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Date: (Filing No. H-)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 791, L.D. 1056, Bill, “An Act To Increase the Availability of Independent Medical Examiners under the Workers' Compensation Act of 1992”

Amend the bill by striking out everything after the title and before the summary and inserting the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there is a long waiting list of injured workers in need of independent medical examinations due to the shortage of available independent medical examiners, which has been further exacerbated by the recent and unexpected retirement of a specialist who had 12 pending cases; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 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. A physician, surgeon or chiropractor who examines an employee at the request of the employer is limited to 12 examinations in a calendar year and may not act as an independent medical examiner pursuant to section 312 for an employee that physician, surgeon or chiropractor has previously examined. The physician, surgeon or chiropractor must have an active practice of treating patients. For purposes of this

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1 section, "active practice" may be demonstrated by having active clinical privileges at a
2 hospital. A physician or surgeon must be certified in the field of practice that treats the
3 type of injury complained of by the employee. Certification must be by a board
4 recognized by the American Board of Medical Specialties or the American Osteopathic
5 Association or their successor organizations. A chiropractor licensed by the Board of
6 Chiropractic Licensure, who has an active practice of treating patients may provide a 2nd
7 opinion when the initial opinion was given by a chiropractor. Once an employer selects a
8 health care provider to examine an employee, the employer may not request that the
9 employee be examined by more than one other health care provider, other than an
10 independent medical examiner appointed pursuant to section 312, without prior approval
11 from the employee or a hearing officer. This provision does not limit an employer's right
12 to request that the employee be examined by a specialist upon referral by the health care
13 provider. Once the employee is examined by the specialist, the employer may not request
14 that the employee be examined by a different specialist in the same specialty, other than
15 an independent medical examiner appointed pursuant to section 312, without prior
16 approval from the employee or the board. The employee has the right to have a
17 physician, surgeon or chiropractor of the employee's own selection present at such an
18 examination, whose costs are paid by the employer. The employer shall give the
19 employee notice of this right at the time the employer requests an examination.

20 **Sec. 2. 39-A MRSA §312, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and
21 affected by §§9 to 11, is amended to read:

22 **1. Examiner system.** The board shall develop and implement an independent
23 medical examiner system consistent with the requirements of this section. As part of this
24 system, the board shall, in the exercise of its discretion, create, maintain and periodically
25 validate a list of not more than 50 health care providers that it finds to be the most
26 qualified and to be highly experienced and competent in their specific fields of expertise
27 and in the treatment of work-related injuries to serve as independent medical examiners
28 from each of the health care specialties that the board finds most commonly used by
29 injured employees. An independent medical examiner must be certified in the field of
30 practice that treats the type of injury complained of by the employee. Certification must
31 be by a board recognized by the American Board of Medical Specialties or the American
32 Osteopathic Association or their successor organizations. The board shall establish a fee
33 schedule for services rendered by independent medical examiners and adopt any rules
34 considered necessary to effectuate the purposes of this section.

35 **Sec. 3. 39-A MRSA §312, sub-§2**, as amended by PL 2005, c. 24, §1, is further
36 amended to read:

37 **2. Duties.** An independent medical examiner shall render medical findings on the
38 medical condition of an employee and related issues as specified under this section. The
39 independent medical examiner in a case may not be the employee's treating health care
40 provider and may not have treated the employee with respect to the injury for which the
41 claim is being made or the benefits are being paid. Nothing in this subsection precludes
42 the selection of a provider authorized to receive reimbursement under section 206 to
43 serve in the capacity of an independent medical examiner. Unless agreed upon by the
44 parties or no other physician is reasonably available, a physician who is not eligible to be
45 assigned as an independent medical examiner if the physician has examined an the

1 employee at the request of an insurance company, employer or employee in accordance
2 with section 207 or has been closely affiliated with the insurance company at any time
3 during the previous 52 weeks is not eligible to serve as an. An independent medical
4 examiner that examines an employee in accordance with section 207 shall notify the
5 board of the name of the employee, the employer or the insurance company that
6 requested the examination and the date of the examination within 10 days of the date of
7 the examination.

8 **Sec. 4. Report.** The Workers' Compensation Board shall submit a report that
9 includes its findings and recommendations by January 15, 2013 to the joint standing
10 committee of the Legislature having jurisdiction over workers' compensation matters
11 regarding the board's review of the independent medical examiner selection process
12 pursuant to the Maine Revised Statutes, Title 39-A, section 312 and the number of
13 independent medical examiners who have examined employees in accordance with Title
14 39-A, section 207. The joint standing committee is authorized to introduce a bill related
15 to the board's report to the First Regular Session of the 126th Legislature.

16 **Emergency clause.** In view of the emergency cited in the preamble, this
17 legislation takes effect when approved.'

18 SUMMARY

19 This amendment replaces the bill. It specifies that health care providers who examine
20 injured workers at the request of an employer in accordance with the Maine Revised
21 Statutes, Title 39-A, section 207 are limited to 12 such examinations per calendar year. It
22 adds the requirement that independent medical examiners be certified in the field of
23 practice of the injury by a board recognized by the American Board of Medical
24 Specialties or the American Osteopathic Association. It clarifies that an independent
25 medical examiner may not be assigned to an injured worker if the independent medical
26 examiner has previously examined the worker or has been closely affiliated with the
27 insurance company at any time during the preceding 52 weeks unless there is no other
28 physician reasonably available. The amendment requires that an independent medical
29 examiner that examines an injured worker at the request of the employer in accordance
30 with Title 39-A, section 207 notify the Workers' Compensation Board of the name of the
31 employee, the employer or the insurer that requested the examination and the date of the
32 examination within 10 days of the date of the examination. The amendment also requires
33 that the board submit a report that includes findings and recommendations by January 15,
34 2013 to the joint standing committee of the Legislature having jurisdiction over workers'
35 compensation matters regarding the board's review of the selection process of
36 independent medical examiners and the number of independent medical examiners who
37 have examined injured workers at the request of employers or insurers. The joint
38 standing committee is authorized to introduce a bill related to the board's report to the
39 First Regular Session of the 126th Legislature. The amendment adds an emergency
40 preamble and emergency clause.