

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

**Legislative Document**

**No. 730**

H. P. 640

House of Representatives, February 9, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Hobbins of Saco.

STATE OF MAINE

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

**AN ACT to Strengthen and Clarify the Occupational Disease Law.**

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

**Sec. 1. 39 MRSA § 2, sub-§ 11 is enacted to read:**

**11. Occupational disease. An occupational disease is a disease or condition arising out of and in the course of employment.**

**Sec. 2. 39 MRSA § 2-A is enacted to read:**

**§ 2-A. Application of the term occupational disease**

**1. Treated as personal injury. Except as otherwise specifically provided, incapacity to work or death of an employee arising out of and in the course of the employment and resulting from an occupational disease, shall be treated as the happening of a personal injury arising out of and in the course of employment within the meaning of this Title and all the provisions of this Title shall apply to those occupational diseases.**

**2. Date of injury. The date when an employee becomes incapacitated either partially or totally from work by an occupational disease or the date on which the employee knew or by the exercise of reasonable diligence should have known of the existence of his occupational disease, whichever is later, shall be deemed the date of injury for the purposes of this Title.**

Sec. 3. 39 MRS § 56-B is enacted to read:

§ 56-B. Loss of hearing

In cases of loss of hearing resulting from occupational disease, the following rules shall be applicable in determining eligibility for compensation and the period during which compensation shall be payable.

1. Definition. Whenever used in this chapter, "occupational hearing loss" means a sensorineural loss of hearing in one or both ears due to prolonged exposure to injurious noise in employment. Injurious noise means sound capable of producing occupational hearing loss.

2. Limitations on sound frequencies. Loss of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000 and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second are not to be considered as constituting disability for hearing.

3. Determination of hearing loss. The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000 and 2,000 per second. Hearing levels shall be measured by means of pure-tone air-conduction audiometric instruments calibrated in accordance with American National Standards Institute Standard S3.22-1976, and in an area with ambient noise level within the limits specified in American Standards Association Criteria for Background Noise in Audiometric Room S3.1, 1960. If the loss of hearing averages 15 decibels or less in the 3 frequencies, such loss of hearing shall not then constitute any compensable hearing disability. If the loss of hearing averages 82 decibels or more in the 3 frequencies, then the same shall constitute and be total or 100% compensable hearing loss.

4. Compensation payable. There shall be payable as permanent partial disability for total occupational deafness of one ear, 50 weeks of compensation, for total occupational deafness of both ears, 200 weeks of compensation and for partial occupational deafness in one or both ears, compensation shall be paid for such periods as are proportionate to the relation which the hearing loss bears to the amount provided in this subsection for total loss of hearing in one or both ears, as the case may be. The amount of hearing loss shall be reduced by the average amount of hearing loss from nonoccupational causes found in the population at any given age according to the provisions set forth.

5. Measurement of hearing impairment. In measuring hearing impairment, the lowest measured losses in each of the 3 frequencies shall be added together and divided by 3 to determine the average decibel loss. For every decibel of loss exceeding 15 decibels, an allowance of 1 1/2% shall be made up to the maximum of 100%, which is reached at 82 decibels.

6. Binaural hearing impairment. In determining the binaural, both ears, percentage of loss, the percentage of impairment in the better ear shall be

multiplied by 5. The resulting figures shall be added to the percentage of impairment in the poorer ear and the sum of the 2 divided by 6. The final percentage shall represent the binaural hearing impairment.

7. **Presbycusis.** Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, 1/2 decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

8. **Filing of claims.** No claim for compensation for occupational deafness may be filed until after the employee has been separated from the occupational noise for a period of at least 30 days. The last day of this period shall be the date of disability. "Separation from the occupational noise" means the use of hearing protective devices or equipment, including noise attenuators and ear plugs.

9. **Employers limit of liability.** An employer shall become liable for the entire occupational deafness to which his employment has contributed, but if previous deafness is established by a hearing test or by other competent evidence, whether or not the employee was exposed to the noise within 30 days preceding the test, the employer shall not be liable for previous loss so established, nor shall he be liable for any loss for which compensation has previously been paid or awarded.

No employer may be liable for the payment of compensation for occupational deafness unless the employee claiming benefits has worked for the employer in employment exposing the employee to harmful noise for a total period of at least 90 days.

No consideration may be given the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

10. **Restriction on liability.** No compensation may be payable for temporary disability for loss of hearing due to exposure to injurious noise in employment.

Sec. 4. 39 MRSA c. 5, as amended, is repealed.

#### STATEMENT OF FACT

The present occupational disease law procedure is simply not working. The number of compensated claims under the law is small. The number of workers with occupational diseases who do not receive compensation is much greater than reported by employers.

Part of the reason the occupational disease law is not working is that it erects procedural barriers against claimants. The term occupational disease laws, as defined in the Maine Revised Statutes, Title 39, section 183, is difficult if not impossible to understand and does not correspond to any currently valid medical concept of the causes of disease. The requirement of the Maine Revised Statutes,

Title 39, section 187, that an employee notify the last employer where he was exposed to the hazards of the disease for more than 60 days, is absurd. Most doctors are slow to diagnose an occupational disease and admit that diagnosis often heavily depends, as it must, upon the employee's work history. Few employees are so versed in occupational disease that they can identify with any certainty the exact industrial hazards over their lifetime which caused their disease. Even fewer can recall if they were exposed at one job or another to the hazard for at least 60 days.

Finally, few employees think when they are offered a tentative occupational disease diagnosis by a doctor that they must immediately notify the last employer in which they were exposed to the hazards of the disease. As a result, all too often they are barred from recovering benefits under the workers' compensation law.

There are many other procedural hazards and absurdities in the present occupational disease law. The law enacted in 1945 has not worked.

This bill strengthens and clarifies the occupational disease law by repealing the present occupational disease law, defining occupational disease as a disease which arises out of and in the course of employment and providing that, insofar as is possible, an occupational disease shall be treated as a personal injury on the job.