

MAINE STATE LEGISLATURE

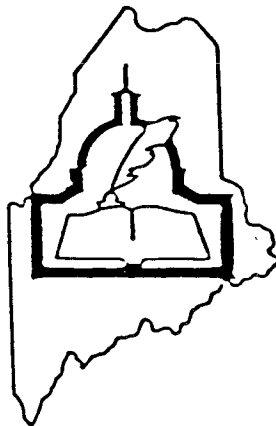
The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
FIRST REGULAR SESSION

JOINT STANDING COMMITTEE ON
LABOR
BILL SUMMARY



JULY, 1985

Prepared by:

Gilbert Brewer, Legislative Assistant
Office of Legislative Assistants
State House, Station 13 Augusta, Maine 04333
(207) 289-1670



STATE LAW LIBRARY
1000 STATE HOUSE STATION
AUGUSTA, MAINE 04333

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, ASST. DIRECTOR
GILBERT W. BREWER
DAVID ELLIOTT
MARTHA FREEMAN
CHRISTOS GIANOPOULOS
WILLIAM T. GLIDDEN, JR.

STATE OF MAINE
OFFICE OF LEGISLATIVE ASSISTANTS
ROOM 101
STATE HOUSE, STATION 13
AUGUSTA, MAINE 04333
TEL.: (207) 289-2486

SARAH HOOKE
JULIE S. JONES
JOHN B. KNOX
EDWARD POTTER
MARGARET J. REINSCH
LARS RYDELL
JOHN SELSER
ANDREA COLNES, RES. ASST.

ONE HUNDRED AND TWELFTH LEGISLATURE
FIRST REGULAR SESSION

JOINT STANDING COMMITTEE
BILL SUMMARIES
JULY 1985

This document is a compilation of the bill summaries prepared by this office for the Joint Standing Committees of the Maine Legislature, covering the First Regular Session of the 112th Legislature. The summaries are arranged by LD number and indexed separately by committee.

LD: 1634 AN ACT TO IMPROVE THE WORKERS' COMPENSATION
EMERGENCY SYSTEM AND REFORM THE RATE-MAKING PROCESS
ND: 1063

MARTIN J
PRAY
TELOW
GWADOSKY
PUBLIC
CH # 372

HOUSE Emerg. Enacted
SENATE Emerg. Enacted
GOV EMER SIGNED

H-296	HA	BOST		
H-309	HB	BOST		
H-394	HC	BRANNIGAN	H	S
S-203	SA	ANDREWS		
S-217	SB	BUSTIN		
S-219	SC	CHALMERS		
S-230	SD	GAUVREAU		
S-243	SE	BERUBE		
S-247	SF	GAUVREAU		
S-248	SG	BERUBE		
S-254	SH	MATTHEWS Z		
S-257	SI	USHER		
S-269	SJ	ANDREWS		
S-279	HC	CHALMERS		

SUMMARY:

LD 1634 is a new draft of LD 1063 and incorporates parts of LD 1062, LD 1063, LD 1328, LD 341 and LD 1038. The new draft is an emergency bill with an effective date of June 30, except for the rehabilitation provisions which take effect January 1, 1986.

From LD 1328, the bill adds the creation of a new safety education and loan program. The Department of Labor will coordinate the safety education program which is designed to provide consulting, advisory, educational, research and inspection services to employers and groups of employees regarding workplace safety. This program is funded by an initial 1/4 of 1% assessment on the actual workers' compensation paid losses of each insurer and self-insurer in the state. Later assessments are tied to later funding requirements. The occupational Safety Loan Fund is also established in LD 1634 to issue loans of up to \$15,000 to employers in the state to make safety improvements in their workplaces. The fund is established with a one-time 1/2 of 1% assessment upon workers' compensation insurance premiums paid to insurance carriers in 1984. The Commissioner of Labor and the State Treasurer are directed to report to the Legislature on January 1, 1986 on the status of the loan fund and any additional funding needs.

The comprehensive rehabilitation program of LD 1063 is retained in the new draft with only minor changes. The major change added by this bill is to allow in-house rehabilitation providers to have the first opportunity at developing a rehabilitation plan for their injured employees. If the rehabilitation administrator approves the plan and finds it in the best interest of the employee, he may approve its

implementation for a 30-day trial period. Otherwise rehabilitation will follow the usual progression under the direction of the newly-created Office of Employment Rehabilitation. The rehabilitation office must be notified as soon as possible after an employer has determined that an employee is unable to return to his previous employment. A suitability evaluation is then ordered and if an employee is found to be suitable for rehabilitation, a plan is developed. These services are provided by a rehabilitation counselor selected by the employee from a list of approved counselors provided by the rehabilitation administrator. Further participation beyond this point is voluntary on both the part of the employee or employer. Either may block the implementation of the developed plan. If the employee is successful and finds a new job, his employer will be eligible to receive wage subsidies paid by the old employer or insurer. Further protection is provided by the Employment Rehabilitation Fund which will reimburse employers for unsuccessful rehabilitation efforts and provide protection to subsequent employers for later injuries to the rehabilitated worker. The fund is funded by a quarterly 1/2% assessment in 1985, 1% thereafter, on insurance carriers' actual paid losses, but an assessment will be made only when the fund requires it. The rehabilitation program provides for its automatic repeal on July 1, 1988 after the Workers' Compensation Commissioner presents a report on the effectiveness of this legislation to the Second Regular Session of the 113th Legislature.

Substantive changes made to the Workers' Compensation Act include setting the maximum benefit level at \$447.92 and delaying any future inflation adjustments until 1988. A 5% cap on annual benefit adjustments was included in the new draft. Employees of sheltered workshops are exempt from the \$25 weekly benefit minimum. Benefits for permanent impairment have been set at 2/3 of the state average weekly wage for all benefit recipients. Workers' compensation benefits will be reduced to reflect the receipt of social security and other employer-financed benefits received by the employee, but a minimum floor has been added to ensure that no employer will entirely avoid making workers' compensation payments where due. The Office of Employee Assistants is directed to provide aid to employees in cases initiated against them by employers or insurers. An abuse investigation unit was created to investigate allegations of fraud and abuse within the workers' compensation system. The Chairman may set discovery timetables for workers' compensation actions by rule under the new draft. The rule of liberal construction was repealed and replaced with a directive to construe all cases upon their merits. Attorneys' fees will be awarded in only those cases in

which an employee prevails. "Prevails" was defined to include any case in which an employee is awarded more in benefits or compensation than the employer offered in writing before the proceeding began. Finally, the Mini-Miranda rule was replaced by a provision that excludes employee statements from evidence in workers' compensation proceedings if the statement was obtained by means of duress on the part of an employer, insurer or employer's representative.

Other provisions of the new draft, LD 1634, call for a study to be conducted on the effect of medical fees on the costs of providing workers' compensation. The study will be completed by March 31, 1986. The Commission on Safety in the Maine Workplace was established to investigate and study the subject of workplace safety and to make recommendations on how best to improve occupational safety in Maine.

House amendments H-296 and H-309 simply made technical corrections in the bill.

House amendment H-394 included the technical amendments of the 2 prior amendments and added the insurance rate-setting provisions recommended by the Business and Commerce Committee. Those provisions eliminate the present prior approval system for setting workers' compensation insurance rates where insurers must obtain approval from the Superintendent of Insurance through a highly technical rate filing before using rates. The new system emphasizes open competition by allowing each insurer to use its own rates after filing them with the superintendent, encouraging insurers to compete for business by offering lower premium rates.

The Superintendent will monitor competition and rates and may disapprove rates or require prefiling. He may also determine that a competitive market does not exist, in which case insurers must return to a prior approval system.

If some employers are unable to obtain insurance in the open market through ordinary methods, 2 residual market mechanisms are created. The Accident Prevention Account is for employers with poor loss records who have been refused coverage by at least 2 insurers. Surcharges are established as an incentive for employers to improve their safety records. The Safety Pool is an alternative source of insurance for employers with good safety records. Primarily, it will serve as an option for small employers who may find it difficult to obtain coverage on the voluntary market because of their small premiums or number of employees. All insurers writing workers' compensation insurance must share in writing coverage for both pools.

In a competitive, voluntary market rates must be filed with the Superintendent not more than 5 days after their effective date. Experience rating, merit rating and scheduled rating modification are available to reflect an individual employer's loss record in rates.

In the Accident Prevention Account and Safety Pool there must be a prior approval rate filing with the public advocate participating. The rating modifications are available on a more limited basis.

In a market found to be noncompetitive, prior approval of rates is required; the public advocate participates only if the state as a market is found noncompetitive. Rating modifications are available.

There is a gradual phase-in of the new system to avoid "rate shock". From 7/1/85-12/31/86, rates are fixed at their current level. From 1/1/87-12/31/87, rates may increase up to 10% and from 1/1/88-12/31/88, rates may increase up to 10% further. After 1/1/89, rates will be set through the open market.

Savings derived from changes in workers' compensation benefits laws will be passed along to employers by an 8% reduction in premium rates.

Senate amendment S-269 was a corrected re-draft of S-203. Both amendments attempted to withdraw the provision of LD 1634 that exempted employees of sheltered workshops from the \$25 minimum weekly benefit requirement. S-217 would have changed the coordination of benefits section to make the extent of the reduction in workers' compensation benefits proportional to the extent of the employee's disability and would have prevented the reduction of workers compensation benefits of retired workers age 70 or over unless their benefits exceeded the allowable income limits set by the social security administration. S-219 and its redraft, S-279, would have allowed a commissioner to assess an employee's costs and witness fees against the employer even if the employee did not prevail in an action when those costs were necessary to the proper disposition of the case. S-230 and its redraft, S-247, attempted to make various clarifications to the employment rehabilitation section of the bill and would have made the implementation of a rehabilitation plan mandatory upon request of either party if the plan was approved by the administrator. S-243 would have set the cap on the annual benefit increase at 2% below the increase in the Consumer Price Index whenever that index rose more than 7%. S-248 would have eliminated the 5% cap on the annual benefit adjustments completely. S-254 would have replaced the emergency preamble to the bill. S-257 would have created a penalty system to

make an injured employee whole for any damages he had incurred while his workers' compensation payment had been delayed.

LD: 1656	AN ACT TO CORRECT AN ERROR AND AN OMISSION IN THE COMPENSATION LAW	DUTREMBLE CARPENTER WILLEY BEAULIEU PUBLIC CH #431
EG W/O RF	HOUSE Emerg. Enacted SENATE Emerg. Enacted GOV. Emerg. Signed	

SUMMARY:

This bill corrects internal references to the insurance pass-through provision made in the non-severability clause and adds language to the attorney fees section to ensure that attorneys who represent employees who prevail in non-controverted claims may accept payment for their services from the employee.