

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

AS PUBLIC LAWS AND CONSTITUTIONAL RESOLUTIONS

at the

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

AND

AS PRIVATE AND SPECIAL LAWS AND RESOLVES

at the

FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

THIRD SPECIAL SESSION

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and the

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LEGISLATIVE ADDRESS

October 21, 1987

by

GOVERNOR JOHN R. McKERNAN, JR.

to the

SECOND SPECIAL SESSION

One Hundred and Thirteenth Legislature

Mr. President, Mr. Speaker, Members of the 113th Legislature:

Thank you for the opportunity to address this joint convention on a subject which none of us enjoys discussing but which we can no longer avoid: workers' compensation. I have called this special session because we as a state face a potential crisis in which more than 250,000 Maine workers could be unprotected against workplace injuries on January 1st if we do not reform our workers' compensation laws.

Since last week, four more insurance companies have filed plans to withdraw from Maine's workers' compensation market. In all, 19 companies representing more than 80 percent of the market have filed withdrawal plans with the Bureau of Insurance. I am convinced the other insurers will follow if we do not take immediate and effective action.

Like most of you, I am not an expert on workers' compensation. It is a frustrating and complex system of laws and regulations and administrative structures. But like you, I have long been aware that our system is becoming increasingly unmanageable — that unless we act soon and decisively, unless we are willing to take some unpopular, but necessary, stands in order to gain control over the system, Maine workers will soon suffer the consequences.

Last spring when I appointed Joe Edwards as Superintendent of Insurance, workers' compensation became the Bureau's overriding concern. I asked the new superintendent to hire an independent actuary and to conduct a comprehensive study of Maine's system and its problems.

It is important to realize that at that time the insurance market had deteriorated to the point where virtually all insurance companies had ceased to write voluntarily workers' compensation policies in our state. It is also important to realize that the companies writing workers' compensation in our state in the involuntary market lost more than \$100 million last year.

Using a nationally-recognized actuarial firm, Superintendent Edwards reviewed the experience of insurance companies writing workers' compensation insurance in Maine and compared that experience to those of companies in other states. He concluded that Maine's workers' compensation rates were about average, but that the costs of the benefits in our system were substantially higher. Some insurance companies in Maine claimed to have costs 300 percent higher than the premiums they are allowed to charge. Others claim their costs are 200 percent higher. Our Superintendent believes those losses are exaggerated — but he also believes that, on average, costs to insurance companies in our system exceed allowed premiums by 100 percent.

If insurance companies are to achieve the return on investment that Judge Alexander ruled they are entitled to, our Superintendent has concluded that, unless costs are reduced, those companies would need 75 to 100 percent increases in their premium rates. Maine businesses, already paying high workers' compensation insurance premiums, cannot absorb rate increases of that magnitude.

In comparing our system with those in other states, it became clear that our higher costs are caused by the level of benefits paid to those with permanent but partial impairments. In fact, those cases, which comprise only 4 percent of the total number of workers' compensation cases, represent 70 percent of the costs to the system.

Let me explain how this can occur. Maine is one of the few states that provides permanent impairment benefits, plus wage loss benefits for life, with an escalator for cost of living capped at 5 percent. Most other states limit the duration of benefits to a certain number of weeks or do not escalate the benefits for a cost of living adjustment. New Hampshire, for example, limits benefits to 341 weeks. Vermont's limit is 330 weeks.

To show you why these distinctions make such a financial difference, take, for example a 25-year-old worker earning \$310 per week (Maine's average weekly wage) who receives a permanent but partial impairment, which is job related. That worker with a 50 percent wage loss would receive up to \$38,000 in wage loss benefits in New Hampshire; \$41,000 in Vermont. In Maine, that same worker, if he or she reached life expectancy, could receive \$912,000 in benefits. Now, I realize that in Maine most cases like this are probably settled with a lump sum agreement, but these numbers dramatically describe the negotiating context in which those settlements are reached.

As humane as our system may be, it is also deeply flawed. Maine businesses, if required to pay rates that fully supported the costs of our present benefits, would not be competitive, would not be in a position to grow and create new jobs. But insurance companies operating in Maine will simply no longer subsidize those costs, indeed will no longer provide coverage, unless they are allowed to charge rates that more accurately reflect their costs. Without significant reforms to the present system, we run the risk of being unable to provide adequate protection for hundreds of thousands of our workers.

The inescapable conclusion is that we have no alternative but to find a way to modify, in the fairest way possible, the benefits provided in the current system.

Our legislation identifies a number of non-benefit costs savings that reduce, somewhat, the amount benefits must be scaled back. In addition, the Speaker has found some areas where changes in the way the system is administered could result in savings. However, the sad fact remains that we cannot solve the current crisis without also addressing benefit levels.

All of you have received summaries of our legislation. I want to point out it is prospective only and would not affect anyone currently receiving benefits. As you can see, we have addressed four areas: 1) rate making procedures; 2) administrative reforms; 3) benefits; and 4) workplace safety.

We should all be concerned about Maine's less than exemplary workplace safety record. In fact, I believe that the reforms included in our legislation will create a safer workplace for Maine workers. I also believe that some of our proposals will reduce litigiousness and will, therefore, reduce costly delays. Other procedural changes we have proposed will also help streamline the system.

In spite of our efforts, however, our consulting actuary believes that the non-benefit provisions of our legislation would only obviate the need for a rate increase in the magnitude of 7 percent. Where do we find the savings for the other 68 percent? As I have said, the only alternative (and believe me, I wish there were some other way) is to reduce the benefits for permanent partial impairments — 4 percent of all cases — to a level closer to those provided in other states with whom we compete. The next question is *how*?

We have chosen to offset permanent impairment awards against the partial payments for wage loss and to repeal the escalator in the benefit levels. In addition, we have chosen to establish limits on the duration for which benefits would be received based on the percentage of permanent impairment. For instance, we would provide 400 weeks of benefits for those less than 25 percent impaired; 500 weeks for those between 25 and 50 percent impaired; 600 weeks for those between 50 and 75 percent impaired and lifetime benefits for those more than 75 percent impaired.

To put our proposal in perspective: remember that Vermont provides only 330 weeks of benefits for those partially impaired and New Hampshire provides only 341 weeks. And neither takes into consideration the degree of impairment, and both include the healing period within their limits. The duration limits in the proposal I have offered would not even be triggered until an injured worker has reached maximum medical improvement.

When compared to other states' systems, our proposal seems the fairest way to reduce the costs of our system in order to avoid an enormous rate increase. The superintendent has determined that, if cost reductions are not achieved, a rate increase of approximately 75 percent would be required in order to restore the voluntary workers' compensation market to Maine.

As I have said, there may be other ways to achieve this level of cost reduction, and I pledge today that we are willing to work with all of you to see if, in our collective wisdom, we can arrive at a fairer way to achieve the same level of cost reduction.

The bottom line, however, is that we must reduce costs to a level that would avoid the necessity for a 75 percent increase in rates. By doing so, we will guarantee that the voluntary insurance market will once again exist in our state. We have been assured by representatives of Hanover, Maine Bonding, and Commercial Union insurance companies that if our legislation passes, they will rescind their withdrawal plans and once again write workers' compensation insurance in Maine. We have reason to believe other companies will also remain in our system, and I am today urging them to do so. Quite frankly, a few companies have indicated they do not believe our proposal goes far enough in either reducing benefits or raising rates. To those insurers I say that our policy in this state is to set rates that are adequate to ensure a reasonable rate of return. We will not, however, allow rates that our regulators believe are excessive.

Before I close I want to emphasize that a state fund for workers' compensation is not an option for resolving this crisis. With the current benefit structure, the best we could expect from the state fund would be a system in which we might reduce the annual loss to \$100 million. That \$100 million would need to be funded by a tax increase approximately equivalent to a 25 percent increase in our state income tax. Maine taxpayers simply cannot afford that burden.

I am aware that this message has not been "up-beat." I want you to know, though, that I am optimistic about our solving this problem. I am convinced that when I address the close of this special session we will have found a solution to this vexing problem — a solution that will ensure that Maine workers will be protected on January 1st.

In short, I believe we will prove during this special session that our system of government does, in fact, work. I look forward to working with all of you.

Thank you.