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Legislative Document

No. 1078

H.P. 813

House of Representatives, March 15, 2011

An Act To Amend the Audit and Enforcement Functions of the Workers' Compensation Board

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

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Clerk

Presented by Representative CUSHING of Hampden.
Cosponsored by Senator COURTNEY of York and
Representatives: CRAY of Palmyra, CURTIS of Madison, PARKER of Veazie, PRESCOTT
of Topsham, WEAVER of York, Senators: PLOWMAN of Penobscot, THIBODEAU of
Waldo.

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

2 **Sec. 1. 24-A MRSA §4438, sub-§1, ¶I**, as enacted by PL 2009, c. 129, §4 and
3 affected by §13, is amended to read:

4 I. Pay all penalties, sanctions, forfeitures and fines provided for under the Maine
5 Workers' Compensation Act of 1992 including penalties payable to the Workers'
6 Compensation Board and the General Fund, ~~except the penalty provided for in Title~~
7 ~~39-A, section 359, subsection 2.~~ No penalty, fine, forfeiture, attorney's fees or other
8 sanction may be imposed on the association if:

9 (1) The Workers' Compensation Board finds that the association was prevented
10 from complying with the Maine Workers' Compensation Act of 1992 because the
11 association was unable in the exercise of reasonable diligence to obtain the
12 records of the insolvent insurer; or

13 (2) The Workers' Compensation Board finds that the association was prevented
14 from complying with the Maine Workers' Compensation Act of 1992 because of
15 circumstances beyond its reasonable control.

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

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

1 Bureau of Labor Standards within the Department of Labor. An annual summary must be
2 provided to the Governor and to the joint standing committees of the Legislature having
3 jurisdiction over labor and banking and insurance matters by February 15th of each year.
4 The quarterly compliance reports and the annual summaries must be made available to
5 the public following distribution.

6 **Sec. 3. 39-A MRSA §358-A, sub-§1**, as enacted by PL 1997, c. 486, §8, is
7 amended to read:

8 **1. Workers' compensation system annual report.** The board, in consultation with
9 the Superintendent of Insurance and the Director of the Bureau of Labor Standards within
10 the Department of Labor, shall submit an annual report to the Governor and the joint
11 standing committees of the Legislature having jurisdiction over labor and banking and
12 insurance matters by February 15th of each year regarding the status of the workers'
13 compensation system. At a minimum, the report must include an assessment of the
14 board's implementation of the following provisions:

15 ~~A. The number of individual cases monitored to ensure the provision of benefits in~~
16 ~~accordance with law, pursuant to section 152, subsection 10;~~

17 ~~B. The number of cases monitored to ensure the payments are initiated within the~~
18 ~~time limits of sections 205 and 324 and the adequacy of compensation provided~~
19 ~~pursuant to section 153, subsection 1;~~

20 ~~C. The number of investigations performed pursuant to section 153, subsection 7;~~

21 ~~D. The number of lump sum settlements cases monitored and a summary of~~
22 ~~postsettlement employment experience pursuant to section 352, subsection 6;~~

23 E. The number of audits performed and an assessment of compliance with this Act
24 based on audit results pursuant to section 359, subsection 1; and

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

28 ~~G. The results of the monitoring program giving side by side information~~
29 ~~compilations for the past 5 years pursuant to section 359, subsection 3.~~

30 ~~The report must contain specific data regarding compliance, including benchmarks~~
31 ~~measuring individual insurer's, self insurer's, or 3rd party administrator's compliance with~~
32 ~~the provisions of this Act and any penalties assessed. Benchmarks must be developed by~~
33 ~~the board with input from insurers, self insurers and 3rd party administrators and other~~
34 ~~parties the board considers appropriate. The board shall also report on the utilization of~~
35 ~~troubleshooters, advocates and retained legal counsel, with correlating outcomes.~~

36 **Sec. 4. 39-A MRSA §359**, as amended by PL 2009, c. 129, §11 and affected by
37 §13, is further amended to read:

38 **§359. Audits; ongoing evaluation**

39 **1. Audits.** ~~The board shall audit claims, including insurer, self insurer, Maine~~
40 ~~Insurance Guaranty Association and 3rd party administrator claim files, on an ongoing~~

1 basis to determine whether insurers, self-insured employers, the Maine Insurance
2 Guaranty Association and 3rd party administrators have met their obligations under this
3 Act and to identify the disputes that arose, the reasons for the disputes, the method and
4 manner of their resolution, the costs incurred, the reasons for attorney involvement and
5 the services rendered by the attorneys. When the board has probable cause to believe that
6 an insurer, self-insurer, the Maine Insurance Guaranty Association or a 3rd-party
7 administrator has not met an obligation under this Act, the board shall audit the matter to
8 determine whether that obligation has been met.

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

14 ~~**2. Penalty.** In addition to any other penalty assessment permitted under this Act, the~~
15 ~~board may assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an~~
16 ~~employer, insurer or 3rd party administrator for an employer has engaged in a pattern of~~
17 ~~questionable claims handling techniques or repeated unreasonably contested claims. The~~
18 ~~board shall certify its findings to the Superintendent of Insurance, who shall take~~
19 ~~appropriate action so as to bring any such practices to a halt. This certification by the~~
20 ~~board is exempt from the provisions of the Maine Administrative Procedure Act. The~~
21 ~~amount of any penalty assessed pursuant to this subsection must be directly related to the~~
22 ~~severity of the pattern of questionable claims handling techniques or repeated~~
23 ~~unreasonably contested claims. All penalties collected pursuant to this subsection must~~
24 ~~be deposited in the General Fund. An insurance carrier's payment of any penalty assessed~~
25 ~~under this section may not be considered an element of loss for the purpose of~~
26 ~~establishing rates for workers' compensation insurance.~~

27 **3. Ongoing evaluation.** No later than July 1, 1993 the The board shall implement a
28 ~~monitoring~~ program to evaluate and compare the cost, utilization and performance of the
29 workers' compensation system for each calendar year beginning with 1988. The
30 information compiled must include the number of injuries occurring and claims filed as
31 compared to employment levels, the type and cost of the benefits provided, attorney
32 involvement and litigation levels, and the long-term, postinjury economic status of
33 injured workers, as well as any other data that is actuarially valid and can be utilized to
34 accomplish the purposes of this Act, including rulemaking and recommending legislation.

35 SUMMARY

36 This bill amends the audit and enforcement functions of the Workers' Compensation
37 Board.

38 1. It eliminates the duty of the board to monitor the claims handling practices of
39 insurers, self-insurers, the Maine Insurance Guaranty Association and 3rd-party
40 administrators and eliminates the monitoring program.

41 2. It requires that, in order for the board to audit an insurer, self-insurer, the Maine
42 Insurance Guaranty Association or a 3rd-party administrator, the board have probable

1 cause to believe that an insurer, self-insurer, the Maine Insurance Guaranty Association
2 or a 3rd-party administrator has not met an obligation under the Maine Workers'
3 Compensation Act of 1992.

4 3. It eliminates the board's authority to assess penalties on employers, insurers or
5 3rd-party administrators that engage in a pattern of questionable claims-handling
6 techniques or repeated unreasonably contested claims.