

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 884

H. P. 747

House of Representatives, February 17, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Tuttle of Sanford.

Cosponsors: Representative Dexter of Kingfield, Senator Shute of Waldo, Senator Usher of Cumberland.

STATE OF MAINE

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

AN ACT to Improve the Financing and Administration of the Second Injury Fund under the Workers' Compensation Act.

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Sec. 1. 39 MRSA § 57, as last amended by PL 1977, c. 612, § 6, is repealed.

Sec. 2. 39 MRSA § 57-A, as amended by PL 1979, c. 446, is repealed.

Sec. 3. 39 MRSA § 57-B is enacted to read:

§ 57-B. Injuries to impaired employees; Second Injury Fund

1. Payment for 2nd injuries. If an employee who has a permanent impairment from any cause or origin incurs a subsequent injury, arising out of and in the course of his employment, which results in compensation liability for disability that is substantially greater, by reason of the combined effects of the preexisting impairment and the subsequent injury or by reason of the aggravation of the preexisting impairment, than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall in the first instance pay all awards of compensation provided by this Act, but the employer or his insurance carrier shall be reimbursed from the Second Injury Fund for all compensation payments subsequent to those payable for the first 104 weeks of disability.

2. Death resulting from 2nd injuries. If the subsequent injury of such an employee results in the death of the employee and it is determined that the death would not have occurred except for the preexisting permanent impairment, the employer or his insurance carrier shall in the first instance pay the compensation prescribed by this Act, but he or his insurance carrier shall be reimbursed from the Second Injury Fund for all compensation payable in excess of 104 weeks.

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 that the employee was retained in employment after the employer acquired knowledge of the permanent impairment.

4. Permanent impairment. As used in this section, "permanent impairment" means any permanent 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. No condition may be considered a permanent impairment unless it is one of the following conditions, or unless it would support a rating of disability of 200 weeks or more if evaluated according to standards applied in compensation claims:

- A. Epilepsy;
- B. Diabetes;
- C. Cardiac disease;
- D. Arthritis;
- E. Amputated foot, leg, arm or hand;
- F. Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than 75% bilaterally;
- G. Residual disability from poliomyelitis;
- H. Cerebral palsy;
- I. Multiple sclerosis;
- J. Parkinson's disease;
- K. Cerebral vascular accident;
- L. Tuberculosis;
- M. Silicosis;
- N. Psychoneurotic disability following treatment in a recognized medical or mental institution;
- O. Hemophilia;

- P. Chronic osteomyelitis;
- Q. Ankylosis of joints;
- R. Hyperinsulism;
- S. Muscular dystrophies;
- T. Arteriosclerosis;
- U. Thrombophlebitis;
- V. Varicose veins;
- W. Heavy metal poisoning;
- X. Ionizing radiation injury;
- Y. Compressed air sequelae; or
- Z. Ruptured intervertebral disk.

5. 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.

6. Legal representation. The Attorney General shall provide legal representation for any claim made under this section. 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.

7. Administration and financing of Second Injury Fund. 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 carrier and self-insurer shall, under regulations prescribed by the commission, make payments to the fund in an amount equal to that proportion of 175% of the total disbursement made from the fund during the preceding calendar year less the amount of the net assets in the fund as of December 31st of the preceding calendar year, which the total compensation paid by such carrier or self-insurer bore to the total compensation paid by all carriers and self-insurers during the fiscal year which ended within the preceding calendar year. An employer who has ceased to be a self-insurer shall continue to be liable for payments due the fund on account of any compensation paid by him during that fiscal year.**

**In every case of death of any employee under this Act where there is no person entitled to compensation, the employer or his insurance carrier shall pay a sum equal to 100 times the average weekly wage in the State, as computed by the Employment Security Commission, to the Treasurer of State for the benefit of the Second Injury Fund.**

**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.**

**8. State exempt from 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.**

#### STATEMENT OF FACT

The purpose of this bill is twofold. The first purpose is to clarify many ambiguities which exist under the present Second Injury Fund statute. Efforts to resolve these ambiguities through judicial interpretation have been unsuccessful. The 2nd is to bolster the existing source of funding by requiring contributions from both insurance carriers and self-insurers. The existing funding mechanism has proven to be grossly inadequate and has jeopardized the ability of the fund to accomplish its original objective.

The original objective of the fund was to encourage the hiring of the handicapped by protecting the employer from excessive liability where an occupational injury combines with a preexisting handicap to create a disability far greater than that which would have resulted from the occupational injury alone. In this type of situation, the fund shares the burden of liability.

This bill allows the fund to fulfill its purpose.