## MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

### SECOND REGULAR SESSION - 1990

Legislative Document

No. 1871

H.P. 1354

House of Representatives, December 11, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Clerk of the House on December 11, 1989. Referred to the Committee on Labor and 1600 ordered printed pursuant to Joint Rule 14.

EDWIN H. PERT, Clerk

Presented by Representative RAND of Portland.

Cosponsored by Senator MATTHEWS of Kennebec, Representative REED of Falmouth and Representative BUTLAND of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY

An Act to Limit Apportionment of Workers' Compensation Liability.



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

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Sec. 1. 39 MRSA §104-B, sub-§1, as enacted by PL 1981, c. 474, §4, is amended to read:

Applicability. Where 2 or more occupational injuries employment occur, during either а single or successive employments, which combine to produce a single incapacitating condition, and more than one insurer is responsible for that condition, their liability shall be governed by this section. 10 This section governs all apportionment disputes resolved by the 12 commission or any commissioner, whether brought before the commission by petition for apportionment or otherwise.

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#### Sec. 2. 39 MRSA §104-B, sub-§§5 and 6 are enacted to read:

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5. Apportionment method. Whenever 2 or more injuries contribute to a period of total or partial incapacity, liability for such weekly benefits must be apportioned on a pro rata basis, according to the number of such contributing injuries. employer's or insurer's share of such liability must be calculated by multiplying its pro rata proportion of liability by the total benefit amount to which the employee is entitled, regardless of the benefit level or average weekly wage applicable to the injury or injuries for which the employer or insurer is responsible.

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Limitation. For any injury occurring after the effective date of this subsection, apportionment of liability may not be based on a prior injury unless the subsequent injury occurred within 2 years of the date of the last payment for total or partial compensation attributable to the prior injury; except that if apportionment of liability to such prior injury would increase the benefits payable to the injured employee, the employee may waive the limitation and allow the commission to decide the claim for apportionment without regard to this subsection.

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#### STATEMENT OF FACT

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The purpose of this bill is to reduce the costs associated with workers' compensation apportionment claims. whenever 2 or more separate injuries combine to incapacitate a worker, the insurance company responsible for the last injury may seek to apportion its liability with the insurance company responsible for the earlier injury.

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The bill requires that apportionment be calculated on a pro rata basis, based simply on the number of contributing injuries, rather than through the process of litigation. In addition, the bill eliminates apportionment claims when the subsequent injury occurred more than 2 years after payment of the last benefit attributable to the prior injury, but permits apportionment in those cases where apportionment of liability would increase the benefits paid to the injured worker.