MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 978

H.P. 679

House of Representatives, March 8, 1991

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EDWIN H. PERT, Clerk

Presented by Representative REED of Falmouth.

Cosponsored by Senator EMERSON of Penobscot and Representative BENNETT of Norway.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

An Act to Clarify the Burden of Proof in Workers' Compensation Cases Involving Issues Concerning the Search for Work.



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

Sec. 1. 39 MRSA §55-B, first ¶, as enacted by PL 1987, c. 559, Pt. B, \$30, is amended to read:

While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to 2/3 the difference, due to the injury, between his the employee's average gross weekly wages, earning earnings or salary before the injury and the weekly wages, earnings or salary which - he that the employee is able to earn after the injury, but not more than the maximum benefit under section 53-B. Payments under this section shall may not continue for longer than 400 weeks after maximum medical improvement.

Sec. 2. 39 MRSA §55-B, last ¶, as enacted by PL 1989, c. 575, is amended to read:

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For purposes of determining an injured employee's degree of incapacity 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 and the employee's ability to 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 incapacity under this section is 100%. When issues concerning the search for work are raised pursuant to this section, the employee shall bear the burden of proof as provided in section 100, subsection 2-A.

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Sec. 3. 39 MRSA §100, sub-§2-A is enacted to read:

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2-A. Burden of proof. In petitions for review that involve issues concerning the search for work, an employee with partial work capacity must prove that suitable work that the employee is physically able to perform is not regularly and continuously available to the employee.

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STATEMENT OF FACT

44 This bill requires that an employee who has recovered partial work capacity demonstrate that the employee has searched the local job market for suitable work. This standard fairly places this responsibility with the person who is in the best position to come forward with that fact. 48