

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TENTH LEGISLATURE
4

5 **Legislative Document**

No. 1829

6
7 H. P. House of Representatives,

H. P. 1848 House of Representatives, January 13, 1982
Filed under Joint Rule 18 pursuant to Joint Order H. P. 1629 and
2,000 ordered printed.

8 EDWIN H. PERT, Clerk

9
10 STATE OF MAINE
11

12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO
14

15 **AN ACT to Change the Time Limitations for Filing**
16 **a Claim for Compensation of Occupational Disease.**
17

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

19 **Sec. 1. 39 MRSA §186, as last amended by PL 1977, c.**
20 **696, §411, is repealed and the following enacted in its**
21 **place:**

22 §186. Date from which compensation is computed; employer
23 liable

24 1. Date of injury. For purposes of this law, the date
25 of injury for occupational disease, equivalent to the date
26 of injury under the Workers' Compensation Act, is the later
27 of the following:

1 A. The date when an employee becomes incapacitated by
2 an occupational disease from performing his work in the
3 last occupation in which he was injuriously exposed to
4 the hazards of the disease; or

5 B. The date when the claimant knew, or through the
6 exercise of reasonable diligence should have known,
7 that the incapacity was related to the employment.

8 2. Employer liable. Where compensation is payable for
9 an occupational disease, the employer in whose employment
10 the employee was last injuriously exposed to the hazards of
11 the disease, and the insurance carrier, if any, on the risk
12 when the employee was last so exposed under that employer,
13 shall be liable therefor. The amount of the compensation
14 shall be based upon the average wages of the employee when
15 last so exposed under the employer, and notice of injury and
16 claim for compensation shall be given and made to that
17 employer. The only employer and insurance carrier liable
18 shall be the last employer in whose employment the employee
19 was last injuriously exposed to the hazards of the disease
20 during a period of 60 days or more, and the insurance car-
21 rier, if any, on the risk when the employee was last so
22 exposed, under that employer.

23 Sec. 2. 39 MRSA §187, as last amended by PL 1977, c.
24 696, §412, is repealed and the following enacted in its
25 place:

26 §187. Notice of incapacity; filing of claim

27 1. Procedure; exceptions. Sections 63 and 95 of the
28 Workers' Compensation Act with reference to giving notice,
29 making claims and filing petitions shall apply to cases
30 under this law, except that:

31 A. In cases under this law the date of injury as de-
32 finied in section 186 shall be taken as the equivalent
33 to the date of injury in sections 63 and 95; and

34 B. The notice under section 63 shall include the fol-
35 lowing:

36 (1) The employee's name and address;

37 (2) The nature of the occupational disease;

38 (3) The date of incapacity; and

1 (4) The name of the employer in whose employment
2 the employee was last injuriously exposed for a
3 period of 60 days to the hazards of the disease
4 and the date when employment with that employer
5 ceased.

6 2. Resumption of payments. After compensation pay-
7 ments for an occupational disease have been legally discon-
8 tinued, claim for further compensation for that occupational
9 disease not due to further exposure to an occupational
10 hazard tending to cause that disease, shall be barred if not
11 made within one year after the last previous payment.

12 Sec. 3. 39 MRSA §189, last sentence, as amended by PL
13 1971, c. 376, is repealed.

14 Sec. 4. 39 MRSA §194, as last amended by PL 1975, c.
15 480, §12, is repealed and the following enacted in its
16 place.

17 §194. Silicosis and asbestos diseases

18 1. Definitions. For the purposes of this section,
19 unless the context indicates otherwise, the following terms
20 have the following meanings.

21 A. "Asbestos disease" means asbestosis or
22 mesothelioma.

23 B. "Silicosis" means silicosis which results in
24 impaired lung function so as to conclude that the sub-
25 ject is precluded from following his usual occupation.
26 Impairment under this section is to be corrected to ac-
27 count for differences of age, sex, race and body size.

28 2. Limitation; exposure requirement. In order for a
29 claimant to recover benefits for silicosis or asbestos dis-
30 ease under this section, the employee must have been exposed
31 to the hazards of the disease in the course of his employ-
32 ment in this State within 20 years before the date of
33 injury.

34 Sec. 5. 39 MRSA §194-A, as enacted by PL 1967, c. 374,
35 §8, is repealed.

1 STATEMENT OF FACT

2 The purpose of this bill is to remove onerous time
3 limitations and exposure requirements and to provide claim-
4 ants under the Occupational Disease Law with greater oppor-
5 tunities to have their cases decided upon the merits.

6 Section 1 of the bill institutes a new definition of
7 "date of injury," based upon the "discovery rule" effective
8 in several other states. Time periods, for purposes of
9 notice and filing under this rule, would not begin to run
10 until the employee is both incapacitated by the disease and
11 either knows, or by the exercise of reasonable diligence
12 should know, that the incapacity is related to the employ-
13 ment.

14 Section 2 of the bill substantially reenacts present
15 law, reorganizing it and accounting for the change made in
16 section 1 of the bill.

17 Section 3 of the bill repeals the requirement that, in
18 order to be compensable, incapacity must result "within 3
19 years after the last injurious exposure to such disease in
20 the employment." That language requires exposure to a dis-
21 ease, not just to the causative factors of a disease and re-
22 quires the worker to remain in contact with the hazard until
23 no more than 3 years prior to becoming incapacitated.

24 Sections 4 and 5 revise the special provisions of the
25 law relating to silicosis and asbestos diseases. The re-
26 quirement of a minimum of 2 years exposure is dropped, but
27 some limit on claims is retained by requiring that the
28 employee must have been exposed to the hazards of the dis-
29 ease within the preceding 20 years.