

# MAINE STATE LEGISLATURE

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7 STATE OF MAINE  
9 SENATE  
11 114TH LEGISLATURE  
13 FIRST REGULAR SESSION

15 SENATE AMENDMENT "A " to COMMITTEE AMENDMENT "A" to H.P.  
675, L.D. 924, Bill, "An Act to Reform the Workers' Compensation  
Law to Prevent Mandatory Relocation and Family Hardship"

17 Amend the amendment by inserting after the title the  
following:

19 'Amend the bill by striking out all of the title and  
21 inserting in its place the following:

23 'An Act to Clarify the Method of Obtaining Incapacity  
Benefits Under the Workers' Compensation Act'

25 Further amend the amendment in the first paragraph after the  
27 title (page 1, line 17 in amendment) by striking out the  
following: "Amend" and inserting in its place the following:  
29 'Further amend'

31 Further amend the amendment by striking out everything after  
the first paragraph and before the statement of fact and  
33 inserting in its place the following:

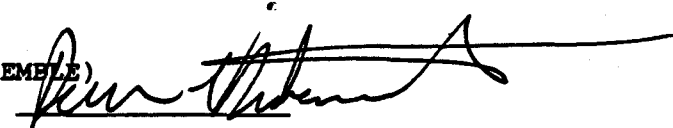
35 '39 MRSA §55-B, as enacted by PL 1987, c. 559, Pt. B, §30,  
is amended by inserting at the end a new paragraph to read:

37 For purposes of determining an injured employee's degree of  
39 incapacity under this section, the commission shall consider the  
41 availability of work that the employee is able to perform in and  
43 around the employee's community and the employee's ability to  
45 obtain such work considering the effects of the employee's  
work-related injury. If no such work is available in and around  
the employee's community or if the employee is unable to obtain  
such work in and around the employee's community due to the  
effects of a work-related injury, the employee's degree of  
47 incapacity under this section is 100%.

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STATEMENT OF FACT

5 This amendment completely replaces the committee amendment  
and makes no substantive change in current law, but only  
7 clarifies the intent of current law. This amendment does not  
alter in any way the current "statewide labor market" standard  
9 used to classify an injured employee as totally or partially  
incapacitated, but merely clarifies that this restriction upon an  
11 injured employee's ability to claim benefits under the total  
incapacity section of the Workers' Compensation Act was never  
13 intended to require an employee to undertake a statewide work  
search for purposes of establishing the employee's degree of  
15 incapacity under the partial incapacity provision of the Workers'  
Compensation Act. The Maine Revised Statutes, Title 39, section  
17 54-B, subsection 2, simply requires that, to be classed as  
totally incapacitated, an injured employee must demonstrate an  
19 inability to perform any full-time remunerative work available in  
an ordinary competitive labor market in the State. An employee  
21 who fails to demonstrate this fact may still receive benefits for  
partial incapacity under Title 39, section 55-B.

23  
25 In determining the degree of incapacity for the purposes of  
calculating benefits due to an injured employee under Title 39,  
section 55-B, it was intended that the Workers' Compensation  
27 Commission continue to evaluate an injured employee's incapacity  
under the test stated by the Law Court in Ibbitson v. Sheridan  
29 Corporation, 422 A.2d 1005 (Me. 1980). This amendment clarifies  
that the Ibbitson test still applies in the case of partial  
31 incapacity and that the degree of incapacity is determined on a  
local, not statewide, standard. An injured employee who is  
33 capable of performing work found in the ordinary statewide labor  
market but who demonstrates by an unsuccessful work search that  
35 the employee is unable to obtain work in or around the employee's  
community still qualifies as 100% incapacitated, even though the  
37 employee will receive benefits under the partial incapacity  
section of the Workers' Compensation Act and remain subject to  
39 the 400-week duration limit of that section.

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43  
45 (Senator DUTREMEILLE)  
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47 COUNTY: York

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