MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 631

S.P. 237

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In Senate, March 9, 1987

Reference to the Committee on Labor suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate Presented by Senator GAUVREAU of Androscoggin. Cosponsored by Representative GREENLAW of Standish, Senator ANDREWS of Cumberland.

STATE OF MAINE

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

	NINETEEN HUNDRED AND EIGHTY-SEVEN		
1 2 3 4		AN ACT Relating to Notice of Injury for Purposes of Workers' Compensation and Occupational Disease Claims.	
5 6		Be it enacted by the People of the State of Maine as follows:	
7		Sec. 1. 39 MRSA §63-A is enacted to read:	
8	٠	§63-A. Notice of injury for occupational injury	
Ò		<u>claims</u>	
10	:	A person shall give notice of an injury or death	
11		in respect of which compensation may be payable under	
12		this Act within 30 days after the date of that injury	
13		or death or 30 days after the employee is aware or,	
14		in the exercise of reasonable diligence, should have	
15		been aware of a relationship between the injury or-	

death and the employment.

- 1 1. Lack of timely notice. Failure of the employee to provide notice within the 30-day period shall not be a bar to a claim for benefits under this Act, unless the lack of timely notice results in actual prejudice to the employer.
 - 2. Actual prejudice defined. Actual prejudice includes, but is not limited to:
- 8 A. A showing that the claimant's injury was ag-9 gravated by the employer's inability to provide 10 early diagnosis and treatment; and

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- B. A showing that the employer was hampered in his investigation of the claim and preparation of a defense due to lack of timely notice.
 - 3. Burden of proof. The burden of proof on notice rests with the employee after the employer has made a preliminary showing the notice of law requirements were not complied with by the employee.
 - Sec. 2. 39 MRSA §187-A is enacted to read:
- 19 §187-A. Notice of injury for purposes of occupation-20 al disease claims
 - A person shall give notice of an occupational disease or death in respect of which compensation is payable under this Act within 30 days after the date of that incapacity or death or 30 days after the employee is aware or, in the exercise of reasonable diligence, should have been aware of a relationship between the occupational disease or death and the employment.
 - 1. Lack of timely notice. Failure of the employee to provide notice within the 30-day period shall not be a bar to a claim for benefits under the Act, unless the lack of timely notice results in actual prejudice to the employer.
- 34 <u>2. Actual prejudice defined. Actual prejudice</u>
 35 includes, but is not limited to:
 - A. A showing that the claimant's incapacity was aggravated by the employer's inability to provide early diagnosis and treatment; and

- B. A showing that the employer was hampered in his investigation of the claim and preparation of a defense due to late notice.
- 4 3. Burden of proof. The burden of proof on notice rests with the employee after the employer has made a preliminary showing that the notice of law requirements were not complied with by the employer.

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STATEMENT OF FACT

An employee's claim for workers' compensation and occupational disease benefits is subject to 2 strict procedural requirements. The employee must properly notify his employer of the injury or disease within 30 days after its occurrence and must file a claim for benefits within 2 years. This bill pertains solely to the notice provisions of our workers' compensation and occupational disease laws.

Under present law, an employee must establish compliance with the 30-day notice provision once the employer has raised the issue of notice as a defense. Occasionally, an otherwise compensable claim nied as the result of the employee's failure to follow the strict notice requirements of our Act, though the employer was in no way prejudiced by the delay in notice. In this situation a basic injustice occurs. The purposes of the notice requirement allow employers an opportunity to promptly diagnose and treat worker injuries, thus reducing the severity of the injury and the number of work lost; allow the employer to seasonably investigate the worker's claim and prepare a defense; and allow employers to institute safety procedures to reduce the likelihood of future similar injuries.

The purposes of the Workers' Compensation Act are not advanced by allowing an employer to insulate itself from liability on the mere technicality of late notice. In such a case the general public, rather than the employer, is required to support the injured worker through welfare benefits, even though the employer was actually responsible for the worker's injury.

This bill resolves this unfairness by permitting 2 an employer to defend on the basis of late notice on-3 ly if actual prejudice to the employer has occurred. 4 The bill modifies the burden of proof requirement on 5 the notice issue. Present law places the burden of 6 proof on the employee once the employer raises the 7 issue in its formal pleadings before the Worker's 8 Compensation Commission. Employers frequently raise 9 the issue of notice in cases where notice was clearly provided in order to get into evidence employee 10 statements which would otherwise be inadmissible. 11

This bill places the initial burden of proof on the employer on the issue of notice. Once the employer makes a preliminary showing, the employee failed to comply with the statutory notice requirements, the burden of proof on the notice issue shifts to the employee.

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