

# MAINE STATE LEGISLATURE

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R.O.S.

L.D. 1981

(Filing No. S-475)

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STATE OF MAINE  
SENATE  
115TH LEGISLATURE  
FIRST SPECIAL SESSION

SENATE AMENDMENT "B" to H.P. 1397, L.D. 1981, Bill, "An Act to Make Changes in the Workers' Compensation System"

Amend the bill by striking out all of section D-2.

Further amend the bill by striking out all of sections D-6 and D-7 and inserting in their place the following:

'Sec. D-6. 39 MRSA §54-B, sub-§§2 and 3, as enacted by PL 1987, c. 559, Pt. B, §27, are amended to read:

2. Limitation. Any employee who has--reached--maximum medical-improvement-and is able to perform full-time remunerative work that is available in the ordinary competitive labor market in the State,--regardless of the availability of such work in and around his community, within a reasonable commuting distance from the employee's residence is not eligible for compensation under this section, but may be eligible for compensation under section 55-B. Reasonable moving and relocation expenses for employees who are retrained or rehabilitated under this Act are available as provided in section 87, subsection 2. In determining the availability of work for purposes of this section, the employee has the initial burden of conducting a work search within the employee's community. If the results of that work search demonstrate that no work is available to that employee within the community, the employer has the burden of showing that work is available to the employee within a reasonable commuting distance. In determining whether the commuting distance is reasonable, the commission must consider the cost of commuting, the net wages of the prospective employment and the limitations on the employee's ability to commute, if any, due to the work injury. The commission may not find that commuting over 100 miles one-way is reasonable.

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

8           A. The total and irrevocable loss of sight of both eyes;

10           B. The loss of both hands at or above the wrist;

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

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

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

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

22           **Sec. D-7. 39 MRSA §55-B, first ¶,** as enacted by PL 1987, c.  
23 559, Pt. B, §30, is amended to read:

24           While the incapacity for work resulting from the injury is  
25 partial, the employer shall pay the injured employee a weekly  
26 compensation equal to 2/3 the difference, due to the injury,  
27 between his the employee's average gross weekly wages, earning  
28 earnings or salary before the injury and the weekly wages,  
29 earnings or salary which he that the employee is able to earn  
30 after the injury, but not more than the maximum benefit under  
31 section 53-B. ~~Payments under this section shall not continue for~~  
32 ~~longer than 400 weeks after maximum medical improvement. An~~  
33 ~~employee is not eligible to receive compensation under this~~  
34 ~~section after the employee has received 520 weeks of compensation~~  
35 ~~under section 54-B, this section or both sections.'~~

38           Further amend the bill in Part D by renumbering the sections  
to read consecutively.

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STATEMENT OF FACT

This amendment repeals the statewide work capacity limitation on an employee's eligibility for benefits under the total incapacity provision of the Workers' Compensation Act. This limitation is replaced with one of a reasonable commuting distance from the employee's residence, not to exceed 100 miles one way. The commission is required to consider a variety of factors, including the net wages of the prospective employment, in determining what is a reasonable commuting distance. This amendment deletes the definition of "community" in the bill.

(Senator BUSTIN)  
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