FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document NO. 532

H.P. 398 House of Representatives, February 24, 1987

Reference to the Committee on Labor suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative HIGGINS of Scarborough.

Cosponsored by Representatives WILLEY of Hampden and BEGLEY of Waldoboro.

STATE OF MAINE

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

AN ACT Providing for the Use of Spendable Earnings as a Basis for Calculating Workers' Compensation Benefits.

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

Sec. 1. 39 MRSA §2, sub-§13 is enacted to read:

13. Spendable earnings. "Spendable earnings" means the employee's gross average weekly wages, earnings or salary reduced by the amount which would have been withheld from his wages, earnings or salary under federal and state income tax laws and the United States Social Security Act. The amount of income tax withholding shall be determined by using the maximum number of dependents' allowances to which the employee is entitled and the standard deduction or

<u>zero bracket amount applicable to the employee's filing status. The chairman of the commission shall, by rule, adopt and publish tables governing the determination of withholding amounts under this section.</u>

Sec. 2. 39 MRSA §54-A, first and 2nd ¶¶, as enacted by PL 1985, c. 372, Pt. A, §17, are amended to read:

While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to 2/3 his average gross weekly wages, earnings or salary <u>or 80% of his spendable earnings, whichever is less</u>, but not more than the maximum benefit under section 53-A, nor less than $25 weekly. This weekly compensation shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, as it did at the time of the injury, but in no case may the annual adjustment exceed the lesser of 5% or the actual percentage increase in the state average weekly wage for the previous year.

In the following cases it shall, for the purpose of this Act, be conclusively presumed that the injury resulted in permanent total incapacity: The total and irrevocable loss of sight of both eyes; the loss of both hands at or above the wrist; the loss of both feet at or above the ankle; the loss of one hand and one foot; an injury to the spine resulting in permanent and complete paralysis of the arms or legs; or an injury to the skull resulting in incurable imbecility or insanity. In the event of such permanent total incapacity, the employer shall pay the employee a weekly compensation equal to 2/3 his average gross weekly wages, earnings or salary <u>or 80% of his spendable earnings, whichever is less</u>, but not more than the maximum benefit under section 53-A, nor less than $25 weekly. This weekly compensation shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, as it did at the time of the injury, but in no case may the annual adjustment exceed the lesser of 5% or the actual percentage increase in the state average weekly wage for the previous year. If the totally incapacitated employee dies, as a result of this injury, leaving dependents who were dependent upon his earnings at the time of his injury, then payments shall be made to the dependents in accordance with section 58-A.

Sec. 3. 39 MRSA §55-A, first ¶, as enacted by PL 1985, c. 372, Pt. A, §19, is amended to read:

While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to 2/3 the difference, due to the injury, between his average gross weekly wages, earnings or salary before the injury and the weekly wages, earnings or salary which he is able to earn after the injury, but not more than the maximum benefit under section 53-A. <u>In no case may the employee's compensation exceed 80% of the difference, due to the injury, between his spendable earnings before the injury and the spendable earnings which he is able to earn after the injury.</u> This weekly compensation shall be adjusted annually so that it continues to bear the same percentage relationship to the state average weekly wage, as computed by the Maine Unemployment Insurance Commission, as it did at the time of the injury, but in no case may the annual adjustment exceed the lesser of 5% or the actual percentage increase in the state average weekly wage for the previous year. The annual adjustment required by this section shall be made on the anniversary date of the injury, except that where the effect of the maximum under section 53-A is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment shall be made annually on July 1st.

Sec. 4. Effective date. This Act shall apply only as to injuries occurring on or after its effective date.

STATEMENT OF FACT

This bill provides for basing workers' compensation benefits on a worker's prior spendable earnings or take-home pay rather than on prior gross earnings as is currently done. The purpose is to prevent a worker from receiving more in compensation after the injury than he received in wages prior to the injury. This is now possible because a worker is entitled to receive compensation equal to 2/3 of his prior gross earnings. Yet this compensation is tax free. In many cases, this results in a level of compensation which exceeds the worker's prior take-home pay, his net pay after taxes. In addition to generating unnecessary costs, this system is also inequitable. Lower paid workers with little potential tax liability receive compensation which is close to 2/3 of their prior take-home pay. Higher paid workers, on the other hand, may receive compensation which is equal to or more than their prior take-home pay.

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