

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-511)
110TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 524, L.D. 590, Bill, "AN ACT to Amend the Workers' Compensation Second Injury Fund."

Amend the Bill by striking out all of the title and inserting in its place the following:

'AN ACT to Amend the Workers' Compensation Second Injury Fund, to Assist Handicapped Workers in Returning to Employment and to Reduce Multiple Injury Litigation.'

Further amend the Bill in section 1, in that part designated "§57.", in subsection 4, by striking out in the last line (same line in L.D.) the underlined figure "6" ←—————→ and inserting in its place the underlined figure '3'

Further amend the Bill by inserting at the end before the Statement of Fact the following:

'Sec. 3. 39 MRSA §66-A, as enacted by PL 1971, c. 417, is repealed and the following enacted in its place:

§66-A. Transfer to suitable work

When an employee has suffered a compensable injury which disables him from performing his customary or most recent work, his employer at the time of the injury shall transfer him to a position which is suitable to his physical condition when such position is available. The employer's obligation to transfer the employee shall continue until one year after the employee has reached the stage of maximum medical improvement in the judgment of the commission.

Upon the request of an injured employee, the commission shall, after making the due inquiry, require that the employee be transferred under this section.

The exercise of this authority shall not conflict with any provisions of a collective bargaining agreement between the employer and a labor organization which is the collective bargaining representative of the unit of which the injured workman is a part, if that agreement grants the injured employee greater rights than are provided in this section.

This section does not obligate an employer to offer employment or reemployment in supervisory or confidential positions within the meaning of the United States Code, Title 29, Section 152, and shall not obligate an employer to offer an injured employee employment or reemployment in a position for which he is not qualified.

The employer's failure to comply with an order of the commission under this section disqualifies the employer from exercising any right it may otherwise have to reduce or terminate the employee's benefits under this Act. The disqualification shall continue only as long as the employer fails to make an offer of suitable work which is available or until the employee accepts other employment.

If any injured employee refuses to accept an offer of suitable work, the employer or insurer may, in addition to exercising any other rights it may have, file a petition for a reduction of benefits. If, after hearing, the commission finds that an employee refused to accept the offer and the position offered was suitable

to his physical condition, it shall order the reduction of all benefits payable under sections 54 and 55. The reduction shall be in an amount equal to the difference between the employee's weekly benefit and the benefits he would have been entitled to receive if he had accepted the offer. The order reducing benefits shall remain in effect only as long as the employee fails to accept the offer of suitable work.

If the commission determines that the employee has refused to accept an offer of work suitable to his physical condition, all or a portion of the benefits paid between the time the offer was refused and the commission's determination shall be considered an overpayment. The amount of the overpayment shall be the difference between the employee's benefits for that period and the benefits, if any, he would have been entitled to receive if he had accepted the offer. The amount of the overpayment shall be recoverable by the employer or insurer by making deductions from future benefit payments in such amounts as the commission may determine. If no benefits are payable, the employer or insurer may recover the amount of the overpayment by civil action.

Sec. 4. 39 MRSA §104-B, as enacted by PL 1977, c. 368, is repealed and the following enacted in its place:

§104-B. Multiple injuries; apportionment of liability

1. Applicability. Where 2 or more occupational injuries occur, during either a single employment or successive employments, which combine to produce a single incapacitating condition, and more than one insurer is responsible for that condition, their liability shall be governed by this section.

2. Liability to employee. If an employee has sustained more than one injury while employed by different employers, or if an employee has sustained more than one injury while employed by the same employer and that employer was insured by one insurer when the first injury occurred and insured by another insurer when the subsequent injury or injuries occurred, the insurer providing coverage at the time of the last injury shall initially be responsible to the employee for all benefits payable under this Act.

3. Subrogation. Any insurer determined to be liable for benefits under subsection 2 shall be subrogated to the employee's rights under this Act for all benefits the insurer has paid and for which another insurer may be liable. Any such insurer may, in accordance with rules prescribed by the commission, file a petition for an apportionment of liability among the responsible insurers. ~~the~~ Commission has \leftarrow \rightarrow jurisdiction over all claims for apportionment under this section. In any proceeding for apportionment, no insurer is bound as to any finding of fact or conclusion of the law made in a prior proceeding in which it was not a party.

4. Consolidation. The commission or any commissioner may consolidate some or all proceedings arising out of multiple injuries.

Statement of Fact

This amendment does the following:

1. Reduces the time for filing of claims against the Second Injury Fund from 6 years in the bill to 3 years;
2. Provides for the return to work of employees, where suitable work can be found, by providing possible sanctions on both employers and employees; and

3. Provides for a procedure under which an injured employee may receive prompt payment of benefits in multiple injury cases without having to await a determination of each insurer's share of the total liability.

Filed by Miss Lewis of Auburn.
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of the House.

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