 44 days of that payment. Failure to file the required notice of controversy prior to the expiration of the 90-day period under subsection 4 constitutes acceptance by the employer of the extent of impairment claimed or the reasonableness of the medical services claimed.

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.

Sec. 19. 39 MRSA §52, as amended by PL 1985, c. 729, §2, is further amended by adding after the 4th paragraph a new paragraph to read:

An employer is not liable under this Act for charges for health care services to an injured employee in excess of those established under section 52-B, except upon petition as provided. The commission shall allow charges in excess of those provided under section 52-B against the employer if the provider satisfactorily demonstrates to the commission that his services were extraordinary or that he incurred extraordinary costs in treating the employee as compared to those reasonably contemplated for the services provided. An injured employee is not liable for any portion of the cost of medical services under this section.

Sec. 20. 39 MRSA §52, as amended by PL 1985, c. 729, §2, is further amended by adding at the end a new paragraph to read:

Upon request of an employee, the employer or carrier may establish a program to pay for treatment by prayer or spiritual means by an accredited practitioner.

Sec. 21. 39 MRSA §52-A, sub-§1, as enacted by PL 1981, c. 514, §2, is amended to read:

1. Certificate of authorization. Any employee who makes any claim for compensation, enters into any agreement for compensation or is receiving compensation shall, upon request by the employer, execute a certificate, in a form prescribed by the commission, authorizing the employer to obtain, after payment of a reasonable fee, ~~in writing,~~ from any physician, osteopath, chiropractor or any other health care provider any written information which is or has been obtained in connection with the examination or treatment of the employee and which relates to any injury or disease for which compensation is claimed.

If any employee fails~~, after request,~~ to execute such a certificate~~, the employer may petition the commission for the following relief~~ within 20 days after receiving a request made by certified mail, return receipt requested:

A. As to any employee who is making a claim for compensation, ~~an order suspending~~ any action on the employee's claim shall be suspended, without interest under section 72, until the certificate is executed; and

B. As to any employee who is receiving compensation or who has entered into an agreement for the payment of compensation, ~~an order suspending the~~ payment of compensation shall be suspended until the certificate is executed.

The date on a returned receipt of delivery is prima facie evidence of the employee's receipt of the request on that date. The request must contain a notice to the employee that if he fails to execute the certificate within 20 days after receiving the request, any action on his claim for compensation will be suspended or his compensation will be suspended.

Sec. 22. 39 MRSA §52-B is enacted to read:

§52-B. Medical Fees; reimbursement levels

In order to ensure appropriate limitations on the cost of health care services, the commission shall adopt or amend rules under Title 5, chapter 375, that establish:

1. Maximum charges. Standards, schedules or scales of maximum charges for individual services, procedures of courses of treatment. The maximum charges shall not be less than the usual, customary and reasonable charge paid by private 3rd-party payors for similar services provided by Maine health care providers. In establishing these standards, schedules or scales, the commission shall consult with organizations representing health care providers and other appropriate groups. The standards shall be adjusted annually to reflect any appropriate changes in levels of reimbursement. The standards shall not apply to hospital costs; and

2. Depositions or hearings. Various fees for preparation of materials or attendance at depositions or hearings as may be required under this Act.

Sec. 23. 39 MRSA §53-A, as enacted by PL 1987, c. 156, §1, is repealed.

Sec. 24. 39 MRSA §53-B is enacted to read:

§53-B. Maximum benefit levels

The maximum weekly benefit payable under section 54-B, 55-B or 58-A is $447.92. Beginning on July 1st, 1989, this maximum benefit level shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as determined by the Bureau of Employment Security, as it did on July 1, 1988.

This section applies only to employees injured on or after the effective date of this section.

Sec. 25. 39 MRSA §54, as amended by PL 1985, c. 372, Pt. A, §16, is repealed.

Sec. 26. 39 MRSA §54-A, as amended by PL 1985, c. 601, §2, is repealed.

Sec. 27. 39 MRSA §54-B is enacted to read:

§54-B. Compensation for total incapacity

While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to 2/3 his average gross weekly wages, earnings or salary, but not more than the maximum benefit under section 53-B, nor less than $25 weekly.

1. Annual adjustment. Beginning on the 3rd anniversary of the injury, weekly compensation under this section shall be adjusted annually. The adjustment shall be equal to the lesser of the actual percentage increase or decrease in the state average weekly wages, as computed by the Bureau of Employment Security, for the previous year or 5%.

The annual adjustment shall be made on the 3rd and each succeeding anniversary date of the injury, except that where the effect of the maximum under section 53-B is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment shall be made annually on July 1st.

2. Limitation. Any employee who has reached maximum medical improvement and is able to perform full-time remunerative work in the ordinary competitive labor market in the State, regardless of the availability of such work in and around his community, is not eligible for compensation under this section, but may be eligible for compensation under section 55-B. Reasonable moving and relocation expenses for employees who are retrained or rehabilitated under this Act are available as provided in section 87, subsection 2.

3. Presumption. For the purposes of this Act, in the following cases, it is conclusively presumed that the injury resulted in permanent total incapacity and that the employee is unable to perform full-time remunerative work in the ordinary competitive labor market in the State:

A. The total and irrevocable loss of sight of both eyes;

B. The loss of both hands at or above the wrist;

C. The loss of both feet at or above the ankle;

D. The loss of one hand and one foot;

E. An injury to the spine resulting in permanent and complete paralysis of the arms or legs; or

F. An injury to the skull resulting in incurable imbecility or insanity.

4. Applicability. This section applies only to employees injured on and after the effective date of this section.

Sec. 28. **39 MRSA §55**, as amended by PL 1985, c. 372, Pt. A, §18, is repealed.

Sec. 29. **39 MRSA §55-A**, as enacted by PL 1985, c. 372, Pt. A, §19, is repealed.

Sec. 30. **39 MRSA §55-B** is enacted to read:

§55-B. 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, earning or salary before the injury and the weekly wages, earnings or salary which he is able to earn after the injury, but not more than the maximum benefit under section 53-B. Payments under this section shall not continue for longer than 400 weeks after maximum medical improvement.

This section applies only to employees injured on or after the effective date of this section.

Sec. 31. **39 MRSA §56**, as amended by PL 1985, c. 372, Pt. A, §20, is repealed.

Sec. 32. **39 MRSA §56-A**, as amended by PL 1985, c. 372, Pt. A, §210, is repealed.

Sec. 33. **39 MRSA §56-B** is enacted to read:

§56-B. Permanent impairment

1. Weekly benefit. In the case of permanent impairment, the employer shall pay the injured employee a weekly benefit equal to 2/3 of the state average weekly wage, as computed by the Bureau of Employment Security, for the number of weeks shown in the following schedule:

A. One week for each percent of permanent impairment to the body as a whole from 0 to 14%;

B. Three weeks for each percent of permanent impairment to the body as a whole from 15% to 50%;

C. Four and 1/2 weeks for each percent of permanent impairment to the body as a whole from 51% to 85%; and

D. Eight weeks for each percent of permanent impairment to the body as a whole greater than 85%.

Compensation under this section is in addition to any compensation under section 54-B or 55-B received by the employee.

2. Schedules. In order to reduce litigation and establish more certainty and uniformity in the rating of permanent impairment, the commission shall establish by rule a schedule for determining the existence and degree of permanent impairment based upon medically or scientifically demonstrable findings. The schedule must be based on generally accepted medical standards for determining impairment and may incorporate all or part of any one or more generally accepted schedules used for that purpose, such as the American Medical Associ-

ation's Guides to the Evaluation of Permanent Impairment. Pending the adoption of a permanent schedule, Guides to the Evaluation of Permanent Impairment, 2nd edition, copyright 1984, by the American Medical Association, shall be the temporary schedule and shall be used for the purposes of this subsection.

3. Disfigurement. The commission may award proper and equitable compensation of serious facial or head disfigurement not to exceed 2/3 of the state average weekly wage, as computed by the Bureau of Employment Security, multiplied by 50, including a disfigurement continuous in length which is partially in the facial area and also extends into the neck region. The commission, if in its opinion the earning capacity of an employee has been or may in the future be impaired, may award compensation for any serious disfigurement in the region above the sterno clavicular articulations anterior to and including the region of the sterno cleido mastoid muscles on either side, but no award for the total disfigurement as set forth may exceed, in the aggregate, 2/3 of the state average weekly wage, as computed by the Bureau of Employment Security, multiplied by 50. Notwithstanding this section, 2 or more serious disfigurements, not continuous in length, resulting from the same injury, if partially in the facial area and partially in the neck region as described in this subsection, is deemed to be a facial disfigurement.

4. Filing of petition. A petition for determination of the percentage of impairment must be filed with the commission no earlier than the date of maximum medical improvement, except that a petition for the determination of a hearing impairment due to an injury must be filed with the commission within 2 years from the date of injury.

Sec. 34. 39 MRSA §65, as amended by PL 1965, c. 513, §81, is further amended by adding after the 2nd paragraph a new paragraph to read:

Nothing in this Act may be construed to require an employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, by a duly accredited practitioner of those healing methods, to undergo any medical or surgical treatment. Such an employee or his dependents may not be deprived of any compensation payments to which he would be entitled if medical or surgical treatments were employed.

Sec. 35. 39 MRSA §66-A, as amended by PL 1985, c. 729, §3, is repealed and the following enacted in its place:

§66-A. Worker reinstatement rights

Upon petition of an injured employee, the commission may require, after hearing, that the employee be reinstated as required by this section.

1. Reinstatement rights. When an employee has suffered a compensable injury, he is entitled, upon request, to reinstatement to his former position if the position is available and suitable to his physical condition. If the employee's former position is not available or suitable, he is entitled, upon request, to reinstatement to any other available position which is suitable to his physical condition.

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

A. The size of the employer's business;

B. The number of employees employed by the employer;

C. The nature of the employer's operations; and

D. Any other relevant factors.

3. Time period; discrimination prohibited. The employer's obligation to reinstate the employee continues until one year after the employee has reached the stage of maximum medical improvement in the judgment of the commission. An employer who reinstates an employee under this section may not subsequently discriminate against that employee in any employment decision, including decisions related to tenure, promotion, transfer or reemployment following a layoff, because of the employee's assertion of a claim or right under this Act. Nothing in this subsection may be construed to limit any protection offered to an employee by section 111.

4. Exception for collective bargaining agreements. Reinstatement may not conflict with any provisions of a collective bargaining agreement between the employer and a labor organization which is the collective bargaining representative of the unit of which the injured employee is or would be a part.

5. Limitations. This section does not obligate an employer to offer an injured employee employment or reemployment in:

A. Supervisory or confidential positions within the meaning of the United States Code, Title 29, Section 152; or

B. Any position for which the employee is not qualified.

6. Failure to comply. The employer's failure to comply with his obligation under this section disquali-

fies the employer or insurance carrier from exercising any right it may otherwise have to reduce or terminate the employee's benefits under this Act. The disqualification continues as long as the employer fails to offer reinstatement or until the employee accepts other employment.

If any injured employee refuses to accept an offer of reinstatement, the employer or insurance carrier may file, in addition to exercising any other rights it may have, a petition for a reduction of benefits. If, after hearing, the commission finds that an employee refused to accept the offer and the position offered was suitable to his physical condition, it shall order the reduction of all benefits payable under section 54-B and 55-B. The reduction shall be in an amount equal to the difference between the employee's weekly benefit and the benefits he would have been entitled to receive if he had accepted the offer. The order reducing benefits remains in effect only as long as the employee fails to indicate that he will accept an offer of reinstatement under this section.

If the commission determines that the employee has refused to accept an offer of reinstatement to a position which is suitable to his physical condition, all or a portion of the benefits paid between the time the offer was refused and the commission's determination is deemed to be an overpayment. The amount of the overpayment shall be the difference between the employee's benefits for that period and the benefits, if any, he would have been entitled to receive if he had accepted the offer. The employer or insurance carrier may recover the amount of the overpayment by making deductions from future benefit payments in such amounts as the commission determines. If no benefits are payable, the employer or insurance carrier may recover the amount of the overpayment by civil action.

7. Burden of proof. The petitioning party has the burden of proof on all issues regarding claims under this section except that the employer always retains the burden of proof regarding the availability or nonavailability of work.

8. Rehabilitation plans. All obligations under this section are suspended during the implementation of a rehabilitation plan under subchapter III-A.

9. Foreign workers. If an employee is prevented from accepting an offer of reinstatement because of residence in a foreign country or termination of status as a lawfully employable alien, he is deemed to have refused the offer.

Sec. 36. 39 MRSA §71, as amended by PL 1983, c. 479, §13, is repealed.

Sec. 37. 39 MRSA §71-A is enacted to read:

§71-A. Lump sum payments

1. Commutation. Subject to the limitations of this section, an employer and employee may by agreement discharge any liability for compensation, in whole or in part, by the employer's payment of an amount to be approved by the commission. The employer, the employee or the employee's dependents may petition the commission for an order commuting all payments for future benefits to a lump sum.

2. Review. Before approving any lump sum settlement, a commissioner shall review the following factors with the employee:

A. The employee's rights under this Title and the effect a lump sum settlement would have upon those rights, including, if applicable, the effect of the release of an employer's liability for future medical expenses;

B. The purpose for which the settlement is requested;

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

E. Any other information, including the age of the employee and of the employee's dependents, which would bear upon whether the settlement is in the best interest of the claimant.

The commissioner shall initiate the review within 14 days of his receipt of a request for a settlement review. The commissioner may not approve any settlement for any employee who fails to attend a scheduled review without good cause.

3. Approval. A commissioner may not approve any lump sum settlement unless he finds the settlement to be in the employee's best interest in light of the factors reviewed with the employee under subsection 2. In addition, a commissioner may not approve a lump sum settlement which requires the release of an employer's liability for future medical expenses of the employee unless the parties would be unlikely to reach agreement on the amount of the lump sum payment without the release of liability for future medical expenses.

Sec. 38. 39 MRSA §86-A is enacted to read:

§86-A. Order for mandatory retraining

1. Application for retraining. If an employer has failed to reemploy an injured employee in a position suitable to his physical condition within one year from the date of maximum medical improvement, and the rehabilitation priorities described in section 86, other than retraining, have been determined to be clearly inappropriate, the employer or employee may petition the commission for an order requiring a fixed period of formal retraining.

2. Time for filing. Any petition under this section must be filed within 14 months after the date of maximum medical improvement.

3. Determination of plan. The commission may order, after hearing, a fixed period of formal retraining as described in section 86, subsection 7, except that the commission may not order an employee 55 years of age or older to involuntarily participate in a retraining plan under this section. In determining whether to order a period of formal retraining, the commission shall consider the factors set forth in subsection 4.

4. Retraining plan. The commission, upon a determination of retraining under this section, shall prescribe a plan for retraining which will return, to the maximum extent practicable, the employee to his preinjury earning capacity. The commission shall consider the following factors in prescribing a plan:

A. The employee's age;

B. The employee's work life expectancy;

C. The employee's interests;

D. The employee's aptitudes;

E. The employee's education;

F. The employee's earning capacity before and after the injury;

G. The employee's skills and work experience; and

H. Any other relevant factors.

The plan must include a job placement strategy and a specific program of proposed actions likely to achieve job placement for the employee.

5. Compensation. If retraining is ordered under this section, the employer's obligation to pay compensation under section 54-B or 55-B terminates 6 months after the period fixed for completion of the retraining program, unless the employee demonstrates to the commission that he has actively and reasonably sought employment during that period.

A. Notwithstanding any other provision of this Act, if any employee who receives retraining under this section is receiving compensation under section 55-B, the 400-week duration limit on his compensation imposed under section 55-B shall be reduced as provided in this paragraph. The commission shall calculate the total expense of retraining under this section, exclusive of compensation or benefits otherwise payable under this Act, and shall divide this amount by the employee's amount of weekly compensation under section 55-B. The commission shall subtract that number of weeks from the 400 weeks' compensation for which the employee is eligible under section 55-B.

6. Rules. On or before July 1, 1988, the commission shall adopt rules under Title 5, chapter 375, to implement this section.

7. Applicability. This section applies only to injuries occurring on or after the effective date of this section.

8. Education available. As used in this section, "retraining" may include education of the employee where appropriate.

Sec. 38-A. 39 MRSA §90, sub-§2, as enacted by PL 1985, c. 372, Pt. A, §29, is repealed.

Sec. 39. 39 MRSA §91, sub-§1, as amended by PL 1987, c. 452, is further amended to read:

1. Membership; term. The Workers' Compensation Commission, as established in this section, shall consist of ~~10~~ 12 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 within 60 days after a vacancy occurs or a new commissioner is authorized, 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.

Sec. 40. 39 MRSA §93, sub-§3, as amended by PL 1985, c. 372, Pt. A, §32, is further amended to read:

3. Proceedings before Workers' Compensation Commission. In all proceedings before the Workers' Compensation Commission, ~~all forms of~~ discovery shall be available ~~in civil actions in the Superior Court under the Maine Rules of Civil Procedure, as amended, are available~~ to any of the parties in the proceedings ~~except that~~ as the chairman may, by rule adopted under section 92, prescribe ~~different time periods for the completion of discovery in cases where it is necessary~~ to ensure that hearings may be held within the time periods prescribed by this Act. A commissioner shall rule on all objections and may enforce this subsection in the same manner and to the same extent as a Superior Court Justice may enforce compliance with the Maine Rules of Civil Procedure, as amended, with regard to discovery, except that the commissioner does not have the power of contempt.

Signed statements by a medical doctor or osteopathic physician relating to medical questions, by a psychologist relating to psychological questions or by a chiropractor relating to chiropractic questions, are admissible in workers' compensation hearings before the Workers' Compensation Commission, providing that notice of that testimony to be used is given and service of a copy of the letter or report is made on the opposing counsel 14 days before the scheduled hearing ~~to enable that counsel to depose or subpoena and cross-examine that medical doctor, osteopathic physician, psychologist or chiropractor if he so chooses~~.

Depositions, subpoenas or cross-examination of health care practitioners is permitted only if the commissioner finds that the testimony is sufficiently important to outweigh the delay in the proceeding.

Sec. 41. 39 MRSA §100, sub-§2, as amended by PL 1985, c. 372, Pt. A, §36, is further amended to read:

2. Standard for review. The basis for granting relief under this section is as follows.

A. On the first petition for review brought by a party to an action, the commissioner shall determine the appropriate relief, if any, under this section by determining the employee's present degree of incapacity. ~~For purposes of a first petition brought under this section, evidence of the employee's medical condition at the time of an earlier determination or approved agreement is relevant only if it tends to prove the present degree of incapacity.~~

B. Once a party has sought and obtained a determination under this section, it is the burden of that party in all proceedings on his subsequent petitions under this section to prove ~~by comparative medical evidence~~ that the employee's earning incapacity attributable to the work-related injury has changed since that determination.

Sec. 42. 39 MRSA §100, sub-§4, as amended by PL 1985, c. 372, Pt. A, §38, is further amended to read:

4. Payments pending hearing and decision. If the employee is receiving payments at the time of the petition, the payments may not be decreased or suspended pending the hearing and final decision upon the petition, except in the following circumstances:

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

B. The employer or his insurance carrier files a certificate with the commission stating that:

(1) The employee has left the State for reasons other than returning to his permanent residence at the time of injury;

(2) The employee's whereabouts are unknown; or

(3) The employee has resumed work~~.~~;

C. The employer or his insurance carrier files a certificate with the commission stating that the employee refuses to submit to an examination; or

D. The employee refuses an offer of reinstatement to a position which is suitable to his physical condition or the employee is able to return to work and there is work available, in or near the community in which he resides, which is suitable to his physical condition.

(1) If the employee refuses an offer of reinstatement or fails to return to available suitable work, his benefits shall be reduced in an amount equal to the difference between the employee's weekly benefit and the benefits he would have been entitled to receive if he had accepted reinstatement or returned to available suitable work.

(2) Benefits shall not be suspended or reduced pending hearing under this paragraph unless the employer has provided the employee with written notice that benefits may be suspended or reduced together with any information relied on by the employer to support the proposed suspension or reduction. The employee has 20 days, after receiving that notice, to submit to the commission any additional information relating to his continued entitlement to benefits.

(3) Benefits shall not be suspended or reduced pending hearing under this paragraph if the employee shows that, despite a good faith work search, the employee is unable to obtain suitable work.

(4) Within 30 days after notice to the employee under subparagraph (2), the commission shall enter a provisional order providing for the suspension, reduction or continuation of benefits pending a hearing on the petition. The order shall be based upon the information submitted by both the employer and the employee under this section.

(5) If benefits are suspended or reduced under this paragraph and the commission, after hearing, reverses the provisional order, either in whole or in part, the commission shall order a lump sum payment of all benefits withheld together with interest at the rate of 6% a year. The employer shall pay this lump sum within 10 days of the order.

Sec. 43. 39 MRSA §102-A is enacted to read:

§102-A. Incarceration of employee

No incapacity benefits under section 54-B or 55-B may be paid to an employee during any period in which he is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except when the employee is participating in a work-release or similar program or is sentenced to imprisonment with intensive supervision under Title 17-A, section 1261. All compensation under those sections is forfeited during the period of incarceration except for any period in which the employee is participating in a work-release or similar program or is sentenced to imprisonment with intensive supervision under Title 17-A, section 1261.

Sec. 44. 39 MRSA §104-A, sub-§2, as repealed and replaced by PL 1987, c. 77, §5 and c. 290, is repealed.

Sec. 45. 39 MRSA §104-A, sub-§§2-A and 2-B are

enacted to read:

2-A. Failure to pay within time limits. An employer or insurance carrier who fails to pay compensation, as provided in this section, shall be penalized as provided in this subsection.

A. Except as otherwise provided by section 51-B, subsection 9, if an employer or insurance carrier fails to pay compensation as provided in this section, the commission shall assess against the employer or insurance carrier a forfeiture of up to $100 for each day of noncompliance. If the commission finds that the employer or insurance carrier was prevented from complying with this section because of circumstances beyond their control, no forfeiture may be assessed.

(1) One-half of the forfeiture shall be paid to the employee to whom compensation is due and 1/2 shall be paid to the commission and be credited to the General Fund.

(2) If a forfeiture is assessed against any employer or insurance carrier under this subsection on petition by an employee, the employer or insurance carrier shall pay reasonable attorney fees, as determined by the commission, to the employee.

(3) Forfeitures assessed under this subsection may be enforced by the Superior Court as provided in section 103-E.

B. Payment of any forfeiture assessed under this subsection shall not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.

2-B. Failure to secure payment. 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, the employer is subject to the penalties set out in paragraphs A, B and C. The failure of any employer to procure insurance coverage for the payment of compensation and other benefits to his employees in compliance with sections 21-A and 23 constitutes a failure to secure payment of compensation within the meaning of this subsection.

A. The employer is guilty of a Class D crime.

B. The employer is liable to pay a civil penalty of up to $10,000, payable to the Second Injury Fund.

C. The employer, if organized as a corporation, is subject to revocation or suspension of its authority to do business in this State as provided in Title 13-A, section 1302. The employer, if licensed, certified, registered or regulated by any board authorized by Title 5, section 12004, subsection 1, or whose license may be revoked or suspended by proceedings in the Administrative Court or by the Secretary of State, is subject to revocation or suspension of his license, certification or registration.

Prosecution under paragraph A does not preclude action under paragraph B or C.

If the employer is a corporation, any agent of the corporation having primary responsibility for obtaining insurance coverage is liable for punishment under this section. Criminal liability shall be determined in conformity with Title 17-A, sections 60 and 61.

Sec. 46. 39 MRSA §106, as amended by PL 1985, c. 372, Pt. A, §42, is repealed and the following enacted in its place:

§106. Reports to commission

1. Injuries. Whenever any employee has reported to an employer under the Act any injury arising out of and in the course of his employment which has caused the employee to lose a day's work or has required the services of a physician, or whenever the employer has knowledge of any such injury, the employer shall report the injury to the commission within 7 days after he receives notice or has knowledge of the injury. The employer shall also report the average weekly wages or earnings of the employee, together with any other information required by the commission. The employer shall report whenever the injured employee resumes his employment and the amount of his wages or earnings at that time.

2. Settlements. Whenever any settlement is made with an injured employee by the employer or insurance carrier for compensation covering any specific period under an approved agreement or a decree, or covering any period of total or partial incapacity that has ended, the employer or carrier shall file with the commission a duplicate copy of the settlement receipt or agreement signed by the employee showing the total amount of money paid to him for that period or periods, but the settlement receipt or agreement is not binding without the commission's approval.

3. Return to employment. Any person receiving compensation under this Act who returns to employment or engages in new employment after his injury shall file a written report of that employment with the commission and his previous employer within 7 days of his return to work. This report shall include the identity of the employee, his employer and the amount of his weekly wages or earnings received or to be received.

Sec. 47. 39 MRSA §107, first ¶, as amended by PL 1987, c. 402, Pt. A, §210, is further amended to read:

Every insurance company insuring employers under this Act shall fill out any blanks and answer all questions submitted to it that may relate to policies, premiums, amount of compensation paid and such other information as the commission or the ~~Insurance~~ Superintendent of Insurance may deem important, either for the proper ad-

ministration of this Act or for statistical purposes. ~~Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of $10 for each day of such refusal, to be enforced by the commission in a civil action in the name of the State. All money recovered under this section or section 106, or under sections 21-A to 27, shall be paid into the State Treasury and credited to the appropriation for the administration of this Act.~~

Sec. 48. 39 MRSA §108, as repealed and replaced by PL 1979, c. 713, §2, is repealed.

Sec. 49. 39 MRSA §108-A is enacted to read:

§108-A. Reports and data collection

1. Occupational injuries and illnesses. The Director of the Bureau of Labor Standards shall provide an annual report concerning the number and character of occupational injuries and illnesses and their effects, as required under Title 26, section 42.

The chairman of the commission shall assist the Director of the Bureau of Labor Standards to ensure that necessary information regarding the administrative processes, costs and other factors related to the Workers' Compensation Act and the occupational disease law are included in the report. The Commissioner of Human Services and the Director of the Bureau of Health shall provide the Director of the Bureau of Labor Standards with any information in their possession related to occupational injuries and illnesses. The Superintendent of Insurance shall provide the following information to the Director of the Bureau of Labor Standards on an annual basis:

A. A tabulation of premium and loss data, on an accrual accounting basis, regarding those insurance companies authorized by the Bureau of Insurance to write workers' compensation in the State; and

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

2. Workers' compensation system. The Director of the Bureau of Labor Standards, the Superintendent of Insurance and the chairman of the commission shall meet at least 3 times a year with appropriate staff and other state agencies to review the areas of data collection pertaining to the workers' compensation system, as well as interpret and coordinate appropriate data collection programs. The director shall chair this group. The group shall submit an annual report to the Governor and the Legislature as to the results of their data collection, as well as a profile of the workers' compensation system, including costs, administration, adequacy and timeliness of benefits and an evaluation of the entire workers' compensation system.

The Director of the Bureau of Labor Standards, the Superintendent of Insurance and the chairman of the commission shall provide any further occasional reports through their joint or individual efforts that they consider necessary to the improved function and administration of the Workers' Compensation Act and the occupational disease law.

Sec. 50. 39 MRSA §110-A is enacted to read:

§110-A. Appearance by officer or employee of corporation or partnership

The appearance of an authorized officer, employee or representative of a party in any hearing, action or proceeding before the commission in which the party is participating or desires to participate is not an unauthorized practice of law and is not subject to any criminal sanction. If the appearance of such an officer, employee or representative prevents the efficient processing of any proceeding, the commission, in its discretion, may remove that person from representation of the party.

Sec. 51. 39 MRSA §113 is enacted to read:

§113. Penalties

The following provisions govern the commission's authority to impose penalties for violations of this Act or rules adopted under this Act.

1. Reporting violations. The chairman may assess a civil penalty, not to exceed $100 for each violation, upon any person:

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

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

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

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

4. Enforcement and collection. Penalties assessed under this section are in addition to any other remedies available under this Act and are enforceable by the Superior Court under section 103-E.

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

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

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

(2) If his failure to pay was without due cause, any penalty assessed upon that person under this section shall be doubled.

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

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

Sec. 52. PL 1985, c. 372, Pt. A, §51 is repealed.

Sec. 53. Legislative study on rehabilitation. The joint standing committee of the Legislature having jurisdiction over labor shall study the use of vocational rehabilitation and retraining under the Maine Workers' Compensation Act. The chairmen of the committee shall call the first meeting of the committee no later than December 1, 1987.

Members of the committee shall receive the legislative per diem for each day's attendance at committee meetings and reimbursement for necessary expenses upon application to the Executive Director of the Legislative Council. The committee may request staff assistance from the Legislative Council and may consult with vocational rehabilitation or retraining experts whenever suitable. All state agencies shall cooperate fully with the committee to further the purposes of this section.

The committee shall hold public hearings and conduct a comprehensive study of every aspect of the current system of providing vocational rehabilitation to injured workers within the State, including the following:

1. Vocational rehabilitation conducted under the Workers' Compensation Act, including the following aspects of that system:

A. The desirability of requiring the initial evaluation of suitability for rehabilitation and the development of rehabilitation plans to be performed by the Office of Employment Rehabilitation or other public rehabilitation providers;

B. The desirability of allowing injured employees to choose their own rehabilitation provider;

C. The desirability of making vocational rehabilitation mandatory upon the injured employee, the employer or insurance carrier, or both;

D. The desirability of permitting or prohibiting medical management or medical monitoring by rehabilitation providers;

E. The desirability of requiring earlier intervention in cases where an employee may benefit from rehabilitation services; and

F. Any other aspects of the system that may pose problems currently or in the future or that may benefit from changes and result in increased efficiency and effectiveness of the workers' compensation rehabilitation system;

2. Vocational rehabilitation conducted by the Bureau of Rehabilitation;

3. Vocational rehabilitation conducted by private providers;

4. Issues and problems raised by the interaction of vocational rehabilitation efforts under the Workers' Compensation Act, by the Bureau of Rehabilitation and by private providers; and

5. Identification and evaluation of alternative vocational rehabilitation models in use or proposed by other states or foreign countries, and their potential suitability for application in the State, including the option of requiring employers to provide vocational-technical retraining to injured employees.

The committee shall report back to the Second Regular Session of the 113th Legislature and shall recommend legislation to implement a program under which injured employees will have a right to obtain and a duty to participate in vocational rehabilitation or retraining under the Workers' Compensation Act in suitable cases. The committee may recommend any other legislation or rules necessary or desirable to improve in any way the current system of vocational rehabilitation and retraining in the State.

Sec. 54. Applicability. Sections 15, 17 to 19, 21 to 38 and 41 to 43 of Part B of this Act apply only to injuries occurring on or after the effective date of this Act.

Sec. 55. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1987-88	1988-89
MAINE HUMAN RIGHTS COMMISSION		
Human Rights Commission — Regulation		
Positions	(1)	(1)
Personal Services	$14,595	$32,384
All Other	900	1,500
Capital Expenditures	387	
Provides funds for an additional staff attorney		
MAINE HUMAN RIGHTS COMMISSION TOTAL	$15,882	$33,884
LABOR, DEPARTMENT OF		
Administration — Bureau of Labor Standards		
Positions	(-1)	(-1)
Personal Services	$(8,646)	$(17,800)
Deappropriates funds not needed due to transfer of Clerk Typist I position to Safety Education and Training Program.		
DEPARTMENT OF LABOR TOTAL	$(8,646)	$(17,800)
LEGISLATURE		
Legislature		
Personal Services	$2,860	
All Other	5,700	
Provides funds for a study of vocational rehabilitation retraining to be conducted by joint standing committee of the Legislature having jurisdiction over labor.		
LEGISLATURE TOTAL	$8,560	
WORKERS' COMPENSATION COMMISSION		
Workers' Compensation Commission		
Positions	(17)	(19)
Personal Services	$209,434	$574,803
All Other	110,222	144,662
Capital Expenditures	30,525	
Total	$350,181	$719,465
Provides fund to support the ongoing and new responsibilities of the Workers' Compensation Commission.		
Office of Employment Rehabilitation		
Positions		(2)
Personal Services		$23,309
All Other		4,200
Capital Expenditures		2,571
Total		$30,080
Provides funds for a rehabilitation assistant administrator and clerical support for the mandatory retraining program positions effective January 1, 1989.		
WORKERS' COMPENSATION COMMISSION TOTAL	$350,181	$749,545
TOTAL APPROPRIATIONS	$365,977	$765,629

Sec. 56. Allocation. The following funds are allocated from the Federal Expenditure Fund to carry out the purposes of this Act.

	1987-88	1988-89
LABOR, DEPARTMENT OF		
Administration — Bureau of Labor Standards		
Positions	(-3)	(-3)
Personal Services	$(36,500)	$(88,803)
All Other	5,700	52,000
Capital Expenditures	4,000	8,247
Provides funding for data return processing services and data dissemination and for the transfers of 2 Statisticians II and one Labor Statistical Technician to Safety Education and Training Program.		
DEPARTMENT OF LABOR TOTAL	$(26,800)	$(28,556)

Sec. 57. Allocation. The following funds are allocated from other special revenue fund to carry out the purposes of this Act.

	1987-88	1988-89
LABOR, DEPARTMENT OF		
Safety Education and Training Funds		
Positions	(14 1/2)	(14 1/2)
Personal Services	$184,800	$369,750
All Other	80,000	160,000
Capital Expenditures	5,000	10,000
Provides funding for 5 new positions and 9 1/2 positions transferred from within the Department of Labor, upgrading one position. Provides additional funding for the Safety Training Program.		
TOTAL	$269,800	$539,750
Chemical Information and Training Assistance Fund		
Positions	(-5 1/2)	(-5 1/2)
Personal Services	$(66,500)	$(120,321)
All Other	(60,000)	(69,977)
Capital Expenditures	(15,000)	(11,000)
Deallocates funds and positions which will be transfered to the Safety Education and Training Fund.		
TOTAL	$(141,500)	$(201,298)
DEPARTMENT OF LABOR TOTAL	$128,300	$338,452

Effective November 20, 1987.