

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
114TH LEGISLATURE  
FIRST REGULAR SESSION

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"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 39 MRSA §54-B, sub-§2, as enacted by PL 1987, c. 559, Pt. B, §27, is repealed.

Sec. 2. 39 MRSA §54-B, sub-§2-A is enacted to read:

2-A. Standard. For the purposes of determining an injured employee's eligibility to receive benefits under this section, the commission shall consider the availability of work that the employee is able to perform in and around the employee's community. 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 is eligible to receive benefits under this section.

Sec. 3. 39 MRSA §54-B, sub-§3, as enacted by PL 1987, c. 559, Pt. B, §27, is amended to read:

3. Presumption. For the purposes of this Act, in the following cases, it is conclusively presumed that the injury resulted in permanent total incapacity ~~and that the employee is unable to perform full-time remunerative work in the ordinary competitive labor market in the State:~~

- A. The total and irrevocable loss of sight of both eyes;
- B. The loss of both hands at or above the wrist;

1 C. The loss of both feet at or above the ankle;

3 D. The loss of one hand and one foot;

5 E. An injury to the spine resulting in permanent and  
7 complete paralysis of the arms or legs; or

9 F. An injury to the skull resulting in incurable imbecility  
or insanity.

11 **Sec. 3. 39 MRSA §55-B**, as enacted by PL 1987, c. 559, Pt. B,  
13 §30, is amended by adding at the end a new paragraph to read:

15 For the purposes of determining an injured employee's degree  
17 of incapacity under this section, the commission shall consider  
the availability of work that the employee is able to perform in  
19 and around the employee's community and the employee's ability to  
obtain such employment considering the effects of the employee's  
21 work-related injury.

23 **Sec. 4. Application.** This Act applies to all injuries  
occurring on or after November 20, 1987.

25 **FISCAL NOTE**

27  
29 This bill could result in additional workers' compensation  
payments by the State as an employer by removing the provision  
31 that an employee only has to be able to perform full-time work  
anywhere in the State to no longer be eligible for compensation  
33 for total incapacity. Neither the timing nor the amount of any  
additional payments can be estimated.'

35 **STATEMENT OF FACT**

37  
39 This amendment completely replaces the original bill and  
restores the former standard by which injured employees were  
41 classified as totally or partially incapacitated under the  
Workers' Compensation Act before November 20, 1987. The  
43 amendment repeals the present restriction upon an injured  
employee's ability to claim total incapacity benefits found in  
the Maine Revised Statutes, Title 39, section 54-B, subsection  
45 2. This provision requires that to be classified as totally  
incapacitated, an injured employee must be unable to perform any  
47 full-time remunerative work available in an ordinary competitive  
labor market in the State. If an employee is classified as  
49 totally incapacitated under current law, the employee receives

1 benefits that are unlimited in duration and are adjusted annually  
2 for inflation after 3 years. An employee who is capable of  
3 performing work in the state wide labor market, even if that  
4 employee is "totally incapacitated" in the sense that no work is  
5 available to the employee in and around the employee's community,  
6 is classified as partially incapacitated under Title 39, section  
7 55-B. Partial incapacity benefits under section 55-B are subject  
8 to a 400-week duration cap and are not adjusted for inflation.  
9 The employee's ability or inability to perform work in the  
10 statewide labor market is the determining factor under current  
11 law in classifying an employee as partially or totally  
12 incapacitated and determines the maximum duration of benefits  
13 received by an employee. If the employee is classified as  
14 partially incapacitated under Title 39, section 55-B, benefits  
15 are terminated 400 weeks after the employee reaches maximum  
16 medical improvement, regardless of any continuing incapacity  
17 suffered by the employee.

19 The application of current law eliminates all income to an  
20 injured employee who is able to perform work available in the  
21 State, but who is unable to obtain such work in the employee's  
22 community, 400 weeks after the employee reaches maximum medical  
23 improvement. The employee no longer receives any workers'  
24 compensation benefits but has no other source of income since the  
25 employee is still unable to obtain work due to the effects of the  
26 work-related injury. The employee is then faced with the choice  
27 of seeking public assistance or relocating to another area of the  
28 State in the hope of finding new employment with an income almost  
29 certainly below the employee's preinjury earnings. The harsh  
30 effect of current law falls disproportionately upon persons who  
31 reside in the rural areas of the State and shifts an employer's  
32 obligation to pay for workplace injuries to the state and local  
33 taxpayers.

35 The amendment avoids this result by replacing the current  
36 standard with the standard applied to evaluate an injured  
37 employee's degree of incapacity under the test stated by the Law  
38 Court in Ibbitson v. Sheridan Corporation, 422 A.2d 1005 (Me.  
39 1980). This standard is employed almost universally throughout  
40 the United States to classify employees as totally or partially  
41 incapacitated. Under the amendment, an injured employee who is  
42 capable of performing work, but who demonstrates by an  
43 unsuccessful work search that the employee is unable to obtain  
44 work in and around the employee's community, qualifies as totally  
45 incapacitated under Title 39, Section 54-B, and will receive  
46 benefits for the duration of the employee's incapacity.  
47

COMMITTEE AMENDMENT "A" to H.P. 675, L.D. 924

1           The amendment also codifies the current Ibbitson standard  
2 used to determine the degree of incapacity for an injured  
3 employee who receives benefits under Title 39, section 55-B. As  
4 under current law, an injured employee's degree of partial  
5 incapacity will be determined under the amendment by reference to  
6 the local labor market, except that those employees whose degree  
7 of incapacity is 100% under current law because they cannot find  
8 any work in their local communities will receive benefits for  
9 total incapacity under Title 39, section 54-B, rather than for  
10 partial incapacity under section 55-B.

11  
12           Finally, the amendment applies to all injuries occurring on  
13 or after November 20, 1987. This makes the use of the Ibbitson  
14 standard in determining whether an employee receives benefits  
15 under Title 39, section 54-B or section 55-B, retroactive to the  
16 date of enactment of the statewide labor market standard. This  
17 ensures that all employees will be treated equally and no group  
18 of injured employees will be singled out for application of the  
19 statewide labor market standard. The Law Court has ruled in  
20 Norton v. C.P. Blouin, 511 A.2d 1056 (Me. 1986), that such  
21 application is not unconstitutional if no benefits are required  
22 to be paid for periods of incapacity suffered by the employee  
23 before the law takes effect. Since there is no difference under  
24 current law in the benefits received by an injured employee under  
25 sections 54-B and 55-B until at least 3 years from the date of  
26 injury when the inflation adjustment under section 55-B begins,  
27 the enactment of this amendment will not require the retroactive  
28 payment of benefits for any prior periods of incapacity.

29

Reported by the Majority of the Committee on Labor  
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