

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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

J.S. McCarthy Company
Augusta, Maine
1997

The department, in consultation with the State Planning Office, shall publish a list of those municipalities determined to have capacity pursuant to this subsection. This list need not be established by rule and must be published by January 1, 1997. ~~If the department fails to publish the list by January 1, 1997, municipalities with a site plan or subdivision ordinances or regulations are deemed to have capacity for corresponding projects until January 1, 1998, or until the list is published, whichever period is longer.~~ The list must specify whether a municipality has capacity to review structures or subdivisions of lots for single-family, detached, residential housing, common areas or open space or both types of development. The department may recognize joint arrangements among municipalities and regional organizations in determining whether the requirements of this subsection are met. On and after January 1, 2003, the department shall ~~irrebuttably~~ presume and publish that each municipality with a population of ~~2,500~~ 5,000 or more, as measured by the United States Census of the year 2000, has capacity as provided in this subsection. The department may review municipalities that are determined or presumed to have capacity pursuant to this subsection for compliance with the criteria in paragraphs A to D, and if the department determines that a municipality does not meet the criteria, the department may modify or remove the determination of capacity.

A modification to a development that was reviewed by a municipality and exempted pursuant to this subsection is exempt as long as the modification will not cause the total area of the development to exceed the maximum acreage specified in this subsection for that type of development or, based upon information submitted by the municipality concerning the development and modification, the department determines that the modification may be adequately reviewed by the municipality.

Sec. 2. Transition. The Department of Environmental Protection and the State Planning Office shall consult with municipalities that will be presumed to have capacity pursuant to the Maine Revised Statutes, Title 38, section 488, subsection 19 on or after January 1, 2003 to assist those municipalities in developing capacity as defined by the criteria in Title 38, section 488, subsection 19, paragraphs A to D.

The State Planning Office shall review its municipal financial assistance program to ensure that the criteria considered by the office in making grants for planning and implementation of local growth management programs are consistent with the criteria for a determination of capacity in Title 38, section 488, subsection 19.

Sec. 3. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Maine Environmental Protection Fund		
Positions - Legislative Count	(1,000)	(1,000)
Personal Services	\$36,072	\$45,271
All Other	4,150	5,000
Capital Expenditures	3,000	
Allocates funds for one additional Environmental Specialist III position and operating costs necessary to administer certain aspects of the site location of development laws.		
DEPARTMENT OF ENVIRONMENTAL PROTECTION		
TOTAL	\$43,222	\$50,271

See title page for effective date.

CHAPTER 486

S.P. 491 - L.D. 1523

An Act to Make the Workers' Compensation System More Equitable

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

Sec. 1. 39-A MRSA §151-A is enacted to read:

§151-A. Mission statement

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

Sec. 2. 39-A MRSA §152, sub-§4, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

4. Employment of general counsel. The board shall employ a general counsel, who is the legal adviser to the board and who shall perform such other duties as may be assigned by the board, and assistants as necessary. The general counsel and assistants to the general counsel are unclassified employees, serve at the pleasure of the board and are not subject to the Civil Service Law.

The board shall appoint a staff attorney to advise the advocates pursuant to section 153-A. The staff attorney is subject to the Civil Service Law and works under the direction of the general counsel.

Sec. 3. 39-A MRS §153, sub-§9 is enacted to read:

9. Audit and enforcement. The executive director shall establish an audit, enforcement and monitoring program by July 1, 1998, to ensure that all obligations under this Act are met, including the requirements of section 359. The functions of the audit and enforcement program include, but are not limited to, auditing timeliness of payments and claims handling practices of insurers, self-insurers and 3rd-party administrators; determining whether insurers, self-insurers and 3rd-party administrators are unreasonably contesting claims; and ensuring that all reporting requirements to the board are met. The program must be coordinated with the abuse investigation unit established by section 153, subsection 5 as appropriate. The program must monitor activity and conduct audits pursuant to a schedule developed by the deputy director of benefits administration. At the end of each calendar quarter, the executive director shall prepare a compliance report summarizing the results of the audits and reviews conducted pursuant to this subsection. The executive director shall submit the quarterly compliance reports to the board, the Bureau of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor. An annual summary must be provided to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year. The quarterly compliance reports and the annual summaries must be made available to the public following distribution.

Sec. 4. 39-A MRS §153-A is enacted to read:

§153-A. Advocate program

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

2. Qualified employee. For purposes of this section, "qualified employee" means an employee

who, with respect to an injury occurring on or after January 1, 1993, has participated in the troubleshooter program and has not informally resolved the dispute and has demonstrated to the board that legal counsel has not been retained.

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

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

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

(2) Knowledge of administrative, adjudicatory or workers' compensation laws, rules and procedures;

(3) Knowledge of legal documents, court procedures and rules of evidence; and

(4) Knowledge of medical and legal terminology and practices with respect to workers' compensation.

B. The board shall ensure that advocates receive appropriate and ongoing education and training.

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

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

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

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

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

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

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

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

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

Sec. 5. 39-A MRSA §154, sub-§6, as amended by PL 1995, c. 59, §4, is further amended to read:

6. Assessment levied. The assessments levied under this section may not be designed to produce more than \$6,000,000 in revenues annually beginning in the 1995-96 fiscal year or more than \$6,600,000 annually beginning in the 1997-98 fiscal year. Assessments collected that exceed \$6,000,000 beginning in the 1995-96 fiscal year or \$6,600,000 beginning in the 1997-98 fiscal year by a margin of more than 10% must be refunded to those who paid the assessment. Any amount collected above the board's allocated budget and within the 10% margin must be used to create a reserve of up to 1/4 of the board's annual budget. Any collected amounts or savings above the allowed reserve must be used to reduce the assessment for the following fiscal year. The board shall determine the assessments prior to May 1st and shall assess each insurance company or association and self-insured employer its pro rata share for expenditures during the fiscal year beginning July 1st. Each self-insured employer shall pay the assessment on or before June 1st. Each insurance company or association shall pay the assessment in accordance with subsection 3.

Sec. 6. 39-A MRSA §317, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

§317. Appearance by authorized officer, employee or advocate

The appearance before the board of an authorized officer, employee, advocate or representative of a party in any hearing, action or proceeding 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, advocate or representative prevents the efficient processing of any proceeding, the board, in its discretion, may remove that person from representation of the party.

Sec. 7. 39-A MRSA §358, as corrected by RR 1993, c. 1, §140, is repealed.

Sec. 8. 39-A MRSA §358-A is enacted to read:

§358-A. Reports and data collection

1. Workers' compensation system annual report. The board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor, shall submit an annual report to the Governor and the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year regarding the status of the workers' compensation system. At a minimum, the report must include an assessment of the board's implementation of the following provisions:

A. The number of individual cases monitored to ensure the provision of benefits in accordance with law, pursuant to section 152, subsection 10;

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

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

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

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

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

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

The report must contain specific data regarding compliance, including benchmarks measuring individual insurer's, self-insurer's, or 3rd-party administrator's compliance with the provisions of this Act and any penalties assessed. Benchmarks must be developed by the board with input from insurers, self-insurers and 3rd-party administrators and other parties the board considers appropriate. The board shall also report on the utilization of troubleshooters, advocates and retained legal counsel, with correlating outcomes.

2. Data collection and interpretation. The Director of the Bureau of Labor Standards within the Department of Labor, the Superintendent of Insurance and the board's executive director 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 to interpret and coordinate appropriate data collection programs to carry out the purposes of this Act. The Director of the Bureau of Labor Standards shall chair this group.

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

3. Occupational injuries and illnesses. The Director of the Bureau of Labor Standards within the Department of Labor 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 board's executive director 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 this Act and the occupational disease laws 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.

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

A. A tabulation of premium and loss costs paid and incurred on an accident-year 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.

Sec. 9. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
WORKERS' COMPENSATION BOARD		

**Administration - Workers'
Compensation Board**

Positions - Legislative Count	(10,000)	(10,000)
Personal Services	\$303,002	\$429,275
All Other	169,075	170,725

Allocates funds for 5 additional Advocate positions, one additional Staff Attorney position, 2 additional Auditor positions, 2 additional Clerk Typist III positions, reclassification of 5 1/2 Advocate positions from range 22 to range 24 and operating costs necessary to administer new responsibilities under the workers' compensation law.

WORKERS' COMPENSATION BOARD	_____	_____
TOTAL	\$472,077	\$600,000

See title page for effective date.

CHAPTER 487

S.P. 603 - L.D. 1800

**An Act to Include Flunitrazepam in
the List of Schedule W Drugs**

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

**Sec. 1. 17-A MRSA §1102, sub-§1, ¶¶L
and M,** as enacted by PL 1989, c. 924, §3, are
amended to read:

L. Lysergic acid; ~~and~~

M. Lysergic acid amide; ~~and~~

Sec. 2. 17-A MRSA §1102, sub-§1, ¶N is
enacted to read:

N. Flunitrazepam or its chemical equivalent.

See title page for effective date.

CHAPTER 488

S.P. 357 - L.D. 1176

**An Act to Provide Continuity and
Flexibility for Long-term Care**