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Date: (Filing No. S- )

**LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
127TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 391, L.D. 1119, Bill, “An Act To Amend the Laws Governing the Filing of Wage Statements by Employers and To Clarify the Statute of Limitations under the Maine Workers' Compensation Act of 1992”

Amend the bill by striking out the title and substituting the following:

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

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

**'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:

**COMMITTEE AMENDMENT**

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

6 B. The board may employ ~~hearing officers~~ administrative law judges and mediators  
7 to serve at the pleasure of the board and who are not subject to the Civil Service Law.  
8 They are entitled to receive reimbursement of their actual, necessary and reasonable  
9 expenses incurred in the performance of their duties, consistent with policies  
10 established by the board.

11 **Sec. 4. 39-A MRSA §153, sub-§9**, as amended by PL 2005, c. 603, §3, is further  
12 amended to read:

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

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

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

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

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

23           (2) If an order or award of compensation or compensation scheme has been  
24 entered, the employer, insurer or group self-insurer shall petition the board for an  
25 order to reduce or discontinue benefits and may not reduce or discontinue  
26 benefits until the matter has been resolved by a decree issued by ~~a hearing officer~~  
27 an administrative law judge. The employer, insurer or group self-insurer may  
28 reduce or discontinue benefits pursuant to such a decree pending a motion for  
29 findings of fact and conclusions of law or pending an appeal from that decree.  
30 Upon the filing of a petition, the employer may discontinue or reduce the weekly  
31 benefits being paid pursuant to section 212, subsection 1 or section 213,  
32 subsection 1 based on the amount of actual documented earnings paid to the  
33 employee after filing the petition. The employer shall file with the board the  
34 documentation or evidence that substantiates the earnings and the employer may  
35 discontinue or reduce weekly benefits only for weeks for which the employer  
36 possesses evidence of such earnings.

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

39           **2. Employee selection.** After 10 days from the inception of health care under  
40 subsection 1, the employee may select a different health care provider by giving to the  
41 employer the name of the health care provider and a statement of intention to treat with  
42 the health care provider. The employer may file a petition objecting to the named health  
43 care provider selected by the employee and setting forth reasons for the objection. The  
44 issue of the health care provider must be set for mediation pursuant to section 313. If the  
45 objection is not resolved through mediation, after notice to all parties and a prompt

1 hearing by ~~a hearing officer~~ an administrative law judge, the ~~hearing officer~~  
2 administrative law judge may order one of the following:

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

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

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

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

39 **Sec. 8. 39-A MRSA §213, sub-§1**, as repealed and replaced by PL 2011, c. 647,  
40 §7, is amended to read:

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

43 A. If the injured employee's date of injury is prior to January 1, 2013, the weekly  
44 compensation is equal to 80% of the difference between the injured employee's after-

1 tax average weekly wage before the personal injury and the after-tax average weekly  
 2 wage that the injured employee is able to earn after the injury, but not more than the  
 3 maximum benefit under section 211. Compensation must be paid for the duration of  
 4 the disability if the employee's permanent impairment, determined according to  
 5 subsection 1-A and the impairment guidelines adopted by the board pursuant to  
 6 section 153, subsection 8, resulting from the personal injury is in excess of 15% to  
 7 the body. In all other cases an employee is not eligible to receive compensation  
 8 under this paragraph after the employee has received a total of 260 weeks of  
 9 compensation under section 212, subsection 1, this paragraph or both. The board  
 10 may in the exercise of its discretion extend the duration of benefit entitlement beyond  
 11 260 weeks in cases involving extreme financial hardship due to inability to return to  
 12 gainful employment. This authority may be delegated by the board, on a case-by-  
 13 case basis, to ~~a hearing officer~~ an administrative law judge or a panel of 3 ~~hearing~~  
 14 ~~officers~~ administrative law judges. Decisions made under this paragraph must be  
 15 made expeditiously. A decision under this paragraph made by ~~a hearing officer~~ an  
 16 administrative law judge or a panel of 3 ~~hearing officers~~ administrative law judges  
 17 may not be appealed to the board under section 320, but may be appealed pursuant to  
 18 section 322.

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

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

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

40 **§303. Reports to board**

41 When any employee has reported to an employer under this Act any injury arising out  
 42 of and in the course of the employee's employment that has caused the employee to lose a  
 43 day's work, or when the employer has knowledge of any such injury, the employer shall  
 44 report the injury to the board within 7 days after the employer receives notice or has  
 45 knowledge of the injury. An insured employer that has notice or knowledge of any such

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

21 If an employee has had an incapacity beyond the 14-day period established in section  
22 204 and subsequently returns to work and attends medical appointments related to the  
23 injury, the employer is not required to report the lost time for such appointments to the  
24 board if the employee did not lose wages for attending such appointments.

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

27 **3. Witnesses; discovery.** All witnesses must be sworn. Sworn written evidence  
28 may not be admitted unless the author is available for cross-examination or subject to  
29 subpoena; except that sworn statements by a medical doctor or osteopathic physician  
30 relating to medical questions, by a psychologist relating to psychological questions, by a  
31 chiropractor relating to chiropractic questions, by a certified nurse practitioner who  
32 qualifies as an advanced practice registered nurse relating to advanced practice registered  
33 nursing questions or by a physician's assistant relating to physician assistance questions  
34 are admissible in workers' compensation hearings only if notice of the testimony to be  
35 used is given and service of a copy of the letter or report is made on the opposing counsel  
36 14 days before the scheduled hearing.

37 Depositions or subpoenas of health care practitioners who have submitted sworn written  
38 evidence are permitted only if the ~~hearing officer~~ administrative law judge finds that the  
39 testimony is sufficiently important to outweigh the delay in the proceeding.

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

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

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

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

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

17           **Sec. 13. 39-A MRSA §318**, as amended by PL 2013, c. 63, §10 and affected by  
18 §16, is further amended to read:

19           **§318. Hearing and decision**

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

33           The ~~hearing officer~~ administrative law judge, upon motion by the petitioning party,  
34 may include a finding in the decree that the employer's refusal to pay the benefits at issue  
35 was not based on any rational grounds developed between the claim and formal hearing.  
36 Upon such a finding, the employer shall pay interest to the employee under section 205,  
37 subsection 6 at a rate of 25% per annum from the date each payment was due, instead of  
38 10% per annum.

39           The ~~hearing officer~~ administrative law judge, upon the motion of a party made within  
40 20 days after notice of the decision or upon its own motion, may find the facts specially  
41 and state separately the conclusions of law and file the appropriate decision if it differs  
42 from the decision filed before the request was made. Those findings and conclusions and  
43 the revised decision must be filed in the office of the board and a copy, attested by the  
44 clerk of the board, must be mailed promptly to all parties interested. The running of the

1 time for appeal is terminated by a timely motion made pursuant to this section and the full  
2 time for appeal commences to run from the filing of those findings and conclusions and  
3 the revised decision.

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

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

12 **§320. Review by full board**

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

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

27 The board shall vote on whether to review the decision. If a majority of the board's  
28 membership fails to vote to grant review or the board fails to act within 60 days after  
29 receiving the initial request for review, the decision of the ~~hearing officer~~ administrative  
30 law judge stands, and any appeal must be made to the division in accordance with section  
31 321-B. If the board votes to review the decision, the board may delegate responsibility  
32 for reviewing the decision of the ~~hearing officer~~ administrative law judge under this  
33 section to panels of board members consisting of equal numbers of representatives of  
34 labor and management. Review must be on the record and on written briefs only. Upon  
35 a vote of a majority of the board's membership, the board shall issue a written decision  
36 affirming, remanding, vacating or modifying the ~~hearing officer's~~ administrative law  
37 judge's decision. The written decision of the board must be filed with the board and  
38 mailed to the parties or their counsel. If the board fails to adopt a decision by majority  
39 vote, the decision of the ~~hearing officer~~ administrative law judge stands and is subject to  
40 direct appellate review in the same manner as if the board had not voted to review the  
41 decision.

42 **Sec. 15. 39-A MRSA §321-A, sub-§§2 and 3**, as enacted by PL 2011, c. 647,  
43 §20, are amended to read:



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

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

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

15           **§321-B. Appeal from administrative law judge decision**

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

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

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

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

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

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

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

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

2           **1. Appeals.** Any party in interest may present a copy of the decision of the division  
3 or a ~~decision~~ of the board, if the board has reviewed a decision pursuant to section 320, to  
4 the clerk of the Law Court within 20 days after receipt of notice of the filing of the  
5 decision by the division or the board. Within 20 days after the copy is filed with the Law  
6 Court, the party seeking review by the Law Court shall file a petition seeking appellate  
7 review with the Law Court that sets forth a brief statement of the facts, the error or errors  
8 of law that are alleged to exist and the legal authority supporting the position of the  
9 appellant.

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

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

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

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

24           **1. Order or decision.** The employer or insurance carrier shall make compensation  
25 payments within 10 days after the receipt of notice of an approved agreement for payment  
26 of compensation or within 10 days after any order or decision of the board awarding  
27 compensation. If the board enters a decision awarding compensation, and a motion for  
28 findings of fact and conclusions of law is filed with the ~~hearing officer~~ administrative law  
29 judge or an appeal is filed with the division pursuant to section 321-B or the Law Court  
30 pursuant to section 322, payments may not be suspended while the motion for findings of  
31 fact and conclusions of law or appeal is pending. The employer or insurer may recover  
32 from an employee payments made pending a motion for findings of fact and conclusions  
33 of law or appeal to the division or the Law Court if and to the extent that the ~~hearing~~  
34 ~~officer~~ administrative law judge, division or the Law Court has decided that the employee  
35 was not entitled to the compensation paid. The board has full jurisdiction to determine the  
36 amount of overpayment, if any, and the amount and schedule of repayment, if any. The  
37 board, in determining whether or not repayment should be made and the extent and  
38 schedule of repayment, shall consider the financial situation of the employee and the  
39 employee's family and may not order repayment that would work hardship or injustice.  
40 The board shall notify the Commissioner of Health and Human Services within 10 days  
41 after the receipt of notice of an approved agreement for payment of compensation or  
42 within 10 days after any order or decision of the board awarding compensation  
43 identifying the employee who is to receive the compensation. For purposes of this

1 subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty  
2 Association under Title 24-A, chapter 57, subchapter 3.

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

5 **§329. Interpreter required**

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

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

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

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

27 **3. Determinations.** The committee shall review requests for reimbursement within  
28 14 days of receipt of the request or within a longer period of time if mutually acceptable  
29 to the parties. The committee shall issue a final determination, designated as such, to  
30 each insurer or self-insurer that has requested reimbursement. An insurer or self-insurer  
31 may petition the board for a hearing before ~~a hearing officer~~ an administrative law judge  
32 within 30 days of notice of the determination. Review by the board is limited to errors of  
33 law and abuse of discretion.

34 **Sec. 22. 39-A MRSA §358-A, sub-§1, ¶¶F and G**, as enacted by PL 1997, c.  
35 486, §8, are amended to read:

36 F. The number of penalties assessed and the reasons for the assessments pursuant to  
37 section 205, subsection 3; section 313, subsection 4; section 324, subsections 2 and 3;  
38 section 359, subsection 2; and section 360; ~~and~~

39 G. The results of the monitoring program giving side-by-side information  
40 compilations for the past 5 years pursuant to section 359, subsection 3; ~~and~~

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

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

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

17 **SUMMARY**

18 This amendment replaces the bill and makes various changes in the workers'  
19 compensation laws.

20 1. It maintains the provision in the bill that provides that an employer may report  
21 wages of an employee to the Workers' Compensation Board in the same manner as the  
22 employee is paid and adds that an employer is not required to report lost time to the  
23 Workers' Compensation Board beyond 14 days for an injured employee who has returned  
24 to work and subsequently attended medical appointments if the employee did not lose  
25 wages for attending such appointments.

26 2. It requires the Workers' Compensation Board to inform the Maine Insurance  
27 Guaranty Association of the association's responsibilities under the Maine Workers'  
28 Compensation Act of 1992 within 180 days.

29 3. It changes the job title of hearing officer to administrative law judge, except for  
30 any hearing officer currently serving who is not admitted to the practice of law in Maine.

31 4. It requires the Workers' Compensation Board to develop rules in regards to the  
32 timing and deadlines for independent medical examiner examinations and directs the  
33 Workers' Compensation Board to annually report data regarding these examinations to  
34 the Legislature.

35 **FISCAL NOTE REQUIRED**

36 **(See attached)**