

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**  
OF THE  
**One Hundred And Thirteenth Legislature**  
OF THE  
**State Of Maine**

**VOLUME III**

**FIRST CONFIRMATION SESSION**

August 21, 1987  
Index

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987  
Index

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987  
Index

**SECOND REGULAR SESSION**

January 6, 1988 to March 24, 1988

ONE HUNDRED AND THIRTEENTH MAINE LEGISLATURE  
SECOND SPECIAL SESSION  
1st Legislative Day  
Wednesday, October 21, 1987

This being the day designated in the proclamation of the Governor for the meeting of the One Hundred and Thirteenth Legislature in extra session, the members of the House of Representatives assembled in their hall at 9:30 o'clock and were called to order by the Speaker.

Prayer by Father Raymond Melville, St. Mary's Catholic Church, Augusta.  
Pledge of Allegiance.

For the purpose of ascertaining the presence of a quorum, a certified roll of the Representatives was taken. The elected membership of the House being 151 and 135 members having answered to their names with 13 absent and 3 vacancies, a quorum was found to be present.

Absent were Representatives Baker of Portland, Carter of Winslow, Conley of Portland, Lacroix of Oakland, Lebowitz of Bangor, Marsano of Belfast, Nadeau, G.G. of Lewiston, Nadeau, G.R. of Saco, Perry of Mexico, Stevenson of Unity, Vose of Eastport, Warren of Scarborough and Weymouth of West Gardiner.

State of Maine  
PROCLAMATION

WHEREAS, there exists in the State of Maine an extraordinary occasion arising out of the State's fundamental social and economic obligation to protect its workers; 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 workers' compensation insurance in Maine are withdrawing from the business; and

WHEREAS, comprehensive legislative reform is the only possibility for saving the private insurance market for workers' compensation, without which employers cannot operate;

NOW, THEREFORE, I, JOHN R. MCKERNAN, JR., Governor of the State of Maine, by virtue of the constitutional power vested in me as Governor, do hereby convene the Legislature of this State, hereby requesting the Senators and Representatives to assemble in their respective chambers at the Capitol in Augusta on Wednesday, the twenty-first (21st) day of October, 1987 at ten (10) o'clock in the morning, in order to receive communications, enact legislation necessary to ensure that employers are able to meet the statutory requirement for providing workers' compensation coverage, and conduct such other legislative business as may be appropriate.

In testimony whereof, I have caused the Great Seal of the State to be hereunto affixed  
GIVEN under my hand at  
Augusta this second day of  
October in the Year of our  
Lord One Thousand Nine  
Hundred and Eighty-Seven.  
S/JOHN R. MCKERNAN, JR.  
Governor

S/Peter W. Danton  
Deputy Secretary of State

Was read and ordered placed on file.

On Motion of Representative DIAMOND of Bangor, the following Order:

ORDERED, that a Committee of ten be appointed to wait upon His Excellency, the Governor, and inform him that a quorum of the House of Representatives is assembled in the Hall of the House for the consideration of such business as may come before the House.

Was read and passed and the Chair appointed the following Members:

Representative RYDELL of Brunswick  
Representative ERWIN of Rumford  
Representative CLARK of Millinocket  
Representative SIMPSON of Casco  
Representative TARDY of Palmyra  
Representative TRACY of Rome  
Representative BOTT of Orono  
Representative WEBSTER of Cape Elizabeth  
Representative CURRAN of Westbrook  
Representative GARLAND of Bangor

Subsequently, Representative RYDELL of Brunswick reported that the Committee had delivered the message with which it was charged.

A message was received from the Senate, borne by Senator DUTREMBLE of that body, announcing a quorum present and that the Senate was ready to transact any business that might properly come before it.

On Motion of Representative GWADOSKY of Fairfield, the following Order:

ORDERED, that a message be conveyed to the Senate that a quorum of the House of Representatives is present for the consideration of such business as may come before the House.

Was read and passed and Representative DIAMOND of Bangor was appointed to convey the message and subsequently reported that he had delivered the message with which he was charged.

A message came from the Senate borne by Senator CLARK of Cumberland proposing a convention of both branches of the Legislature to be held at 9:30 a.m. in the Hall of the House for the purpose of extending to His Excellency, John R. McKernan, Jr., Governor of Maine, an invitation to attend the convention and to make such communication as he may be pleased to make.

Representative DIAMOND of Bangor was charged with and conveyed a message to the Senate announcing that the House concurred in the above proposition for a Joint Convention.

(At Ease)

The House was called to order by the Speaker.

At this point, the Senate entered the Hall of the House and a Joint Convention was formed.

In Convention

The President of the Senate, Charles P. Pray, in the Chair.

On motion of Senator CLARK of Cumberland, it was ORDERED, that a Committee be appointed to wait upon His Excellency, Governor John R. McKernan Jr., Governor of the State of Maine, to extend an

invitation to him to attend this convention and make such communication as pleases him.

Was read and passed.

The Chairman appointed:

Senators: Dutremble of York  
Andrews of Cumberland  
Collins of Aroostook  
Representatives: McHenry of Madawaska  
Tammaro of Baileyville  
Joseph of Waterville  
Hale of Sanford  
Ruhlin of Brewer  
Rand of Portland  
Begley of Waldoboro  
Hepburn of Skowhegan  
Zirkilton of Mt. Desert  
Willey of Hampden

Senator DUTREMBLE of York, for the Committee, subsequently reported that the Committee had discharged the duty with which they had been charged, and the Governor was pleased to say that he would attend the convention forthwith.

Whereupon, Governor John R. McKernan, Jr. entered the Convention Hall amid prolonged applause, the audience rising.

The Governor then addressed the Convention as follows:

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

I want to thank you for the opportunity to address this Joint Convention today on a subject which none of us enjoy discussing but one which, unfortunately, we can no longer avoid and that is 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 that 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 procedures. It is important to realize that, at this particular time, we have to realize that we, in fact, have a system that is becoming increasingly unmanageable. 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.

At that time, the insurance market had deteriorated to the point where virtually all insurance companies had ceased to write voluntarily worker's 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 insurance 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 than other states. Some insurance companies in Maine have claimed that it costs more than 300 percent higher than the premiums they are allowed to charge. Others claim their costs are 200 percent higher. Our Superintendent believes that 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 rules they are entitled to, our Superintendent has concluded that, unless costs are reduced, those companies would be entitled to a 75 percent to 100 percent increase in their premium rates. Maine businesses, already paying high workers' compensation insurance premiums, which are very high, 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 I might point out, comprise only 4 percent of the total number of workers' compensation cases, which 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 only 330 weeks but they allow for an escalator for cost-of-living.

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, not \$50,000, not \$100,000, not \$500,000, but \$912,000 in benefits. I realize that in Maine most cases like this are probably settled with a lump sum agreement, but obviously the negotiations around the settlement takes into account the fact that were it not settled for a lump sum, that worker would be able to receive benefits significantly higher than in any of our competing states.

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 current benefit system, 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, 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 to me is that we have no alternative but to find a way to modify, in the fairest way possible, the benefits provided in our 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, I believe, have received a summary of our legislation and I want to point out that it is prospective only and it would not affect anyone who is currently receiving workers' compensation benefits. As you can see, we have addressed four areas: (1) rate making procedures; (2) administrative reforms; (3) benefit levels; 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 that currently exist in the system for injured workers to get their benefits. 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 -- having a special session on this subject is not my idea of having a good time and I am sure that most of you would agree with that) but the only alternative that we can find is to reduce benefits for permanent partial impairments -- that 4 percent of the cases that create 70 percent of the cost to the system -- to reduce those benefits 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. 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, to us, seems the fairest way to reduce the cost of our system in order to avoid an enormous rate increase. The Superintendent has determined, as I said earlier, that if reductions are not achieved, the 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 as I said to leadership and I will say to you, that we pledge

today that we are willing to work with all of you to see if, in our collective wisdom, we can arrive at a level of cost reduction that seems fairer than one we have proposed.

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, although we have no pledges, that other companies will also remain in our system, and I am urging them to do so. Quite frankly, a few companies have indicated that 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 just want to emphasize another point and that is that I do not believe the state fund for workers' compensation is an option for resolving this crisis. With the current benefit structure, the best we can expect from the state fund would be a system in which we might reduce the annual loss to \$100 million. That \$100 million, in my view, 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 particularly upbeat but I want you to know that I am optimistic that we are going to solve this problem. I am convinced that, when I address the close of this special session, whenever that may be, that we will have found a solution to this vexing problem, a solution that ensures Maine workers protection after January 1st.

In short, I believe that by working together, we will prove that during this special session that our system of government does, in fact, work. I want you all to know, as I said earlier, that I look forward to working with all of you and I truly do believe that we are going to find a way to resolve what I view as the most important problem that we have faced since I have been Governor. Thank you very much.

At the conclusion of the Governor's address, the Governor withdrew amid applause of the Convention, the audience rising.

The purpose for which the Convention was assembled having been accomplished, the Chairman declared the same dissolved and the Senate retired to its chamber amid applause of the House, the members rising.

IN THE HOUSE

The House was called to order by the Speaker.

The following item appearing on Supplement No. 1 was taken up out of order by unanimous consent:

COMMUNICATIONS

The following Communication: (S.P. 693)  
The Senate of Maine  
Augusta

October 15, 1987

The Honorable Charles P. Pray  
President of the Senate  
113th Legislature  
The Honorable John L. Martin  
Speaker of the House  
113th Legislature

Dear Mr. President and Mr. Speaker:

Please be advised that today two bills were received by the Secretary of the Senate.

Pursuant to the provisions of Joint Rule 14, these bills were referred to the Joint Standing Committees and ordered printed on October 15, 1987 as follows:

BANKING AND INSURANCE

Bill "An Act to Reform the Process by which Insurance Rates are Established under the Maine Workers' Compensation Act" (Emergency) (S.P. 691) (L.D. 1917) (Presented by Senator COLLINS of Aroostook) (Cosponsored by: Representative WILLEY of Hampden)

LABOR

Bill "An Act to Reform the Maine Workers' Compensation Act to Assure Coverage for Maine Workers" (Emergency) (S.P. 692) (L.D. 1918) (Presented by Senator COLLINS of Aroostook) (Cosponsored by: Representative WILLEY of Hampden)

Sincerely,  
S/Joy J. O'Brien  
Secretary of the Senate  
S/Edwin H. Pert  
Clerk of the House

Came from the Senate, read and ordered placed on file.

Was read and ordered placed on file in concurrence.

The following item appearing on Supplement No. 2 was taken up out of order by unanimous consent:

State of Maine  
PROCLAMATION

WHEREAS, there exists in the State of Maine an extraordinary occasion arising out of the State's fundamental social and economic obligation to protect its workers; 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 workers' compensation insurance in Maine are withdrawing from the business; and

WHEREAS, comprehensive legislative reform is the only possibility for saving the private insurance market for workers' compensation, without which employers cannot operate; and

WHEREAS, a public hearing has been scheduled in conflict with the convening hour set forth in my October 2nd proclamation;

NOW, THEREFORE, I, JOHN R. MCKERNAN, JR., Governor of the State of Maine, by virtue of the constitutional power vested in me as Governor, do hereby convene the Legislature of this State, hereby requesting the Senators and Representatives to assemble in their respective chambers at the Capitol in Augusta on Wednesday, the twenty-first (21st) day of October, 1987 at nine (9) o'clock in the morning, in order to receive communications, enact legislation necessary to ensure that employers are able to meet the statutory requirement for providing workers' compensation coverage, and conduct such other legislative business as may be appropriate.

In testimony whereof, I  
have caused the Great

Seal of the State to be hereunto affixed GIVEN under my hand at Augusta this twentieth day of October in the Year of our Lord One Thousand Nine Hundred and Eighty-Seven.  
S/JOHN R. MCKERNAN, JR.  
Governor

S/Rodney S. Quinn  
Secretary of State

Was read and ordered placed on file.

The following item appearing Supplement No. 3 was taken up out of order by unanimous consent:

SENATE PAPER

The following Joint Order: (S.P. 694)  
ORDERED, the House concurring, that when the House and Senate adjourn, they adjourn to the call of the President of the Senate and the Speaker of the House when there is need to conduct legislative business, pursuant to Article IV, Part 3, Section 12 of the Constitution.

Came from the Senate, read and passed.  
Was read and passed in concurrence.

(Off Record Remarks)

On motion of Representative Diamond of Bangor,  
Adjourned pursuant to Joint Order (S.P. 694)