

MAINE STATE LEGISLATURE

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DATE: April 5, 2002 (Filing No. S597)

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STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "B" to S.P. 822, L.D. 2202, Bill, "An Act to Ensure that 25% of Workers' Compensation Cases with Permanent Impairment Remain Eligible for Duration-of-disability Benefits in Accordance With the Workers' Compensation Act"

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

'Sec. 1. 39-A MRSA §213, sub-§1,' as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

1. Benefit and duration. While the incapacity for work is partial, the employer shall pay the injured employee a weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured employee is able to earn after the injury, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the disability if the employee's permanent impairment, determined according to subsection 1-A and the impairment guidelines adopted by the board pursuant to section 153, subsection 8 resulting from the personal injury is in excess of 15% to the body. In all other cases an employee is not eligible to receive compensation under this section after the employee has received 260 weeks of compensation under section 212, subsection 1, this section or both. The board may in the exercise of its discretion extend the duration of benefit

SENATE AMENDMENT

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SENATE AMENDMENT 'B' to S.P. 822, L.D. 2202

2 entitlement beyond 260 weeks in cases involving extreme financial
hardship due to inability to return to gainful employment. This
4 authority may not be delegated to a hearing officer and such
decisions must be made expeditiously.

6 **Sec. 2. 39-A MRSA §213, sub-§1-A** is enacted to read:

8 1-A. Determination of permanent impairment. For purposes
of this section, "permanent impairment" includes only permanent
10 impairment resulting from:

12 A. The work injury at issue in the determination;

14 B. Any work injury other than the work injury at issue in
the determination that combines with that injury and
16 contributes to the employee's incapacity; or

18 C. Any preexisting condition or injury that is aggravated
or accelerated by the work injury at issue.

20 **Sec. 3. 39-A MRSA §213, sub-§2**, as enacted by PL 1991, c. 885,
22 Pt. A, §8 and affected by §§9 to 11, is amended to read:

24 **2. Threshold adjustment.** Effective January 1, 1998 and
every other January 1st thereafter, the board, using an
26 independent actuarial review based upon actuarially sound data
and methodology, must adjust the 15% impairment threshold
28 established in subsection 1 so that 25% of all cases with
permanent impairment will be expected to exceed the threshold and
30 75% of all cases with permanent impairment will be expected to be
less than the threshold. The actuarial review must include all
32 cases receiving permanent impairment ratings on or after January
1, 1993, irrespective of date of injury, but may utilize a cutoff
34 date of 90 days prior to each adjustment date to permit the
collection and analysis of data. The data must be adjusted to
36 reflect ultimate loss development. In order to ensure the
accuracy of the data, the board shall require that all cases
38 involving permanent injury, including those settled pursuant to
section 352, include an impairment rating performed in accordance
40 with subsection 1-A and the guidelines adopted by the board and
either agreed to by the parties or determined by the board. Each
42 adjusted threshold is applicable to all cases with dates of
injury on or after the date of adjustment and prior to the date
44 of the next adjustment.

46 **Sec. 4. Application; retroactivity.** This Act applies
retroactively to injuries occurring on or after January 1, 1993,
48 except that it does not apply to those injuries for which a
determination of permanent impairment has been made by order of a
50 hearing officer or by agreement of the parties prior to April 1,
2002.'

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FISCAL NOTE

This amendment eliminates the cost associated with those elements of the Kotch v. American Protective Services, Inc. decision that allowed for combining unrelated work and nonwork injuries in determining eligibility for duration-of-disability wage loss benefits.

As amended, this bill will partially reduce the amount of an unbudgeted increase in costs to state agencies through increased workers' compensation payment and premiums beginning in fiscal year 2002-03 associated with those elements of the Kotch v. American Protective Services, Inc. decision that allowed for combining prior work injuries that contribute to the incapacity but do not aggravate or accelerate the current work injury. The total savings to state agencies can not be determined at this time.

SUMMARY

This amendment overrides the court decision in the case of Kotch v. American Protective Services, Inc., 2002 ME 19, and clarifies the method for determining permanent impairment consistent with case law prior to the Kotch decision. It provides that the determination of permanent impairment for purposes of section 213 of the Workers' Compensation Act of 1992 must include the work injury at issue as well as other work injuries that combine with the work injury at issue and contribute to the incapacity. It also includes permanent impairment arising from other preexisting conditions and injury, but only if those conditions or injuries are aggravated or accelerated by the work injury at issue.

This amendment makes this change retroactive.

SPONSORED BY: 
(President Pro Tem M. MICHAUD)

COUNTY: Penobscot