



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1195

S.P. 422

In Senate, April 1, 2015

An Act To Amend the Laws Governing Workers' Compensation

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator CUSHING of Penobscot.
Cosponsored by Representative WARD of Dedham and
Senators: MASON of Androscoggin, President THIBODEAU of Waldo, VOLK of
Cumberland, WHITTEMORE of Somerset, WOODSOME of York, Representatives: GUERIN
of Glenburn, LOCKMAN of Amherst, O'CONNOR of Berwick.

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

2 **Sec. 1. 39-A MRSA §152, sub-§5**, as enacted by PL 1991, c. 885, Pt. A, §8 and
3 affected by §§9 to 11, is repealed.

4 **Sec. 2. 39-A MRSA §152, sub-§10**, as enacted by PL 1991, c. 885, Pt. A, §8 and
5 affected by §§9 to 11, is amended to read:

6 **10. Case administration.** The board shall assume an active and forceful role in the
7 administration of this Act to ensure that the system operates efficiently and with
8 maximum benefit to both employers and employees. It shall continually monitor
9 individual cases to ensure that benefits are provided in accordance with this Act. The
10 board shall develop standards of conduct for attorneys that appear before the board or
11 before hearing officers, or who participate in matters governed by this Title. In
12 establishing standards of conduct for attorneys, the board must be guided by the Maine
13 Rules of Civil Procedure, Rule 11.

14 **Sec. 3. 39-A MRSA §152-A** is enacted to read:

15 **§152-A. Hearing officers**

16 **1. Appointment.** The Governor shall appoint 8 hearing officers, who are authorized
17 to take action and enter orders consistent with this Act in all cases assigned to them by
18 the board. The appointments are subject to review by the joint standing committee of the
19 Legislature having jurisdiction over labor matters and to confirmation by the Legislature.

20 **2. Term.** A hearing officer serves an initial term of 3 years; a subsequent term is 5
21 years.

22 **Sec. 4. 39-A MRSA §153, sub-§5, ¶E**, as enacted by PL 1991, c. 885, Pt. A, §8
23 and affected by §§9 to 11, is amended to read:

24 E. Whenever the board determines that a fraud, attempted fraud or violation of this
25 Act or rules of the board may have occurred, the board shall report in writing all
26 information concerning it to the Attorney General or the Attorney General's delegate
27 for appropriate action, including a civil action for recovery of funds and criminal
28 prosecution by the Attorney General, except that if the violation has resulted in a de
29 minimis alteration in the calculation of an amount, a report to the Attorney General is
30 not required.

31 **Sec. 5. 39-A MRSA §153, sub-§7**, as enacted by PL 1991, c. 885, Pt. A, §8 and
32 affected by §§9 to 11, is amended to read:

33 **7. Investigation.** The board may, when the interests of any of the parties or when
34 the administration of this Act demands, appoint a person to make a full investigation of
35 the circumstances surrounding any industrial injury or any matter connected to an
36 industrial injury, or conduct an audit pursuant to section 359 and report the same without
37 delay to the board and the Superintendent of Insurance.

1 **Sec. 6. 39-A MRSA §153, sub-§9**, as amended by PL 2005, c. 603, §3, is further
2 amended to read:

3 **9. Audit and enforcement.** The executive director shall establish an audit,
4 enforcement and monitoring program by July 1, 1998, to ensure that all obligations under
5 this Act are met, including the requirements of section 359. The functions of the audit
6 and enforcement program include, but are not limited to, auditing timeliness of payments
7 and claims handling practices of insurers, self-insurers, ~~the Maine Insurance Guaranty~~
8 ~~Association~~ and 3rd-party administrators; determining whether insurers, self-insurers, ~~the~~
9 ~~Maine Insurance Guaranty Association~~ and 3rd-party administrators are unreasonably
10 contesting claims; and ensuring that all reporting requirements to the board and the
11 Superintendent of Insurance are met. ~~When auditing the Maine Insurance Guaranty~~
12 ~~Association, the program shall consider when the Maine Insurance Guaranty Association~~
13 ~~obtained the records of an insolvent insurer.~~ The program must be coordinated with the
14 abuse investigation unit established by section 153, subsection 5 as appropriate. The
15 program must monitor activity and conduct audits pursuant to a schedule developed by
16 the deputy director of benefits administration. Audit working papers are confidential and
17 may not be disclosed to any person outside of the board except the audited entity and the
18 Superintendent of Insurance. For purposes of this subsection "audit working papers"
19 means all documentary and other information acquired, prepared or maintained by the
20 board during the conduct of an audit or investigation, including all intra-agency and
21 interagency communications relating to an audit or investigation and draft reports or any
22 portion of a draft report. The final audit report, including the underlying reconciled
23 information, is not confidential. At the end of each calendar quarter, the executive
24 director shall prepare a compliance report summarizing the results of the audits and
25 reviews conducted pursuant to this subsection. The executive director shall submit the
26 quarterly compliance reports to the board, the Bureau of Insurance and the Director of the
27 Bureau of Labor Standards within the Department of Labor. An annual summary must be
28 provided to the Governor and to the joint standing committees of the Legislature having
29 jurisdiction over labor and banking and insurance matters by February 15th of each year.
30 The quarterly compliance reports and the annual summaries must be made available to
31 the public following distribution.

32 **Sec. 7. 39-A MRSA §201, sub-§7** is enacted to read:

33 **7. Medical appointments.** An employee who has sustained a personal injury arising
34 out of and in the course of employment, and who has returned to work on a full-time
35 basis, is entitled to compensation for time spent attending medical appointments related
36 to the injury during hours that the employee is customarily at work, but the employer is
37 not required to separately report such time.

38 **Sec. 8. 39-A MRSA §205, sub-§3**, as amended by PL 2009, c. 129, §5 and
39 affected by §13, is further amended to read:

40 **3. Penalty for delay.** When there is not an ongoing dispute, if weekly compensation
41 benefits or accrued weekly benefits are not paid by the employer or insurance carrier
42 within 30 days after becoming due and payable, \$50 per day must be added and paid to
43 the worker for each day over 30 days in which the benefits are not paid. For a first failure

1 to pay, not more than \$500 may be added pursuant to this subsection to the amount paid
2 to the worker, and for a 2nd failure to pay, not more than \$1,000 may be added pursuant
3 to this subsection to the amount paid to the worker. Not more than \$1,500 in total may be
4 added pursuant to this subsection. For purposes of ratemaking, daily charges paid under
5 this subsection do not constitute elements of loss. ~~For purposes of this subsection,~~
6 ~~"employer or insurance carrier" includes the Maine Insurance Guaranty Association~~
7 ~~under Title 24-A, chapter 57, subchapter 3.~~

8 **Sec. 9. 39-A MRSA §205, sub-§4**, as amended by PL 2009, c. 129, §6 and
9 affected by §13, is further amended to read:

10 **4. Payment of bills for medical or health care services.** When there is no ongoing
11 dispute, if bills for medical or health care services are not paid within 30 days after the
12 carrier has received notice of nonpayment by certified mail from the provider of the
13 medical or health care services or, if the bill was paid by the employee, from the
14 employee who paid for the medical or health care services, \$50 or the amount of the bill
15 due, whichever is less, must be added and paid to the provider of the medical or health
16 care services or, if the bill was paid by the employee, to the employee who paid for the
17 medical or health care services for each day over 30 days in which the bills for medical or
18 health care services are not paid. Not more than \$1,500 in total may be added pursuant to
19 this subsection. ~~For purposes of this subsection, "carrier" includes the Maine Insurance~~
20 ~~Guaranty Association under Title 24-A, chapter 57, subchapter 3.~~

21 **Sec. 10. 39-A MRSA §303**, as amended by PL 2013, c. 63, §8, is further amended
22 to read:

23 **§303. Reports to board**

24 When any employee has reported to an employer under this Act any injury arising out
25 of and in the course of the employee's employment that has caused the employee to lose a
26 day's work, or when the employer has knowledge of any such injury, the employer shall
27 report the injury to the board within 7 days after the employer receives notice or has
28 knowledge of the injury. An insured employer that has notice or knowledge of any such
29 injury and fails to give timely notice to its insurer shall reimburse the insurer for any
30 penalty that is due as a result of the late filing of the report of injury. The employer shall
31 also report the average weekly wages or earnings of the employee, as defined in section
32 102, subsection 4, together with any other information required by the board, within 30
33 days after the employer receives notice or has knowledge of a claim for compensation
34 under section 212, 213 or 215, unless a wage statement has previously been filed with the
35 board. The wage statement must report the earnings or wages of the employee on a
36 weekly basis, unless the employee is paid on other than a weekly basis, in which case the
37 employer may report the earnings or wages in the same manner as earnings or wages are
38 paid. A copy of the wage information must be mailed to the employee. The employer
39 shall report when the injured employee resumes the employee's employment and the
40 amount of the employee's wages or earnings at that time. The employer shall complete a
41 first report of injury form for any injury that has required the services of a health care
42 provider within 7 days after the employer receives notice or has knowledge of the injury.
43 The employer shall provide a copy of the form to the injured employee and retain a copy

1 for the employer's records but is not obligated to submit the form to the board unless the
2 injury later causes the employee to lose a day's work. The employer is also required to
3 submit the form to the board if the board has finally adopted a major substantive rule
4 pursuant to Title 5, chapter 375, subchapter 2-A to require the form to be filed
5 electronically.

6 **Sec. 11. 39-A MRSA §312, sub-§§3, 5 and 9**, as enacted by PL 1991, c. 885,
7 Pt. A, §8 and affected by §§9 to 11, are amended to read:

8 **3. Appointment.** If the parties to a dispute can not agree on an independent medical
9 examiner of their own choosing, the board shall assign an independent medical examiner
10 within 30 days of a request by any party from the list of qualified examiners to render
11 medical findings in any dispute relating to the medical condition of a claimant, including
12 but not limited to disputes that involve the employee's medical condition, improvement or
13 treatment, degree of impairment or ability to return to work.

14 **5. Medical findings; fees.** The independent medical examiner shall submit within a
15 reasonable time after the independent medical examiner's examination a written report to
16 the board, the employer and the employee stating the examiner's medical findings on the
17 issues raised by that case and providing a description of findings sufficient to explain the
18 basis of those findings. In any case in which the report is not filed within 60 days
19 following the independent medical examiner's examination, the hearing officer shall
20 inquire of the independent medical examiner the status of the independent medical
21 examiner's review. It is presumed that the employer and employee received the report 3
22 working days after mailing. The fee for the examination and report must be paid by the
23 employer.

24 **9. Annual review.** The board shall create a review process to oversee on an annual
25 basis the quality of performance and the timeliness of the submission of medical findings
26 by the independent medical examiners and shall publish its findings no later than July 1st
27 of each year.

28 **Sec. 12. 39-A MRSA §318, first ¶**, as enacted by PL 1991, c. 885, Pt. A, §8 and
29 affected by §§9 to 11, is amended to read:

30 The hearing officer shall hear those witnesses as may be presented or, by agreement,
31 the claims of both parties as to the facts may be presented by affidavits. If the facts are
32 not in dispute, the parties may file with the hearing officer an agreed statement of facts
33 for a ruling on the applicable law. From the evidence or statements furnished, the hearing
34 officer shall in a summary manner decide the merits of the controversy. The hearing
35 officer's decision must be rendered within 60 days of the close of evidence of the hearing,
36 unless the executive director authorizes the hearing officer to take additional time to
37 render the decision. The hearing officer's decision must be filed in the office of the board
38 and a copy, attested by the clerk of the board, mailed promptly to all parties interested or
39 to the attorney of record of each party. The hearing officer's decision, in the absence of
40 fraud, on all questions of fact is final; but if the hearing officer expressly finds that any
41 party has or has not sustained the party's burden of proof, that finding is considered a
42 conclusion of law and is reviewable in accordance with section 322.

1 **Sec. 13. 39-A MRSA §324, sub-§2**, as amended by PL 2009, c. 129, §10 and
2 affected by §13, is further amended to read:

3 **2. Failure to pay within time limits.** An employer or insurance carrier who fails to
4 pay compensation, as provided in this section, is penalized as follows. ~~For purposes of~~
5 ~~this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty~~
6 ~~Association under Title 24-A, chapter 57, subchapter 3.~~

7 A. Except as otherwise provided by section 205, if an employer or insurance carrier
8 fails to pay compensation as provided in this section, the board may assess against the
9 employer or insurance carrier a fine of up to \$200 for each day of noncompliance. If
10 the board finds that the employer or insurance carrier was prevented from complying
11 with this section because of circumstances beyond its control, a fine may not be
12 assessed.

13 (1) The fine for each day of noncompliance must be divided as follows: Of each
14 day's fine amount, the first \$50 is paid to the employee to whom compensation is
15 due and the remainder must be paid to the board and be credited to the Workers'
16 Compensation Board Administrative Fund.

17 (2) If a fine is assessed against any employer or insurance carrier under this
18 subsection on petition by an employee, the employer or insurance carrier shall
19 pay reasonable costs and attorney's fees related to the fine, as determined by the
20 board, to the employee.

21 (3) Fines assessed under this subsection may be enforced by the Superior Court
22 in the same manner as provided in section 323.

23 B. Payment of a fine assessed under this subsection is not considered an element of
24 loss for the purpose of establishing rates for workers' compensation insurance.

25 **Sec. 14. 39-A MRSA §325, sub-§4**, as enacted by PL 1991, c. 885, Pt. A, §8 and
26 affected by §§9-11, is amended to read:

27 **4. Attorney's fees for lump-sum settlements.** Attorney's fees for lump-sum
28 settlements pursuant to section 352 for injuries occurring after January 1, 2015 must be
29 determined as follows:

30 A. Before computing the fee, reasonable expenses incurred on the employee's behalf
31 must be deducted from the total settlement, including:

- 32 (1) Medical examination fee and witness fee;
33 (2) Any other medical witness fee, including cost of subpoena;
34 (3) Cost of court reporter service; and
35 (4) Appeal costs; and

36 B. The computation of the fee, based on the amount resulting after deductions
37 according to paragraph A, may not exceed:

- 38 (1) Ten percent of the first \$50,000 of the indemnity benefits of the settlement;

- 1 (2) Nine percent of the first \$10,000 over \$50,000 of the indemnity benefits of
2 the settlement;
- 3 (3) Eight percent of the next \$10,000 over \$50,000 of the indemnity benefits of
4 the settlement;
- 5 (4) Seven percent of the next \$10,000 over \$50,000 of the indemnity benefits of
6 the settlement;
- 7 (5) Six percent of the next \$10,000 over \$50,000 of the indemnity benefits of the
8 settlement; and
- 9 (6) Five percent of any amount over \$90,000 of the indemnity benefits of the
10 settlement.

11 C. A fee may not be assessed for the amount of any settlement intended to pay for
12 current or future medical costs.

13 **Sec. 15. 39-A MRSA §359**, as amended by PL 2009, c. 129, §11 and affected by
14 §13, is further amended to read:

15 **§359. Audits; penalty; monitoring**

16 **1. Audits.** The board shall audit claims, including insurer, self-insurer, ~~Maine~~
17 ~~Insurance Guaranty Association~~ and 3rd-party administrator claim files, on an ongoing
18 basis to determine whether insurers, self-insured employers, ~~the Maine Insurance~~
19 ~~Guaranty Association~~ and 3rd-party administrators have met their obligations under this
20 Act and to identify the disputes that arose, the reasons for the disputes, the method and
21 manner of their resolution, the costs incurred, the reasons for attorney involvement and
22 the services rendered by the attorneys. Any de minimis error in the calculation of average
23 weekly wage may not be considered in the calculation of any penalty under this section.

24 If as a result of an examination and after providing the opportunity for a hearing the board
25 determines that any compensation, interest, penalty or other obligation is due and unpaid
26 to an employee, dependent, service provider or any other entity, the board shall issue a
27 notice of assessment detailing the amounts due and unpaid in each case and shall order
28 the amounts paid to the unpaid party or parties.

29 After an audit and examination, if the board determines that an assessment in the
30 aggregate could equal or exceed the amount of compensation, interest, penalty or other
31 obligations identified in audit, a hearing must be held before a 3-member panel composed
32 of the executive director, a hearing officer appointed by the board and the Superintendent
33 of Insurance or the superintendent's designee. The superintendent or the superintendent's
34 designee shall serve as the chair of the panel. The panel shall render its decision by
35 majority vote and advise the board of its decision. The board shall then issue a notice of
36 assessment accordingly.

37 **2. Penalty.** In addition to any other penalty assessment permitted under this Act, the
38 ~~board~~ Superintendent of Insurance may assess civil penalties not to exceed \$25,000 upon
39 finding, after hearing, that an employer, insurer or 3rd-party administrator for an
40 employer has engaged in a pattern of questionable claims-handling techniques or repeated
41 unreasonably contested claims. ~~The board shall certify its findings to the~~ The

1 Superintendent of Insurance, ~~who shall take appropriate action so as to bring any such~~
2 ~~practices to a halt. This certification by the board is exempt from the provisions of the~~
3 ~~Maine Administrative Procedure Act.~~ The amount of any penalty assessed pursuant to
4 this subsection must be directly related to the severity of the pattern of questionable
5 claims-handling techniques or repeated unreasonably contested claims. All penalties
6 collected pursuant to this subsection must be deposited in the General Fund. An
7 insurance carrier's payment of any penalty assessed under this section may not be
8 considered an element of loss for the purpose of establishing rates for workers'
9 compensation insurance.

10 **3. Monitoring.** No later than July 1, 1993 the board shall implement a monitoring
11 program to evaluate and compare the cost, utilization and performance of the workers'
12 compensation system for each calendar year beginning with 1988. The information
13 compiled must include the number of injuries occurring and claims filed as compared to
14 employment levels, the type and cost of the benefits provided, attorney involvement and
15 litigation levels, and the long-term, postinjury economic status of injured workers, as well
16 as any other data that is actuarially valid and can be utilized to accomplish the purposes
17 of this Act, including rulemaking and recommending legislation. The board shall report
18 the results of its monitoring program to the joint standing committee having jurisdiction
19 over workers' compensation matters on an annual basis by March 1st of each year.

20 **Sec. 16. Task force.** The Workers' Compensation Board, established in the Maine
21 Revised Statutes, Title 39-A, shall convene a task force to study psychological injury and
22 impairment arising out of injuries sustained by employees in the course of employment.
23 The board shall invite the participation of health care professionals, including
24 psychiatrists, psychologists, licensed clinical professional counselors; attorneys; a
25 representative of Maine Employers' Mutual Insurance Company; a commercial workers'
26 compensation insurance carrier; a representative of the Workers' Compensation
27 Coordinating Council of Maine; a representative of the Maine AFL-CIO; a representative
28 of the Maine State Chamber of Commerce; and the Superintendent of Insurance.

29 In conducting its review, the task force shall evaluate the appropriate clinical standards
30 for use in the evaluation of psychological impairment, the degree to which claims based
31 on psychological impairment have increased or decreased over the past 10 years and the
32 extent to which employees who have been diagnosed as suffering a psychological
33 impairment arising out of a work-related injury have been able to return to gainful
34 employment.

35 No later than February 1, 2016, the Worker's Compensation Board shall submit the report
36 of the task force, together with any recommendations, to the Joint Standing Committee on
37 Labor, Commerce, Research and Economic Development.

38 SUMMARY

39 This bill makes the following changes to the laws governing workers' compensation
40 and the Workers' Compensation Board, or "board."

1 1. It repeals language requiring the board to hire qualified persons to serve as hearing
2 officers, and instead requires hearing officers to be appointed by the Governor and
3 confirmed by the Senate.

4 2. Current law authorizes the board to establish the terms of hearing officers by rule;
5 this bill instead provides that the initial term of a hearing officer is 3 years and subsequent
6 terms are 5 years.

7 3. It provides that if a violation of the Maine Workers' Compensation Act of 1992
8 results in a de minimus alteration to a calculation of benefits, a report to the Attorney
9 General is not required.

10 4. It requires that a person appointed to investigate circumstances surrounding an
11 industrial injury or to conduct an audit must submit a report of the investigation or audit
12 to the Superintendent of Insurance as well as to the board.

13 5. It eliminates authorization for the board to audit the Maine Insurance Guaranty
14 Association.

15 6. It authorizes the disclosure of audit working papers to the Superintendent of
16 Insurance.

17 7. It provides that an employee who has received a personal injury arising out of and
18 in the course of employment and who has returned to work on a full-time basis is entitled
19 to compensation for time spent attending medical appointments related to the injury that
20 occur during hours that the employee is customarily at work.

21 8. It specifies that for a first failure to pay benefits, the penalty for delay of \$50 per
22 day may not be more than \$500, and that for a second failure to pay, the penalty for delay
23 of \$50 per day may not be more than \$1,000.

24 9. It eliminates language identifying the Maine Insurance Guaranty Association as an
25 employer or insurance carrier for purposes of assessing penalties for delay in payment.

26 10. It specifies that wage statements must report wages of the employee in the same
27 manner as wages are paid.

28 11. It requires that if an independent medical examiner is assigned by the board, the
29 assignment must be made within 30 days of the request.

30 12. It requires that the independent medical examiner submit a written report of
31 findings within a reasonable time following the examination. If a report is not filed
32 within 60 days following the examination, the hearing officer is directed to follow up
33 with the independent medical examiner.

34 13. It requires the board to annually publish its findings regarding the quality and
35 timeliness of the submission of medical findings by independent medical examiners.

1 14. It requires hearing officers to render decisions within 60 days of the close of
2 evidence of a hearing unless the executive director authorizes the hearing officer to take
3 additional time to render the decision.

4 15. It specifies that the law governing the determination of attorney's fees for lump-
5 sum settlements applies to injuries occurring after January 1, 2015; that the computation
6 of the amount is based on the indemnity benefits of the settlement; and that a fee may not
7 be assessed for the amount of any settlement intended to pay for current or future medical
8 costs.

9 16. It specifies that a de minimus error in the calculation of average weekly wage
10 may not be considered in the calculation of a penalty.

11 17. It specifies that, if after an audit the board determines that an assessment in the
12 aggregate could equal or exceed the amount of compensation, interest, penalty or other
13 obligations, a hearing must be held before a panel composed of the executive director of
14 the board, the Superintendent of Insurance and a hearing officer appointed by the board.

15 18. It authorizes the Superintendent of Insurance, rather than the board, to assess
16 civil penalties if it is found that an employer, insurer or 3rd-party administrator for an
17 employer has engaged in a pattern of questionable claims-handling techniques or repeated
18 unreasonable contested claims.

19 19. It requires the board to annually report the results of its monitoring program to
20 the joint standing committee of the Legislature having jurisdiction over workers'
21 compensation matters.

22 20. It directs the board to conduct a study regarding psychological injury and
23 impairment arising out of injuries sustained by employees in the course of employment.