

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1521

H. P. 1260

House of Representatives, March 29, 1979

On Motion of Mr. Baker of Portland, referred to the Committee on Labor. Sent up for concurrence and ordered Printed.

EDWIN H. PERT, Clerk

Presented by Mr. Tierney of Lisbon.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

AN ACT to Improve the Administration of the Second Injury Fund under the  
Workers' Compensation Laws.

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

Sec. 1. 39 MRSA § 57, as last amended by PL 1977, c. 612, § 6, is repealed and the following enacted in its place:

§ 57. Permanent total incapacity due partly to prior injury; Second Injury Fund

1. Payment for second injuries. If an employee who has a permanent impairment from any cause or origin which is, or is likely to be, a hindrance or obstacle to his employment sustains a personal injury arising out of and in the course of employment which, in combination with the earlier preexisting impairment results in total permanent incapacity, the employer or his insurance carrier shall be liable for all compensation provided by this Act. The employer or insurance carrier shall be reimbursed from the Second Injury Fund for compensation payments not attributable to the second injury.

2. Permanent impairment. As used in this section, "permanent impairment" means any permanent physical condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.

3. **Employer knowledge.** In order to qualify under this section for reimbursement from the Second Injury Fund, the employer must establish from written records that the employer had knowledge of the permanent impairment at the time that the employee was hired, or at the time the employee was retained in employment after the employer acquired that knowledge.

4. **Jurisdiction.** The Workers' Compensation Commission shall have jurisdiction over all claims brought by employers or insurance carriers against the Second Injury Fund. The Second Injury Fund shall not be bound as to any question of law or fact by reason of any award or any adjudication to which it was not a party or in relation to which it was not notified at least 3 weeks prior to the award or adjudication, that it might be subject to liability for the injury or death. An employer or its insurance carrier shall notify the Workers' Compensation Commission of any possible claim against the Second Injury Fund as soon as practicable, but in no event later than 100 weeks after the injury or death.

5. **Legal representation.** The Attorney General shall provide legal representation for any claim made under this section. The reasonable expense of prosecution or defense by the Attorney General of claims against the Second Injury Fund shall, subject to the approval of the Workers' Compensation Commission, be payable out of the Second Injury Fund. The Attorney General shall not defend the Second Injury Fund against any claim brought by the State. The Workers' Compensation Commission is authorized to hire, using funds from the Second Injury Fund, private counsel to defend any claim brought against the Second Injury Fund by the State.

6. **Second Injury Fund administration and contributions.** There is hereby established in the State Treasury a special fund, known as the Second Injury Fund, for the sole purpose of making payments in accordance with this section. The fund shall be administered by the chairman of the Workers' Compensation Commission. The Treasurer of State shall be the custodian of the fund and all moneys and securities in the fund shall be held in trust by the Treasurer of State and shall not be money or property of the State.

The Treasurer of State is authorized to disburse moneys from the fund only upon written order of the chairman of the Workers' Compensation Commission. He shall be required to give bond in an amount to be fixed and with securities approved by the chairman conditioned upon the faithful performance of his duty as custodian of the fund. The premium of the bond shall be paid out of the fund. The moneys of the fund shall be invested by him in accordance with law. Interest, income and dividends from the investments shall be credited to the fund.

Each employer shall, annually on or before July 1st, pay to the Treasurer of State for the benefit of the Second Injury Fund, a sum equal to 1½% of the total amount of money expended by each of them in payment of their liability under this Act for the preceding calendar year. When the total amount of all the payments into the fund, with the interest accumulated thereon, equals or exceeds \$150,000,

no further contributions to the fund shall be required to be made: Provided, that whenever the amount of the fund is less than \$50,000 the chairman of the Workers' Compensation Commission may make additional assessments to prevent depletion of the fund. The additional assessments shall be limited to 1% of the total amount of money expended by each of them in payment of their liability under this Act for the preceding calendar year.

In every case of the death of any employee under this Act where there is no person entitled to compensation, the employer shall pay to the Workers' Compensation Commission a sum equal to 100 times the average weekly wage in the State as computed by the Employment Security Commission to be deposited with the Treasurer of State for the benefit of the Second Injury Fund, and the chairman of the Workers' Compensation Commission shall direct the distribution thereof in a manner consistent with this section.

All moneys in the original Second Injury Fund upon the effective date of this section shall be deposited with the Treasurer of State as part of the new fund created by this section.

Sec. 2. 39 MRSA § 57-A, as amended by PL 1977, c. 612, § 7, is repealed.

#### STATEMENT OF FACT

The purpose of this bill is to fulfill the Legislature's original intent in establishing the Second Injury Fund. That intent was to encourage employers to hire handicapped individuals by shifting the possible compensation consequences of the preexisting impairment from the employer to a fund specially created to share the burden. The bill also insures that employees under Title 39, section 57, will receive their total compensation entitlement and that recovery from the Second Injury Fund will be the employer's responsibility.

The bill also enlarges the funding process for the fund in response to the decision of the Maine Supreme Judicial Court in the case of **Church v. McKee**, Me., 387 A2d 754 (1978). That decision significantly increased the injuries potentially eligible for contribution beyond the funding provision as originally established.