

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 669

H.P. 499 House of Representatives, March 6, 1987  
Reference to the Committee on Labor suggested and ordered  
printed.

EDWIN H. PERT, Clerk  
Presented by Representative PRIEST of Brunswick.  
Cosponsored by Representatives WARREN of Scarborough,  
MICHAUD of East Millinocket and Senator USHER of Cumberland.

STATE OF MAINE

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

1 AN ACT Concerning Occupational Hearing Loss  
2 under the Workers' Compensation Act.  
3

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

6 Sec. 1. 39 MRSA §56-B is enacted to read:

7 §56-B. Occupational loss of hearing

8 In case of loss of hearing resulting in whole or  
9 in part from occupational exposure to noise, the fol-  
10 lowing provisions apply in determining eligibility  
11 for compensation and the period during which compen-  
12 sation is payable.

13 1. Definitions. As used in this chapter, "occu-  
14 pational hearing loss" means a sensorineural loss of

1 hearing in one or both ears due to prolonged exposure  
2 to injurious noise in employment. "Injurious noise"  
3 means sound capable of producing occupational hearing  
4 loss.

5 2. Limitations on sound frequencies. Losses of  
6 hearing due to industrial noise for compensation pur-  
7 poses shall be confined to the frequencies of 500,  
8 1,000, 2,000 and 3,000 cycles per second. Loss of  
9 hearing ability for frequency tones above 3,000 cy-  
10 cles per second are not to be considered as consti-  
11 tuting disability for hearing.

12 3. Determination of hearing loss. The percent of  
13 hearing loss, for purposes of the determination of  
14 compensation claims for occupational deafness shall  
15 be calculated as the average, in decibels, of the  
16 thresholds of hearing for the frequencies of 500,  
17 1,000, 2,000 and 3,000 cycles per second. Hearing  
18 levels shall be measured by means of pure tone air  
19 conduction audiometric instruments calibrated in ac-  
20 cordance with the American National Standards Insti-  
21 tute Standards, S3.6-1969-R, 1973 and S3.13-1972,  
22 American National Standards Institute, or American  
23 Standards Association Standard Z24.5, 1951, American  
24 Standards Association, and in an area with ambient  
25 noise level within the limits specified in American  
26 National Standards Institute Criteria for Background  
27 Noise and Audiometric Room Standard S3.1, 1960-R  
28 1977. If the losses of hearing average 20 decibels or  
29 less, American National Standards Institute, or 12  
30 decibels or less, American Standards Association, in  
31 the 4 frequencies, such losses of hearing shall not  
32 then constitute any compensable hearing disability.  
33 If the losses of hearing average 92 decibels or more,  
34 American National Standards Institute, or 82 decibels  
35 or more, American Standards Association, in the 4  
36 frequencies, then the same shall constitute and be  
37 total or 100% compensable hearing loss.

38 4. Compensation payable. There shall be payable  
39 as permanent partial disability for total occupation-  
40 al deafness of 50 weeks of compensation, for total  
41 occupational deafness of both ears, 200 weeks of com-  
42 penensation and for partial occupational deafness in  
43 one or both ears, compensation shall be paid for such  
44 periods as proportionate to the relation which the

1 hearing loss bears to the amount provided in this  
2 subsection for total loss of hearing in one or both  
3 ears, as the case may be. The amount of hearing loss  
4 shall be reduced by the average amount of hearing  
5 loss from nonoccupational causes found in the popula-  
6 tion at any given age according to the provisions set  
7 forth.

8       5. Measurement of hearing impairment. In measur-  
9 ing hearing impairment, the lowest measured losses in  
10 each of the 4 frequencies shall be added together and  
11 divided by 4 to determine the average decibel loss.  
12 For every decibel of loss exceeding 12 decibels,  
13 American Standards Association, or 20 decibels, Amer-  
14 ican National Standards Institute, an allowance of  
15 1.5% shall be made up to the maximum of 100%, which  
16 has reached 82 decibels, American Standards Associa-  
17 tion or 92 decibels, American National Standards In-  
18 stitute.

19       6. Binaural hearing impairment. In determining  
20 the binaural, both ears, percentage of loss, the per-  
21 centage of impairment in the better ear shall be mul-  
22 tiplied by 5. The resulting figure shall be added to  
23 the percentage of impairment in the poor ear and the  
24 sum of the 2 divided by 6. The final percentage shall  
25 represent the binaural hearing impairment.

26       7. Presbycusis. Before determining the percent-  
27 age of hearing impairment, in order to allow for the  
28 average amount of hearing loss from nonoccupational  
29 causes found in the population at any given age,  
30 there shall be deducted from the total average deci-  
31 bel loss a figure to be determined by the Workers'  
32 Compensation Commission on an annual basis, based on  
33 statistics available to the parties from audiological  
34 studies, by age, of the general population.

35       8. Filing of claims. The requirements of this  
36 section regarding notice and the period within which  
37 to file a claim for occupational hearing loss shall  
38 run from the date the employee has been advised by  
39 competent medical or audiological authority that his  
40 hearing loss is occupational in nature. The date will  
41 be taken as the "date of injury" for procedural pur-  
42 poses.

1           9. Employer's limit of liability. An employer  
2 shall become liable for the entire occupational deaf-  
3 ness to which his employment has contributed, except  
4 that he shall not be liable for any loss for which  
5 compensation has previously been paid or awarded. No  
6 employer may be liable for the payment of compensa-  
7 tion for occupational deafness, unless the employee  
8 claiming benefits shall have worked for the employer  
9 and employment exposes the employee to harmful noise  
10 for a total period of at least 90 days. No considera-  
11 tion may be given to the questions of whether or not  
12 the ability of an employee to understand speech is  
13 improved by the use of a hearing aid.

14           10. Compensation and medical protection availa-  
15 ble. In addition to the compensation payable under  
16 subsection 4, any employee who is temporarily dis-  
17 abled due to exposure to injurious noise, including  
18 injurious noise which results in the condition known  
19 as tinnitus, shall be entitled to compensation pay-  
20 ments available for like injuries under this section.  
21 Those employees who have incurred occupational loss  
22 of hearing which does not rise to the level necessary  
23 for compensation under subsection 4, but is nonethe-  
24 less occupational in nature, and shall be afforded  
25 the protection of this section with regard to reason-  
26 able and necessary medical and audiological care.

27           Sec. 2. 39 MRSA §193, as amended by PL 1983, c.  
28 496, §§1 and 2, is repealed.

1

STATEMENT OF FACT

2           The need for new occupational hearing loss law  
3 has become apparent since the Maine Revised Statutes,  
4 Title 39, section 193, was last amended in 1983. The  
5 difficult and harsh procedural requirements of the  
6 State's occupational disease law have acted as a vir-  
7 tual bar to justifiable claims of occupational hear-  
8 ing loss. It has become necessary to remove "occupa-  
9 tional loss of hearing" from the occupational disease  
10 law and reenact an amended version as part of the  
11 Workers' Compensation Act covering "injuries." The  
12 nature of occupational hearing loss, arising as it  
13 does from repeated microtrauma to the ear, more  
14 closely resembles an injury than a disease. Advances  
15 in audiological testing and diagnostic procedures  
16 have rendered the present law archaic and inadequate  
17 as to appropriate compensation payable for that loss.  
18 Hearing loss claims currently pending before the  
19 Workers' Compensation Commission are embroiled in le-  
20 gal disputes as to issues such as medical protection  
21 being available for those without a measurable loss  
22 in the "compensable" range and the availability of  
23 wage loss due to disability resulting from occupa-  
24 tional hearing loss. This proposed new law seeks to  
25 protect and compensate those employees who have suf-  
26 fered bonafide occupational hearing loss arising out  
27 of and in the course of their employment and to pro-  
28 tect employers from claims for occupational hearing  
29 loss that can be shown to be the result of solely  
30 nonoccupational factors. In order to correct mistakes  
31 existent in the prior law, the Legislature specifi-  
32 cally finds that this new law should apply retroac-  
33 tively to pending claims filed with the Workers' Com-  
34 pensation Commission subsequent to Title 39, section  
35 193, as amended.

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