

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2002

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Legislative Document

No. 2202

S.P. 822

In Senate, March 25, 2002

**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.**

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Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Pamela L. Cahill".

PAMELA L. CAHILL  
Secretary of the Senate

Presented by Senator KILKELLY of Lincoln. (GOVERNOR'S BILL).  
Cosponsored by Representative TREADWELL of Carmel and  
Senators: NUTTING of Androscoggin, TURNER of Cumberland, Representatives: ETNIER  
of Harpswell, MacDOUGALL of North Berwick.

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

2           **Sec. 1. 39-A MRSA §213, sub-§2**, as enacted by PL 1991, c. 885,  
4 Pt. A, §8 and as affected by §§9 to 11, is amended to read:

6           **2. Threshold adjustment.** Effective January 1, 1998 and  
8 every other January 1st thereafter, the board, using an  
10 independent actuarial review based upon actuarially sound data  
12 and methodology, must adjust the 15% impairment threshold  
14 established in subsection 1 so that 25% of all cases with  
16 permanent impairment will be expected to exceed the threshold and  
18 75% of all cases with permanent impairment will be expected to be  
20 less than the threshold. The actuarial review must include all  
22 cases receiving permanent impairment ratings on or after January  
24 1, 1993, irrespective of date of injury, but may utilize a cutoff  
26 date of 90 days prior to each adjustment date to permit the  
28 collection and analysis of data. The data must be adjusted to  
30 reflect ultimate loss development. In order to ensure the  
32 accuracy of the data, the board shall require that all cases  
34 involving permanent injury, including those settled pursuant to  
36 section 352, include an impairment rating ~~performed in accordance  
38 with the guidelines adopted by the board and either agreed to by  
40 the parties or determined by the board~~ reflecting only permanent  
42 impairment that results from a work injury, including permanent  
44 impairment that exists as a result of the injury's having  
46 aggravated or accelerated a preexisting condition or injury. The  
48 impairment ratings may not reflect permanent impairment to the  
50 body parts or conditions not medically affected by the work  
injury even if those impairments or conditions combine with the  
work injury to give rise to a compensable disability for the  
purposes of section 201, subsection 4. Each adjusted threshold  
is applicable to all cases with dates of injury on or after the  
date of adjustment and prior to the date of the next adjustment.

The data used by the board for the purpose described in this  
subsection must reflect or may be adjusted to reflect only that  
permanent impairment that results from a work injury, including  
permanent impairment that exists as a result of the injury's  
having aggravated or accelerated a preexisting condition or  
injury. The data may not reflect permanent impairment to body  
parts or conditions not affected by the work injury even if those  
preexisting conditions or injuries combine with the work injury  
to give rise to a compensable disability for the purposes of  
section 201, subsection 4.

These standards apply with like force to individual permanent  
impairment assessments performed for the purposes of determining  
whether an employee is eligible for partial incapacity benefits  
for the duration of the disability in accordance with this  
subsection and subsection 1.

2           **Sec. 2. Application.** This Act does not apply to individual  
3 cases in which a previous final decree finding the extent of  
4 permanent impairment has been issued and appeal proceedings have  
5 been completed.

6  
7           **Sec. 3. Retroactivity.** Notwithstanding the Maine Revised  
8 Statutes, Title 1, section 302, this Act applies retroactively to  
9 permanent impairment assessments made under Title 39-A, section  
10 213 for injuries subject to section 213 and to all pending  
11 proceedings.

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### SUMMARY

15           The Maine Workers' Compensation Act of 1992, the Maine  
16 Revised Statutes, Title 39-A, Part 1, requires in section 213  
17 that 25% of all injured workers with permanent partial injuries  
18 be eligible to receive benefits for the duration of the  
19 disability. The remaining 75% of injured workers with less  
20 serious, permanent partial injuries are subject to a durational  
21 benefit cap that is currently 364 weeks. The cases that fall  
22 within the 25% band are some of the most expensive cases in the  
23 system. Any changes that affect eligibility for unlimited  
24 durational benefits without a corresponding adjustment to the  
25 eligibility threshold will significantly increase the total  
26 system costs.

27

28           The purpose of this bill is to maintain the requirement  
29 contained in the Maine Workers' Compensation Act of 1992, section  
30 213 that 25% of workers' compensation cases involving permanent  
31 injury be eligible for duration-of-disability benefits rather  
32 than the durational benefit cap. This bill clarifies that, when  
33 the board collects permanent impairment data to determine the  
34 point at which 25% of cases will be eligible for  
35 duration-of-disability benefits, the data may not include  
36 permanent impairment that is unrelated to the work injury at  
37 issue even if such permanent impairment combines with the work  
38 injury to give rise to a compensable disability. It also  
39 confirms that this same standard applies for the purposes of  
40 determining whether an individual case involves permanent  
41 impairment sufficient to exceed the permanent impairment  
42 threshold established in the Workers' Compensation Act, section  
43 213. To this extent, this bill overturns the decision of the  
44 Maine Supreme Judicial Court in Kotch v. American Protective  
45 Services, Inc. 2002 ME 19, which interpreted the law to permit  
46 preexisting conditions that are not related to the work injury to  
47 be considered in determining eligibility for  
48 duration-of-disability wage loss benefits. The bill also  
49 provides guidance to the Workers' Compensation Board concerning  
50 the collection of permanent impairment data on a prospective  
51 basis.

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2 This bill applies retroactively to all injuries occurring on  
3 or after January 1, 1993 and to pending proceedings; an exception  
4 from the general prohibition against application of legislation  
5 to matters pending at the time of passage or amendment is  
6 provided.