

MAINE STATE LEGISLATURE

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(New Draft of H.P. 405, L.D. 488)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1672

H.P. 1262

House of Representatives, May 24, 1983

Reported by the Majority from the Committee on Labor and printed under Joint Rule 2.

Original bill sponsored by Representative Zirnkilton of Mount Desert. Cosponsored by Representative Swazey of Bucksport, Representative Gauvreau of Lewiston and Senator Pray of Penobscot.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Change the Workers'
Compensation Law with Respect to
Asbestosis.

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

Sec. 1. 39 MRSA §194-A, as enacted by PL 1967, c. 374, §8, is repealed.

Sec. 2. 39 MRSA §194-B is enacted to read:

§194-B. Special provisions for asbestos-related dis-
eases

1. Definition. As used in this section, the
term "asbestos-related disease" means a disease
caused by exposure to asbestos.

1 2. Scope. This section applies only to
2 asbestos-related diseases caused or contributed to by
3 a last injurious exposure to asbestos which occurred
4 on or after November 30, 1967.

5 Except as otherwise provided in this section, all
6 provisions of this chapter shall apply to these dis-
7 eases.

8 3. Aggravation of condition. Section 185 shall
9 not apply to asbestos-related diseases.

10 4. Last employer liable; notice. Notwithstand-
11 ing section 186, the only employer and insurance car-
12 rier liable shall be the last employer in whose
13 employment the employee was last injuriously exposed
14 to asbestos, and the insurance carrier, if any, on
15 the risk when the employee was last so exposed under
16 that employer. Notice of incapacity under section
17 187 shall include the name of that employer and the
18 date when employment with that employer ceased.

19 5. Disability or death under inadequate prior
20 law. In cases of asbestos-related disease resulting
21 in incapacity or death prior to October 1, 1983,
22 lateness in giving notice or filing a petition shall
23 not be a bar to compensability, as provided in this
24 section, unless the employer can show that his rights
25 were substantially prejudiced by that failure. This
26 subsection is repealed January 1, 1985.

27 6. Compensation limit. The 3-year limit pro-
28 vided in section 189 shall not apply to
29 asbestos-related diseases.

30 Nothing in this section shall be construed to require
31 retroactive payments of compensation for periods of
32 incapacity which occurred prior to October 1, 1983,
33 or retroactive payments of death benefits for periods
34 of time prior to October 1, 1983. Compensation for
35 claims permitted under this section shall be payable
36 only for periods of incapacity occurring after Octo-
37 ber 1, 1983.

38 7. Further compensation. Notwithstanding
39 section 187, after compensation payments for incapac-
40 ity or death caused by an asbestos-related disease

1 have been legally discontinued, a claim for further
2 compensation for that disease not due to further
3 exposure to asbestos in that employment shall be
4 barred if not made within 40 years after the last
5 previous payment.

6 8. Compensation benefits. Compensation under
7 this section shall be paid as follows.

8 A. If an employee is determined to be entitled
9 to compensation for periods of total incapacity
10 occurring on or after October 1, 1983, or if a
11 dependent of an employee is determined to be
12 entitled to full death benefits for periods
13 occurring on or after October 1, 1983, and the
14 employee became incapacitated or died on or after
15 November 30, 1967, and before January 1, 1972,
16 then the weekly compensation paid shall be equal
17 to 2/3 of the average weekly wage in the State,
18 as computed by the Bureau of Employment Security,
19 that exists on the date the worker files his
20 claim for compensation. If an employee is deter-
21 mined to be entitled to compensation for periods
22 of partial incapacity occurring on or after Octo-
23 ber 1, 1983, and the employee became incapaci-
24 tated on or after November 30, 1967, and before
25 January 1, 1972, then the weekly compensation
26 paid shall be equal to 2/3 the difference, due to
27 the injury, between the average weekly wage in
28 the State, as computed by the Bureau of Employ-
29 ment Security, that exists on the date the worker
30 files his claim for compensation and the weekly
31 wages, earnings or salary which he is able to
32 earn thereafter. If a dependent of an employee
33 is determined to be entitled to partial death
34 benefits for periods occurring on or after Octo-
35 ber 1, 1983, and the employee died on or after
36 November 30, 1967, and before January 1, 1972,
37 then the weekly compensation paid shall be equal
38 to the same proportion of the weekly payment pro-
39 vided in this paragraph for full death benefits,
40 as the total amount contributed by the employee
41 to such partial dependents for their support
42 during the year prior to incapacity, bears to the
43 employee's earnings during that period.

1 not provide for retroactive payments of compensation.
2 Benefits will be payable only for periods of incapacity
3 occurring after October 1, 1983, or periods of
4 entitlement to dependents' death benefits occurring
5 after October 1, 1983. The section does not apply to
6 a worker covered under the Longshoremen's and Harbor
7 Workers' Compensation Act or the Federal Employees
8 Compensation Act.

9 This new draft removes the barriers that prevent
10 a worker from recovering under the current law,
11 including the 60-day exposure requirement, the one-
12 year limitation on filing claims for further bene-
13 fits, the so-called 3-year rule, and the time limits
14 in current section 194-A. In addition, workers are
15 assured fair benefit payments. If an employee is
16 entitled to compensation for periods of incapacity
17 occurring after October 1, 1983, or a dependent is
18 entitled to death benefits for periods after October
19 1, 1983, and if the employee became incapacitated or
20 died on or after November 30, 1967, and before Janu-
21 ary 1, 1972, the weekly compensation will be based on
22 the state average weekly wage as of the date the
23 claim is filed. Because the annual adjustment provi-
24 sions did not take effect until January 1, 1972, this
25 provision is needed to assure updated benefit levels.
26 If an employee became incapacitated or died on or
27 after January 1, 1972, and before October 1, 1983,
28 compensation will be equal to the compensation that
29 would have been paid if payments had begun at the
30 time he became incapacitated or died and the payments
31 had been annually adjusted for inflation since that
32 time. For an employee who becomes incapacitated or
33 dies on or after October 1, 1983, compensation shall
34 be payable as provided under Title 39, sections 54,
35 55 and 58 .

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