# LAWS

## OF THE

# STATE OF MAINE

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE**

**FIRST REGULAR SESSION**
**December 3, 2014 to July 16, 2015**

**THE GENERAL EFFECTIVE DATE FOR**
**FIRST REGULAR SESSION**
**NON-EMERGENCY LAWS IS**
**OCTOBER 15, 2015**

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

**Augusta, Maine**
**2015**

**Sec. C-25. 22 MRSA §2761, sub-§3-A,** as enacted by PL 1995, c. 260, §6, is amended to read:

**3-A. Parentage.** For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise determined by a court of competent jurisdiction prior to the filing of the birth certificate or unless an attested copy of a gestational carrier agreement as defined in Title 19-A, section 1832, subsection 11 is presented that provides otherwise. If the mother was married at the time of either conception or birth, or between conception and birth, the name of the ~~husband~~ spouse must be entered on the certificate as the ~~father~~ parent of the child, unless ~~paternity~~ parentage has been determined otherwise by a court of competent jurisdiction or unless an attested copy of a gestational carrier agreement is presented that provides otherwise.

**Sec. C-26. 22 MRSA §4002, sub-§7,** as enacted by PL 1979, c. 733, §18, is amended to read:

**7. Parent.** "Parent" means a natural or adoptive parent or a parent established under Title 19-A, chapter 61, unless parental rights have been terminated.

**Sec. C-27. 22 MRSA §4005-F, first ¶,** as enacted by PL 2007, c. 257, §1, is amended to read:

As part of a child protection proceeding, the District Court may determine parentage of the child. Title 19-A, ~~sections 1558 to 1564 apply~~ chapter 61 applies to determinations of parentage in a child protection proceeding.

**Sec. C-28. 22 MRSA §4031, sub-§3,** as corrected by RR 1999, c. 1, §29, is amended to read:

**3. Scope of authority.** The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title 19-A, chapter 58 do not apply to child protection proceedings. If custody or parentage is an issue in another pending proceeding, the proceedings may be consolidated in the District Court with respect to the issue of custody ~~issue, parentage or both~~. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any prior order regarding the child's care and custody.

**Sec. C-29. 22 MRSA §4036, sub-§2-A** is enacted to read:

**2-A. Determination of parentage.** In a protection order or in a judicial review order, the court may determine the parentage of the child. The court's determination of the child's parentage must be made pursuant to Title 19-A, chapter 61 and has the same legal effect as a determination of parentage made pursuant to that chapter.

## PART D

**Sec. D-1. Effective date.** This Act takes effect July 1, 2016.

Effective July 1, 2016.

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## CHAPTER 297

## S.P. 391 - L.D. 1119

### An Act To Amend the Laws Governing the Filing of Wage Statements and Other Laws under the Maine Workers' Compensation Act of 1992

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

**Sec. 1. 2 MRSA §6-E, sub-§6,** as enacted by PL 1993, c. 145, §1, is amended to read:

**6. Administrative law judges.** The salary of the ~~hearing officers~~ administrative law judges is within salary range 90.

**Sec. 2. 39-A MRSA §105, sub-§4,** as amended by PL 2013, c. 63, §5, is further amended to read:

**4. Hearing.** A hearing, if requested by a party within 10 days of the board's decision on a petition, must be conducted under the Maine Administrative Procedure Act. A ruling by the board or ~~hearing officer~~ administrative law judge under this section is final and not subject to review by the Superior Court.

**Sec. 3. 39-A MRSA §152, sub-§5,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**5. Employment of and contracts with administrative law judges and mediators.** The board shall obtain the services of persons qualified by background and training to serve as ~~hearing officers~~ administrative law judges, who are authorized to take action and enter orders consistent with this Act in all cases assigned to them by the board, and mediators. In the exercise of its discretion, the board may obtain the services of ~~hearing officers~~ administrative law judges and mediators by either of the 2 following methods:

A. The board may contract for the services of ~~hearing officers~~ administrative law judges and mediators, in which case they must be paid reasonable per diem fees for their services plus reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the board; or

B. The board may employ ~~hearing officers~~ administrative law judges and mediators to serve at

the pleasure of the board and who are not subject to the Civil Service Law. They are entitled to receive reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the board.

**Sec. 4. 39-A MRSA §153, sub-§9,** as amended by PL 2005, c. 603, §3, is further amended 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, the Maine Insurance Guaranty Association and 3rd-party administrators; determining whether insurers, self-insurers, the Maine Insurance Guaranty Association and 3rd-party administrators are unreasonably contesting claims; and ensuring that all reporting requirements to the board are met. When auditing the Maine Insurance Guaranty Association, the program shall consider when the Maine Insurance Guaranty Association obtained the records of an insolvent insurer. 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. Audit working papers are confidential and may not be disclosed to any person outside of the board except the audited entity. For purposes of this subsection "audit working papers" means all documentary and other information acquired, prepared or maintained by the board during the conduct of an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and draft reports or any portion of a draft report. The final audit report, including the underlying reconciled information, is not confidential. At the end of each calendar quarter, the executive director shall prepare a compliance report summarizing the results of the audits and reviews conducted pursuant to this subsection. The executive director shall submit the quarterly compliance reports to the board, the Bureau of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor. An annual summary must be provided to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year. The quarterly compliance reports and the annual summaries must be made available to the public following distribution.

Within 180 days of notice of insolvency to the board or its designee and the Maine Insurance Guaranty Association, the executive director of the board or the executive director's designee shall meet with the Maine Insurance Guaranty Association, pursuant to rules established by the board, to review the insolvency.

**Sec. 5. 39-A MRSA §205, sub-§9, ¶B,** as amended by PL 2011, c. 647, §2, is further amended to read:

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

(1) If no order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer may discontinue or reduce benefits by sending a certificate by certified mail to the employee and to the board, together with any information on which the employer, insurer or group self-insurer relied to support the discontinuance or reduction. The employer may discontinue or reduce benefits no earlier than 21 days from the date the certificate was mailed to the employee, except that benefits paid pursuant to section 212, subsection 1 or section 213, subsection 1 may be discontinued or reduced based on the amount of actual documented earnings paid to the employee during the 21-day period if the employer files with the board the documentation or evidence that substantiates the earnings and the employer only reduces or discontinues benefits for any week for which it possesses evidence of such earning. The certificate must advise the employee of the date when the employee's benefits will be discontinued or reduced, as well as other information as prescribed by the board, including the employee's appeal rights.

(2) If an order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer shall petition the board for an order to reduce or discontinue benefits and may not reduce or discontinue benefits until the matter has been resolved by a decree issued by ~~a hearing officer~~ an administrative law judge. The employer, insurer or group self-insurer may reduce or discontinue benefits pursuant to such a decree pending a motion for findings of fact and conclusions of law or pending an appeal from that decree. Upon the filing of a petition, the employer may discontinue or reduce the weekly benefits being paid pursuant to section 212, subsection 1 or section 213, sub-

section 1 based on the amount of actual documented earnings paid to the employee after filing the petition. The employer shall file with the board the documentation or evidence that substantiates the earnings and the employer may discontinue or reduce weekly benefits only for weeks for which the employer possesses evidence of such earnings.

**Sec. 6. 39-A MRSA §206, sub-§2,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**2. Employee selection.** After 10 days from the inception of health care under subsection 1, the employee may select a different health care provider by giving to the employer the name of the health care provider and a statement of intention to treat with the health care provider. The employer may file a petition objecting to the named health care provider selected by the employee and setting forth reasons for the objection. The issue of the health care provider must be set for mediation pursuant to section 313. If the objection is not resolved through mediation, after notice to all parties and a prompt hearing by ~~a hearing officer~~ an administrative law judge, the ~~hearing officer~~ administrative law judge may order one of the following:

A. If the employer can not show cause why the employee should not commence or continue treatment with the health care provider of the employee's choice, the ~~hearing officer~~ administrative law judge shall order that the employer is responsible for payment for treatment received from the health care provider; or

B. If the employer can show cause why the employee should not commence or continue treatment with the health care provider of the employee's choice, the ~~hearing officer~~ administrative law judge shall order that the employer is not responsible and that the employee is responsible for payment for treatment received from the health care provider from the date the order is mailed.

**Sec. 7. 39-A MRSA §207, first ¶,** as amended by PL 2001, c. 278, §1, is further amended to read:

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

**Sec. 8. 39-A MRSA §213, sub-§1,** as repealed and replaced by PL 2011, c. 647, §7, is amended to read:

**1. Benefit and duration.** While the incapacity for work is partial, the employer shall pay the injured employee a weekly compensation as follows.

A. If the injured employee's date of injury is prior to January 1, 2013, the weekly compensation is equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured employee is able to earn after the injury, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the disability if the employee's permanent impairment, determined according to subsection 1-A and the impairment guidelines adopted by the board pursuant to section 153, subsection 8, resulting from the personal injury is in excess of 15% to the body. In all other cases an employee is not eligible to receive compensation under this paragraph after the employee has received a total of 260 weeks of compensation under section 212, subsection 1, this paragraph or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 260 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may be delegated by the board, on a case-by-case basis, to ~~a hearing of-~~

~~ficer~~ an administrative law judge or a panel of 3 ~~hearing officers~~ administrative law judges. Decisions made under this paragraph must be made expeditiously. A decision under this paragraph made by ~~a hearing officer~~ an administrative law judge or a panel of 3 ~~hearing officers~~ administrative law judges may not be appealed to the board under section 320, but may be appealed pursuant to section 322.

B. If the injured employee's date of injury is on or after January 1, 2013, the weekly compensation is equal to 2/3 of the difference, due to the injury, between the employee's average gross weekly wages, earnings or salary before the injury and the average gross weekly wages, earnings or salary that the employee is able to earn after the injury, but not more than the maximum benefit under section 211. An employee is not eligible to receive compensation under this paragraph after the employee has received a total of 520 weeks of compensation under section 212, subsection 1-A, this paragraph or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 520 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may be delegated by the board, on a case-by-case basis, to ~~a hearing officer~~ an administrative law judge or a panel of 3 ~~hearing officers~~ administrative law judges. The board, ~~hearing officer~~ administrative law judge or panel shall make a decision under this paragraph expeditiously. A decision under this paragraph made by ~~a hearing officer~~ an administrative law judge or a panel of 3 ~~hearing officers~~ administrative law judges may not be appealed to the board under section 320, but may be appealed pursuant to section 321-A.

Orders extending benefits beyond 520 weeks are not subject to review more often than every 2 years from the date of the board order or request allowing an extension.

**Sec. 9. 39-A MRSA §303,** as amended by PL 2013, c. 63, §8, is further amended to read:

**§303. Reports to board**

When any employee has reported to an employer under this Act any injury arising out of and in the course of the employee's employment that has caused the employee to lose a day's work, or when the employer has knowledge of any such injury, the employer shall report the injury to the board within 7 days after the employer receives notice or has knowledge of the injury. An insured employer that has notice or knowledge of any such injury and fails to give timely notice to its insurer shall reimburse the insurer for any penalty that is due as a result of the late filing of the report of injury. The employer shall also report the average weekly wages or earnings of the employee, as defined in section 102, subsection 4, together with any other information required by the board, within 30 days after the employer receives notice or has knowledge of a claim for compensation under section 212, 213 or 215, unless a wage statement has previously been filed with the board. The wage statement must report the earnings or wages of the employee on a weekly basis, unless the employee is paid on other than a weekly basis, in which case the employer may report the earnings or wages in the same manner as earnings or wages are paid. A copy of the wage information must be mailed to the employee. The employer shall report when the injured employee resumes the employee's employment and the amount of the employee's wages or earnings at that time. The employer shall complete a first report of injury form for any injury that has required the services of a health care provider within 7 days after the employer receives notice or has knowledge of the injury. The employer shall provide a copy of the form to the injured employee and retain a copy for the employer's records but is not obligated to submit the form to the board unless the injury later causes the employee to lose a day's work. The employer is also required to submit the form to the board if the board has finally adopted a major substantive rule pursuant to Title 5, chapter 375, subchapter 2-A to require the form to be filed electronically.

If an employee has had an incapacity beyond the 14-day period established in section 204 and subsequently returns to work and attends medical appointments related to the injury, the employer is not required to report the lost time for such appointments to the board if the employee did not lose wages for attending such appointments.

**Sec. 10. 39-A MRSA §309, sub-§3,** as amended by PL 2005, c. 99, §1, is further amended to read:

**3. Witnesses; discovery.** All witnesses must be sworn. Sworn written evidence may not be admitted unless the author is available for cross-examination or subject to subpoena; except that sworn statements by a medical doctor or osteopathic physician relating to medical questions, by a psychologist relating to psychological questions, by a chiropractor relating to chiropractic questions, by a certified nurse practitioner who qualifies as an advanced practice registered nurse relating to advanced practice registered nursing questions or by a physician's assistant relating to physician assistance questions are admissible in workers' compensation hearings only if notice of the 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.

Depositions or subpoenas of health care practitioners who have submitted sworn written evidence are permitted only if the ~~hearing officer~~ administrative law

judge finds that the testimony is sufficiently important to outweigh the delay in the proceeding.

The board may establish procedures for the prefiling of summaries of the testimony of any witness in written form. In all proceedings before the board or its designee, discovery beyond that specified in this section is available only upon application to the board, which may approve the application in the exercise of its discretion.

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

**9. Annual review.** The board shall create a review process to oversee on an annual basis the quality of performance and the timeliness of the submission of medical findings by the independent medical examiners and shall develop rules in relation to timeliness and procedures applicable to this section.

**Sec. 12. 39-A MRSA §315, first ¶,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

Upon filing of the mediator's report indicating that mediation has not resolved all issues in dispute, the matter must be referred to the board, which shall fix a time for hearing upon at least a 5-day notice given to all the parties or to the attorney of record of each party. All hearings must be held before ~~a hearing officer~~ an administrative law judge employed by the board at such towns and cities geographically distributed throughout the State as the board designates. If the designated place of hearing is more than 10 miles from the place where the injury occurred, the employer shall provide transportation or reimburse the employee for reasonable mileage in traveling within the State to and from the hearing. The amount allowed for travel is determined by the board and awarded separately in the decree.

**Sec. 13. 39-A MRSA §318,** as amended by PL 2013, c. 63, §10 and affected by §16, is further amended to read:

**§318. Hearing and decision**

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

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

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

Clerical mistakes in decrees, orders or other parts of the record and errors arising from oversight or omission may be corrected by the board at any time of its own initiative, at the request of the ~~hearing officer~~ administrative law judge or on the motion of any party and after notice to the parties. During the pendency of an appeal, these mistakes may be corrected before the appeal is filed with the division and thereafter, while the appeal is pending, may be corrected with leave of the division.

**Sec. 14. 39-A MRSA §320,** as amended by PL 2013, c. 63, §§11 and 12 and affected by §16, is further amended to read:

**§320. Review by full board**

~~A hearing officer~~ An administrative law judge may request that the full board review a decision of the ~~hearing officer~~ administrative law judge if the decision involves an issue that is of significance to the operation of the workers' compensation system. Except when a motion is filed to find the facts specially and state separately the conclusions of law, the request must be made within 25 days of the issuance of a decision. If a motion is filed to find the facts specially and state separately the conclusions of law, the request must be made within 5 days of the issuance of a decision on the motion. There may be no such review of

findings of fact made by ~~a hearing officer~~ an administrative law judge.

If ~~a hearing officer~~ an administrative law judge asks for review, the time for appeal is stayed and no further action may be taken until a decision of the board has been made. If the board reviews a decision of ~~a hearing officer~~ an administrative law judge, any appeal must be from the decision of the board and must be made to the Law Court in accordance with section 322. The time for appeal begins upon the board's issuance of a written decision on the merits of the case or written notice that the board denies review.

The board shall vote on whether to review the decision. If a majority of the board's membership fails to vote to grant review or the board fails to act within 60 days after receiving the initial request for review, the decision of the ~~hearing officer~~ administrative law judge stands, and any appeal must be made to the division in accordance with section 321-B. If the board votes to review the decision, the board may delegate responsibility for reviewing the decision of the ~~hearing officer~~ administrative law judge under this section to panels of board members consisting of equal numbers of representatives of labor and management. Review must be on the record and on written briefs only. Upon a vote of a majority of the board's membership, the board shall issue a written decision affirming, remanding, vacating or modifying the ~~hearing officer's~~ administrative law judge's decision. The written decision of the board must be filed with the board and mailed to the parties or their counsel. If the board fails to adopt a decision by majority vote, the decision of the ~~hearing officer~~ administrative law judge stands and is subject to direct appellate review in the same manner as if the board had not voted to review the decision.

**Sec. 15. 39-A MRSA §321-A, sub-§§2 and 3,** as enacted by PL 2011, c. 647, §20, are amended to read:

**2. Composition.** The division is composed of full-time ~~hearing officers~~ administrative law judges who are appointed by the executive director of the board to serve on panels to review decisions under section 318. The executive director of the board shall appoint no fewer than 3 full-time ~~hearing officers~~ administrative law judges to serve as members of a panel. ~~A hearing officer~~ An administrative law judge may not serve as a member of a panel that reviews a decision of that ~~hearing officer~~ administrative law judge. ~~A hearing officer~~ An administrative law judge may be a member of more than one panel at the discretion of the executive director of the board.

**3. Rules.** The board shall adopt rules of procedure designed to provide a prompt and inexpensive review of a decision by ~~a hearing officer~~ an administrative law judge. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 16. 39-A MRSA §321-B,** as amended by PL 2013, c. 63, §§13 and 14 and affected by §16, is further amended to read:

**§321-B. Appeal from administrative law judge decision**

**1. Procedure.** An appeal of a decision by ~~a hearing officer~~ an administrative law judge pursuant to section 318 to the division must be conducted pursuant to this subsection.

A. A party in interest may file with the division a notice of intent to appeal a decision by ~~a hearing officer~~ an administrative law judge pursuant to section 318 within 20 days after receipt of notice of the filing of the decision by the ~~hearing officer~~ administrative law judge.

B. At the time of filing an appeal under this section, the appellant shall file with the division a copy of the decision appealed. The failure of an appellant who timely files an appeal in accordance with paragraph A to provide a copy of the decision does not affect the jurisdiction of the division to determine the appeal on its merits unless the appellee shows substantial prejudice from that failure.

**2. Basis.** A finding of fact by ~~a hearing officer~~ an administrative law judge is not subject to appeal under this section.

**3. Action.** The division, after due consideration, may affirm, vacate, remand or modify a decree of ~~a hearing officer~~ an administrative law judge and shall issue a written decision. The written decision of the division must be filed with the board and mailed to the parties or their counsel.

**4. Publication of decisions.** The division shall publish the decisions issued under subsection 3 and make them available to the public at such cost as is required to pay for suitable publication. The division shall distribute copies of all written decisions to the State Law Library and the county law libraries.

**Sec. 17. 39-A MRSA §322,** as amended by PL 2011, c. 647, §21, is further amended to read:

**§322. Appeal from decision of appellate division or board**

**1. Appeals.** Any party in interest may present a copy of the decision of the division or ~~a decision~~ of the board, if the board has reviewed a decision pursuant to section 320, to the clerk of the Law Court within 20 days after receipt of notice of the filing of the decision by the division or the board. Within 20 days after the copy is filed with the Law Court, the party seeking review by the Law Court shall file a petition seeking appellate review with the Law Court that sets forth a

brief statement of the facts, the error or errors of law that are alleged to exist and the legal authority supporting the position of the appellant.

**2. Procedures.** The Law Court shall establish and publish procedures for the review of petitions for appellate review of decisions of the board.

**3. Discretionary appeal; action.** Upon the approval of 3 or more members of a panel consisting of no fewer than 5 Justices of the Law Court, the petition for appellate review may be granted. If the petition for appellate review is denied, the decision of the board is final. The petition must be considered on written briefs only.

If the petition for appellate review is granted, the clerk of the Law Court shall notify the parties of the briefing schedule consistent with the Maine Rules of Civil Procedure and in all respects the appeal before the Law Court must be treated as an appeal in an action in which equitable relief has been sought, except that there may be no appeal upon findings of fact. The Law Court may, after due consideration, reverse, modify or affirm any decision of the board.

**Sec. 18. 39-A MRSA §324, sub-§1,** as amended by PL 2013, c. 63, §15, is further amended to read:

**1. Order or decision.** The employer or insurance carrier shall make compensation payments within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation. If the board enters a decision awarding compensation, and a motion for findings of fact and conclusions of law is filed with the ~~hearing officer~~ administrative law judge or an appeal is filed with the division pursuant to section 321-B or the Law Court pursuant to section 322, payments may not be suspended while the motion for findings of fact and conclusions of law or appeal is pending. The employer or insurer may recover from an employee payments made pending a motion for findings of fact and conclusions of law or appeal to the division or the Law Court if and to the extent that the ~~hearing officer~~ administrative law judge, division or the Law Court has decided that the employee was not entitled to the compensation paid. The board has full jurisdiction to determine the amount of overpayment, if any, and the amount and schedule of repayment, if any. The board, in determining whether or not repayment should be made and the extent and schedule of repayment, shall consider the financial situation of the employee and the employee's family and may not order repayment that would work hardship or injustice. The board shall notify the Commissioner of Health and Human Services within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation identifying the employee who is to receive the compensation. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

**Sec. 19. 39-A MRSA §329,** as enacted by PL 1999, c. 202, §1, is amended to read:

**§329. Interpreter required**

An employee whose native language is not English and who does not understand the English language to the degree necessary to reasonably understand and participate in proceedings that affect the employee's rights is entitled to have an interpreter present at all proceedings before the board or ~~a hearing officer~~ an administrative law judge relating to that employee's rights. The board shall provide and pay the cost of the interpreter. To the extent possible, the board shall seek advice from the Department of Labor in locating appropriate interpreters to meet the needs of employees in the workers' compensation system.

**Sec. 20. 39-A MRSA §353, first ¶,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

An employee may not be discriminated against by any employer in any way for testifying or asserting any claim under this Act. Any employee who is so discriminated against may file a petition alleging a violation of this section. The matter must be referred to ~~a hearing officer~~ an administrative law judge for a formal hearing under section 315, but any ~~hearing officer~~ administrative law judge who has previously rendered any decision concerning the claim must be excluded. If the employee prevails at this hearing, the ~~hearing officer~~ administrative law judge may award the employee reinstatement to the employee's previous job, payment of back wages, reestablishment of employee benefits and reasonable attorney's fees.

**Sec. 21. 39-A MRSA §355-C, sub-§3,** as enacted by PL 2001, c. 448, §5, is amended to read:

**3. Determinations.** The committee shall review requests for reimbursement within 14 days of receipt of the request or within a longer period of time if mutually acceptable to the parties. The committee shall issue a final determination, designated as such, to each insurer or self-insurer that has requested reimbursement. An insurer or self-insurer may petition the board for a hearing before ~~a hearing officer~~ an administrative law judge within 30 days of notice of the determination. Review by the board is limited to errors of law and abuse of discretion.

**Sec. 22. 39-A MRSA §358-A, sub-§1, ¶¶F and G,** as enacted by PL 1997, c. 486, §8, are amended to read:

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~~.~~; and

**Sec. 23. 39-A MRSA §358-A, sub-§1, ¶H** is enacted to read:

H. The timeliness of examinations conducted pursuant to section 312 and any other data regarding independent medical examiners and examinations.

**Sec. 24. Transition.** A Workers' Compensation Board hearing officer serving on the effective date of this Act who is admitted to the practice of law in Maine becomes an administrative law judge on the same terms and conditions of employment as existed on the day prior to the effective date of this Act and has the same authority to hear and decide cases as existed prior to the effective date of this Act. A Workers' Compensation Board hearing officer serving on the effective date of this Act who is not admitted to the practice of law in Maine remains a hearing officer on the same terms and conditions of employment as existed on the day prior to the effective date of this Act and, notwithstanding any provision of law to the contrary, is considered an administrative law judge for all purposes under the Maine Revised Statutes, Title 39-A and has all of the rights, responsibilities, duties and authority that existed prior to the effective date of this Act. The term "hearing officer," as used in Title 39-A prior to the effective date of this Act, is coextensive with the term "administrative law judge," used subsequent to the effective date of this Act.

See title page for effective date.

## CHAPTER 298

## S.P. 525 - L.D. 1410

### An Act To Strengthen Maine's Fisheries Laws

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

**Sec. 1. 12 MRSA §10001, sub-§6, ¶¶E and M,** as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, are repealed.

**Sec. 2. 12 MRSA §10001, sub-§6, ¶T,** as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, is amended to read:

T. White sucker, (Catostomus commersoni); and

**Sec. 3. 12 MRSA §10001, sub-§6, ¶U,** as amended by PL 2007, c. 159, §1, is repealed.

**Sec. 4. 12 MRSA §10001, sub-§§16 and 18,** as enacted by PL 2003, c. 414, Pt. A, §2 and affected by c. 614, §9, are amended to read:

**16. Eel.** "Eel" means a member of the species Anguilla rostrata in that stage of its life cycle when it is ~~6~~ 9 inches or more in length.

**18. Elver.** "Elver" means a member of the species Anguilla rostrata in that stage of its life cycle when it is less than ~~6~~ 9 inches in length.

**Sec. 5. 12 MRSA §10001, sub-§36-A** is enacted to read:

**36-A. Lamprey eel.** "Lamprey eel" means the species Petromyzon marinus (sea lamprey).

**Sec. 6. 12 MRSA §10001, sub-§59-A** is enacted to read:

**59-A. Sucker.** "Sucker" means only the species Catostomus commersoni (white sucker) and the species Catostomus catostomus (longnose sucker).

**Sec. 7. 12 MRSA §12258,** as enacted by PL 2003, c. 414, Pt. A, §2 and affected by Pt. D, §7 and c. 614, §9 and amended by c. 655, Pt. B, §§219 and 220 and affected by §422, is repealed.

**Sec. 8. 12 MRSA §12506,** as amended by PL 2013, c. 148, §§1 and 2, is further amended to read:

**§12506. Eel, sucker, lamprey and yellow perch harvesting method permit; elver prohibition; limitations on alewife harvesting**

**1. Permit required.** Except as otherwise authorized pursuant to this Part and except as provided in subsection 5-A, a person may not fish for or possess the following fish using the harvesting methods listed in subsection 2 without a valid permit issued under this section:

B. Eels;

C. Suckers;

D. Lampreys; or

E. Yellow perch.

Each day a person violates this subsection, that person commits a Class E crime for which a minimum fine of $50 and an amount equal to twice the applicable license fee must be imposed.

**2. Issuance.** The commissioner may adopt rules providing for the issuance of permits to fish for or possess the following fish using the following harvesting methods in the inland waters of the State, provided the permits do not interfere with any rights granted under section 6131:

A. Eels using eel pots or weirs;

B. Suckers and yellow perch using trap nets, dip nets or spears;