

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 590

H. P. 524

House of Representatives, February 3, 1981

Submitted by the Workers' Compensation Commission pursuant to Joint Rule 24.

Referred to the Committee on Labor. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative A. Martin of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend the Workers' Compensation Second Injury Fund.

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Sec. 1. 39 MRSA § 57, as last amended by PL 1977, c. 612, § 6, is repealed and the following enacted in its place: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 is liable for all compensation provided by this section. 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 or mental 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 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 has 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 6 years 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 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 is administered by the chairman of the Workers' Compensation Commission. The Treasurer of State is 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 may disburse moneys from the fund only upon written order of the chairman of the Workers' Compensation Commission. He is 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.

In every case of the death of any employee under this section where there is no person entitled to compensation, the employer shall pay to the Treasurer of State a sum equal to 100 times the average weekly wage in the State as computed by the Employment Security Commission for 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.

7. Exemption for liability. The State is not liable for any claim against the Second Injury Fund that is in excess of the fund's current ability to pay.

Sec. 2. 39 MRSA § 57-A, as last amended by PL 1979, c. 446, is repealed.

STATEMENT OF FACT

This bill brings all of the "Second Injury Fund" provisions within one section. The present language has been severely criticized by the Law Court, most recently in the decision of *Wentzell v. Timberlands, Inc.*, Me. 412 A2d 1213 (1980). The bill brings the substantive provisions of the Second Injury Fund into conformance with the Council of State Government's "Workmen's Compensation and Rehabilitation Law," while preserving the present funding framework.