

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION

2
3 ONE HUNDRED AND TENTH LEGISLATURE

4
5 **Legislative Document**

No. 1952

6
7 H. P. 1981 House of Representatives, February 10, 1982
Filed by the Joint Standing Committee on Labor under Joint Rule
18, pursuant to H. P. 1629. Approved by the Legislative Council June 4,
1981..

8 Reported by Representative Beaulieu from the Committee on
Labor pursuant to H. P. 1629 and printed under Joint Rules No. 18.
EDWIN H. PERT, Clerk

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10 STATE OF MAINE

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12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO

14
15 **AN ACT to Revise the Workers' Compensation**
16 **Laws Relating to Occupational Hearing Loss.**

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

19 39 MRSA §193, as last amended by PL 1979, c. 313, is
20 repealed and the following enacted in its place:

21 §193. Occupational loss of hearing

22 1. Occupational hearing loss. Compensation for
23 noise-induced occupational loss of hearing which constitutes
24 an occupational disease shall be paid only as provided in
25 this chapter.

26 2. Definitions. As used in this chapter, unless the
27 context indicates otherwise, the following terms have the
28 following meanings.

29 A. "ANSI" means the American National Standards Insti-
30 tute.

1 B. "Noise-induced occupational hearing loss" means a
2 permanent bilateral loss of hearing acuity of the
3 sensorineural type due to prolonged exposure to poten-
4 tially hazardous noise in employment. For purposes of
5 this chapter, sudden hearing loss resulting from a sin-
6 gle, short noise exposure, such as an explosion, shall
7 not be considered an occupational disease but shall be
8 considered as an injury. Also for purposes of this
9 chapter, tinnitus shall not be considered a compensable
10 condition.

11 C. "Potentially hazardous noise" means noise which
12 exceeds the permissible daily exposure to the corre-
13 sponding noise level as shown in the following table:

<u>Noise Level (dBA)</u>	<u>Permissible Daily Exposure</u>
<u>90</u>	<u>8 hours</u>
<u>95</u>	<u>4 hours</u>
<u>100</u>	<u>2 hours</u>
<u>105</u>	<u>1 hour</u>
<u>110</u>	<u>30 minutes</u>
<u>115</u>	<u>15 minutes</u>

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21 D. "Prolonged exposure" means exposure to potentially
22 hazardous noise in employment for a period of at least
23 one year.

24 E. "Sensorineural hearing loss" means a loss of hear-
25 ing acuity due to damage to the inner ear which can
26 result from numerous causes, as distinguished from con-
27 ductive hearing loss which results from disease or
28 injury involving the middle ear or outer ear or both
29 and which is not caused by prolonged exposure to noise.

30 3. Degree of hearing loss; determination of degree.
31 The degree of hearing loss shall be determined as follows.

32 A. For purposes of determining the degree of hearing
33 loss for awarding compensation for noise-induced
34 occupational hearing loss, the average threshold, for
35 each ear shall be determined by adding the ANSI hearing
36 thresholds for the 4 frequencies, 500, 1,000, 2,000 and
37 3,000 Hertz and dividing that sum by 4. To determine
38 the binaural disability, subtract 30dB, low fence, from
39 the obtained average in each ear. This decibel amount
40 is then multiplied by 1.5% for each ear. The smaller
41 percentage, the better ear, is then multiplied by 5 and
42 added to the larger number, the poorer ear, and the
43 resulting number is divided by 6. This resulting

1 number is the percentage of binaural hearing disability
2 to be used under subsection 9.

3 B. If the better ear has a hearing loss of 30 dB or
4 less as measured from 0 dB on an audiometer calibrated
5 to ANSI S3.6 - 1969 American National Standard "Speci-
6 fications for Audiometers," or 20dB or less as measured
7 on an audiometer calibrated to ASA-Z 24.5 - 1951 "Amer-
8 ican Standard Specifications for Pure Tone Audiometer
9 for Screening Purposes," the hearing loss shall not be
10 compensable. If the audiogram is performed on an ASA
11 calibrated audiometer, the hearing threshold level must
12 be converted to ANSI calibration levels.

13 4. Liability for hearing loss; previous hearing loss;
14 preplacement audiometric testing. Liability for hearing
15 loss is as follows.

16 A. An employer shall be liable for the hearing loss of
17 an employee to which his employment has contributed.
18 If previous occupational hearing loss or hearing loss
19 from nonoccupational causes is established by competent
20 evidence, including the results of a preplacement audi-
21 ogram, the employer shall not be liable for the hearing
22 loss so established whether or not compensation has
23 previously been paid or awarded, and shall be liable
24 only for the difference between the percentage of dis-
25 ability determined as of the date of disability and the
26 percentage of disability established by the
27 preplacement audiogram.

28 B. An employer may require an employee to undergo
29 audiometric testing at the expense of the employer at
30 the time of termination of employment. The employer
31 shall be required to notify the employee, in writing,
32 of this requirement and the penalty, as provided in
33 this paragraph, for noncompliance with the requirement
34 at or before the employee's termination date. In the
35 event of refusal or failure by the employee to undergo
36 audiometric testing within 60 days after receipt of
37 written notice of the scheduling of the test by the
38 employer, the employee shall be penalized by losing any
39 right to compensation, unless the failure is due to a
40 legitimate reason as determined by a commissioner.

41 C. Any employee who undergoes audiometric testing at
42 the direction of an employer may request a copy of the
43 results which shall be provided to him within 2 weeks
44 of the request.

1 D. For purposes of verifying the degree of hearing
2 loss for awarding compensation, an employee may intro-
3 duce audiometric test results obtained, at his own
4 expense within 30 days after employer testing, from any
5 qualified individual as set forth in subsection 8.

6 5. Administration of testing. A commissioner shall
7 have the discretion to order further audiometric testing if
8 there is any question of reliability in the administration
9 of the testing under this section.

10 6. Frequencies; evaluation of hearing loss. In any
11 evaluation of occupational hearing loss, only hearing levels
12 at frequencies of 500, 1,000, 2,000 and 3,000 Hertz shall be
13 considered.

14 7. Hearing tests; instruments; test condi-
15 tions. Hearing levels shall be determined at all times by
16 using pure tone air-conduction audiometric instruments cali-
17 brated in accordance with ANSI standards S3.6 - 1969 - R
18 1973 and S3.13 - 1972 and performed in an environment as
19 prescribed by ANSI standard S.31 - 1960 R 1971, American
20 Standard Criteria for Background Noise in Audiometer Rooms.
21 To measure permanent hearing loss, hearing tests shall be
22 performed after at least 14 hours absence from exposure to
23 hazardous noise. Adequate hearing protection is acceptable
24 for 14 quiet hours. The electroacoustic calibration of an
25 audiometric instrument used to measure permanent hearing
26 loss shall have been performed within one year of the time
27 of the hearing examination, to assure that the audiometer is
28 within the tolerances permitted by the ANSI standards. On
29 the day of the examination, the audiometer also shall have
30 been given a functional test by a person with known, stable
31 hearing thresholds and a listening test to ensure that the
32 audiometer's output is free from distorted or unwanted
33 sounds.

34 8. Audiometric technician to perform hearing
35 test. All hearing tests shall be performed by a person at
36 the level of a certified audiometric technician or above or
37 by an individual who meets the training requirements speci-
38 fied by the Intersociety Committee on Audiometric Technician
39 Training, American Industrial Hygiene Association Journal
40 27:303-304, May-June 1966.

41 9. Compensation for noise-induced occupational hearing
42 loss. There shall be payable for total (100%) hearing loss
43 200 weeks of compensation. For partial hearing loss, com-
44 ensation shall be payable for the number of weeks which
45 bears the same percentage relationship to 200 weeks as the

1 calculated percentage loss bears to total hearing loss.
2 Notwithstanding any other provision of this Title, the maxi-
3 um weekly benefit shall, for the purpose of this section,
4 be considered to be 100% of the average weekly wage in the
5 State as computed by the Bureau of Employment Security.

6 10. Filing of claims. No claim for compensation for
7 occupational hearing loss may be filed until after the
8 employee has been separated from the occupational noise for
9 a period of at least 30 days. The last day of this period
10 shall be the date of disability. "Separation from the
11 occupational noise" may be achieved by the use of effective
12 hearing protective devices or equipment.

13 11. Award; use of hearing aids. No reduction in award
14 for hearing loss may be made if the ability of the employee
15 to understand speech is improved by the use of a hearing
16 aid. The employer shall not be required to furnish hearing
17 aids or accessories in case of occupational hearing loss.

18 12. Effective date. This section shall apply only to
19 actions instituted after its effective date. The require-
20 ments concerning the calibration and testing of audiometric
21 instruments set forth in subsection 7 shall apply only to
22 hearing examinations which are conducted after that date.

23 STATEMENT OF FACT

24 This bill increases the frequency levels at which
25 occupational hearing loss is compensable under the workers'
26 compensation law. Under present law, if an individual sus-
27 tains a hearing loss due to occupational noise exposure in
28 frequencies above 2,000 cycles per second, he is not enti-
29 tled to compensation. This bill adds a 3,000 cycle level to
30 the existing levels of compensable frequencies.

31 Standing alone, this change would not only increase the
32 number of hearing loss claims, but also the amount of com-
33 pensation awarded per claim. In order to partially offset
34 the anticipated additional costs as well as to minimize the
35 impact on workers' compensation insurance rates, the bill
36 makes a number of other changes. The most important of
37 these changes are an increase in the threshold sound pres-
38 sure level used in calculating hearing loss and an adjust-
39 ment of the maximum benefit levels for hearing loss.