

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1487

H.P. 1096 House of Representatives, May 8, 1987  
Submitted by the Department of Defense and Veterans'  
Services pursuant to Joint Rule 24.

Reference to the Committee on Aging, Retirement and  
Veterans suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative ZIRNKILTON of Mount Desert.

Cosponsored by Representatives RICHARD of Madison,  
PARADIS of Old Town and Senator COLLINS of Aroostook.

STATE OF MAINE

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

1 AN ACT to Clarify Existing Federal  
2 Compensation and Care as the Primary  
3 Resource to an Injured Service Member  
4 before Seeking Benefits under the  
5 Workers' Compensation Act.  
6

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

9 37-B MRSA §186, as enacted by PL 1983, c. 460,  
10 §3, is repealed and the following enacted in its  
11 place:

12 §186. Injuries sustained in connection with military  
13 duty

14 1. Compensation as state employee. A member of  
15 the state military forces shall receive compensation

1 as a state employee according to the provisions of  
2 Title 39 and this section.

3 A. Duty status is as follows.

4 (1) The types of duty which are covered  
5 are:

6 (a) Active state duty by order of the  
7 Governor under this subchapter;

8 (b) Inactive duty training, with or  
9 without pay, under the United States  
10 Code, Title 32, Section 502;

11 (c) Annual training under the United  
12 States Code, Title 32, Sections 502 and  
13 503;

14 (d) Full-time training duty for 30  
15 days or less under the United States  
16 Code, Title 32, Section 502; and

17 (e) Other training duties or schools  
18 under the United States Code, Title 32,  
19 with status of less than 30 days' dura-  
20 tion;

21 (2) The types of duty which are not covered  
22 are:

23 (a) Annual training or any other types  
24 of duty under the United States Code,  
25 Title 10, including Section 672, Sub-  
26 sections (b) and (d);

27 (b) Initial active duty for training,  
28 such as initial active duty service  
29 schools;

30 (c) Full-time training duty for over  
31 30 days under the United States Code,  
32 Title 32, Section 502, Subsection (f);  
33 and

34 (d) Federal technician, civilian duty  
35 under the United States Code, Title 32,  
36 Section 709;

1            B. Types of injuries cognizable are as follows:

2                    (1) The injury, disability or disease must  
3                    have been received, incurred or contracted  
4                    as a result of qualified duty;

5                    (2) Service members must be under the con-  
6                    trol and supervision of the military. Inci-  
7                    idents occurring during periods of leave or  
8                    pass are not compensable; and

9                    (3) An injury, disability or disease re-  
10                   ceived not incident to duty or contracted  
11                   with willful negligence or misconduct is not  
12                   compensable;

13           C. Preconditions for benefits under Title 39 are  
14           as follows:

15                   (1) Federal income maintenance benefits  
16                   must be applied for and, if they exceed com-  
17                   parable Title 39 benefits, must be exhausted  
18                   by the member before receiving weekly com-  
19                   ensation benefits under Title 39. Medical  
20                   care at military or Veterans' Administration  
21                   facilities, civilian care paid for by the  
22                   military forces and other benefits furnished  
23                   by the military force or the Veterans' Ad-  
24                   ministration, including military schools of-  
25                   fered to retrain or occupationally rehabili-  
26                   tate the service member, must be used by the  
27                   service member before entitlement to medical  
28                   care benefits under Title 39. Military  
29                   schools are fully creditable under Title 39  
30                   in an approved plan of rehabilitation; and

31                   (2) Title 39 benefits are based on inabili-  
32                   ty to perform the usual civilian occupation;

33           D. For the purpose of calculation of compensa-  
34           tion, average weekly wage shall be computed sole-  
35           ly on the earning capacity of the injured member  
36           in the civilian occupation in which he is regu-  
37           larly engaged. In case of death, dependents  
38           shall be entitled to compensation as provided in  
39           Title 39 and any amendments to that Title;

1 E. If the member remains in a federal pay status  
2 or continues to receive pay in accordance with  
3 section 143, the member's medical care shall be  
4 through the military or Veterans' Administration  
5 unless referred to civilian care. If, the member  
6 is eligible for military or Veterans' Administra-  
7 tion care and knowingly declines or through his  
8 actions forfeits his rights to the benefits of  
9 section 143 or to federal care benefits, this  
10 declination or conduct serves to waive his rights  
11 to seek compensation for civilian care under Ti-  
12 tle 39;

13 G. For the purpose of Title 39, section 62, all  
14 federal benefits received by the member as a re-  
15 sult of an injury, disability or disease shall be  
16 considered to be derived from the employer and  
17 shall constitute a setoff to compensation awarded  
18 as a result of this section. A dollar-for-dollar  
19 setoff is authorized for all federal benefits to  
20 include continuation of pay under section 143,  
21 continuation of federal pay and allowances,  
22 incapacitation pay, severance pay, disability re-  
23 irement pay, Veterans' Administration disability  
24 payments and military and Veterans' Administra-  
25 tion death benefits; and

26 G. Reporting under the early pay provisions of  
27 Title 39 do not have to be initiated until a fi-  
28 nal decision is reached on the injured service  
29 member's entitlement to federal benefits or while  
30 military or veterans' disability benefits are re-  
31 ceived in lieu of compensation under Title 39,  
32 whichever ceases first. Veterans' disability  
33 benefits provided in this subsection include  
34 state military duty pay received under section  
35 143, federal continuation pay, or incapacitation  
36 pay in lieu of Title 39 benefits. The time pro-  
37 visions of Title 39 are effective upon notifica-  
38 tion to the service member that federal benefits  
39 are not authorized, or the gross monetary federal  
40 benefits are determined to be less than the  
41 entitlements under the provisions of Title 39  
42 without taking into account the setoff prescribed  
43 in paragraph E.

## STATEMENT OF FACT

2           The Maine Revised Statutes, Title 37-B, section  
3 186, has been a source of uncertainty for the admin-  
4 istrators of health and disability benefits for state  
5 military force members who serve in multiple capaci-  
6 ties. The military, veteran and state employee ca-  
7 pacities of members on duty with the state military  
8 forces qualify them in the event of injury or disease  
9 to continuation of military pay and allowances, and  
10 in serious circumstances to discharge with lump-sum  
11 military severance pay. The Veterans' Administration  
12 then picks up the disabled service veteran where the  
13 military left off with ongoing medical disability  
14 payments and lump-sum benefits in the event of an es-  
15 tablished percentage of permanent disability. Title  
16 37-B, section 186, places a duplicate responsibility  
17 on the State under Title 39 for benefits that paral-  
18 lel an injured veteran's hospital benefits, ongoing  
19 income maintenance payments, continuation of pay or  
20 incapacitation pay and severance and permanent dis-  
21 ability lump-sum settlements. The purpose of this  
22 change in Title 37-B, section 186, is to clarify when  
23 a member of the state military forces should seek  
24 medical care, financial relief from injury and long-  
25 term disability or settlement from the State in the  
26 event of resulting permanent disability.

27           This change establishes a priority of financial  
28 resources for an injured member's relief. An injured  
29 service member should look first to federal resources  
30 for hospital care and continuation of military pay  
31 and allowances; then, if appropriate, medical dis-  
32 charge and severance pay. If there is permanent im-  
33 pairment, ongoing disability and lump-sum payment  
34 should be sought from the Veterans' Administration.  
35 Title 39 benefits should operate only when there is a  
36 failure, void or shortfall of benefits in the federal  
37 system or in the state system which would deny a vet-  
38 eran benefits that a Maine civilian employee would  
39 have been entitled to under Title 39. Title 39 bene-  
40 fits should be initiated, not with time of injury as  
41 the point of orientation, but at the point of termi-  
42 nation of federal benefits, provided that they exceed  
43 Title 39. The reason for assigning the operative re-  
44 porting date at the date of federal benefit termina-

1 tion, instead of the injury date normally used under  
2 Title 39, is that federal benefits will cover a loss  
3 due to on-duty injuries except in extraordinary cir-  
4 cumstances related to nonjob causation.

5 This bill distinguishes between the multiple duty  
6 status levels of a guard member and clearly relates  
7 them to federal compensation rights and, when appro-  
8 priate circumstances arise, to Title 39. Addition-  
9 ally, the state military forces have more than 5,000  
10 part-time employees performing duties of short dura-  
11 tion by serving one weekend per month and 15 days an-  
12 nual training per year. Requiring a Title 39 initial  
13 report when a soldier is terminated from continuation  
14 of pay and allowances, is a lesser hardship than the  
15 present mandate of reporting all injuries within 7  
16 days while thousands of soldiers and airmen are  
17 simultaneously in the field participating in annual  
18 training. Most states do not offer workers' compen-  
19 sation to their guard members because the Federal  
20 Government has undertaken the service of medical care  
21 and disability for these individuals.

22 Workers' compensation, if offered at all, is nor-  
23 mally supplemental to federal disability benefits in  
24 appropriate circumstances. Given that the state sys-  
25 tem parallels the federal system for hospital dis-  
26 ability compensation for military members, the State  
27 has to be assertive to prevent abuse. If, through  
28 election or willful forfeiture of veterans' benefits  
29 by the injured member, the veterans' benefits cease,  
30 the State should not be compelled to pay workers'  
31 compensation under Title 39. An intentional waiver  
32 of federal benefits should additionally waive corre-  
33 sponding Title 39 benefits to prevent opportunists  
34 from pitting federal benefits against state benefits.

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