

MAINE STATE LEGISLATURE

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MINORITY
HUMAN RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 331, L.D. 452, Bill, "An Act Regarding Recovery from Members of the Tobacco Industry of Medicaid and Maine Health Program Health Care Costs for Tobacco-related Illness, Disease or Disability"

Amend the bill by striking out the title and substituting the following:

'An Act Providing for the Recovery of Health Care, Disability and Economic Loss for Tobacco-related Injury or Disease'

Further 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. 22 MRSA §14-A is enacted to read:

§14-A. Recovery of health care and disability expenses for tobacco-related injury or disease

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Economic loss," as applicable to the State, means health care and disability costs paid by or through the State, including, but not limited to, the benefits provided under the Medicaid program administered by the department pursuant to the United States Social Security Act, Title XIX or under the State Employee Health Program for active or retired state employees and their dependents.

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2 B. "Economic loss," as applicable to an insurer, means
health care and disability benefits paid to or on behalf of
an individual.

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6 C. "Economic loss," as applicable to an individual, means
health care expense, loss of income caused by disability,
the cost or value of replacement services, pecuniary loss
arising from death and the costs of burial. "Economic loss"
8 does not include subjective or nonmonetary losses, pain,
10 suffering, emotional distress, loss of society and
companionship, loss of consortium, injury to reputation or
12 humiliation.

14 D. "Insurer" means any entity authorized to do business in
this State under Title 24 or Title 24-A, a self-insured
16 employer doing business in this State or any entity
providing health or disability benefits or health care to
18 members of groups or to individuals.

20 E. "Tobacco" or "tobacco products" includes cigarettes,
cigars, cheroots, pipe tobacco, chewing tobacco, snuff and
22 any other form of tobacco prepared for smoking, chewing or
inhaling.

24
26 F. "Tobacco manufacturer" means any entity that
manufactures tobacco or tobacco products for smoking or
other use by persons.

28
30 2. Economic loss recovery authorized. If, after December
31, 1995, the State or an insurer incurs economic loss arising
32 from a person's injury or disease that is caused by exposure to
tobacco or tobacco smoke, the State or insurer may recover that
34 loss from any tobacco manufacturer who is liable under this
section or any other applicable law. The State may proceed by
36 action of the commissioner as represented by the Attorney
General, or private attorneys, pursuant to subsection 7.

38 3. Additional recovery authorized. In addition to recovery
of the economic loss under subsection 2 or 9, the State, insurer
40 or individual may also recover the related costs and expenses of
its investigation, the gathering of data, the performance of
42 scientific studies, court costs and legal representation
necessary for effectuating those recoveries. The additional
44 costs and expenses may not exceed 50% of the recovered economic
loss plus interest.

46
48 4. Liability. A tobacco manufacturer whose products are
distributed, marketed or sold to consumers of the State after
50 December 31, 1995 is strictly liable for recoveries sought under
subsection 2, 3 or 9 and may not assert against any such claims

1 the defenses of comparative negligence, contributory fault or
2 assumption of the risk. A recovery by the State or insurer is
3 independent of rights or causes of action that may be asserted by
4 an individual.

6 **5. Apportionment.** In determining the extent of a tobacco
7 manufacturer's liability under this section, the court shall
8 apply evidentiary presumptions in the following manner.

10 A. It is presumed that a tobacco manufacturer's percentage
11 share of liability for economic loss in any given year is
12 equal to its percentage share of the total dollar volume of
13 retail tobacco sales in this State for the 3-year period
14 immediately preceding the year in which the economic loss is
15 sustained.

16 B. Economic loss attributable to tobacco use may be
17 established on the basis of reliable appraisals and expert
18 assessments for a class of persons affected rather than
19 proof of causation for each person individually.

20 C. An appraisal or assessment of economic loss may be based
21 on epidemiological studies, scientific samplings or
22 statistical surveys determined by the commissioner to be
23 reliable. The commissioner may adopt rules specifying
24 methods by which data may be collected and assessments may
25 be made in determining a manufacturer's liability.

26 D. A tobacco manufacturer is entitled to rebut the
27 presumptions contained in paragraphs A to C if determination
28 of liability and damages is concluded in a timely manner
29 without unduly delaying the recoveries authorized by this
30 section.

31 **6. Compromise authority.** The Attorney General, with the
32 advice and consent of the commissioner, may compromise or waive
33 any portion of the State's recovery authorized by this section to
34 the extent that it is in the best interest of the State to do so
35 and may establish a plan for periodic and continuing payments by
36 any tobacco manufacturer in discharge of the manufacturer's
37 liability as the liability accrues.

38 **7. Private sector assistance.** The commissioner or the
39 Attorney General may contract with private consultants and
40 private attorneys to provide expert assistance and legal
41 representation in an action pursuant to subsection 2.

42 **8. Distribution.** Funds recovered on the State's behalf
43 under this section must first be used to pay the associated fees,
44 legal costs and expenses incurred by the department or the
45 department.

Attorney General, including expenses payable under subsection 7. The remainder of the funds recovered on the State's behalf must be remitted to the General Fund. All recoveries must be accounted for as determined by the State Budget Officer.

9. Liability to individuals. A tobacco manufacturer whose products are distributed, marketed or sold in the State after December 31, 1995 is strictly liable for any economic loss to an individual reasonably attributable to that individual's exposure to tobacco or tobacco smoke. This subsection applies to any claim for injury, death or disease that accrues after December 31, 1995.

A. If a portion of the loss has been paid by an entity that asserts its own claim for economic loss, the court shall make orders as necessary to avoid duplication of recovery.

B. Recoverable economic loss includes reasonably foreseeable future losses in addition to economic loss experienced at the time of recovery.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The Department of Human Services may experience future General Fund and Federal Expenditure Fund savings if the department is able to successfully recover funds from any members of the tobacco industry. The amount of potential future savings can not be determined at this time.

If the Attorney General elects to institute and prosecute legal proceedings for recovery, the Judicial Department and the Department of the Attorney General will incur significant additional costs. The amount and timing of the General Fund appropriations necessary to cover the additional costs can not be determined at this time.'

STATEMENT OF FACT

This amendment replaces the bill. It authorizes the recovery of economic loss for injury, illness, disease or disability due to exposure to tobacco and tobacco smoke from tobacco manufacturers doing business in the State after December 31, 1995. It allows the recovery of additional costs, fees and expenses up to 50% of the recovered economic loss plus interest. It apportions liability among manufacturers according to market

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2 share. It specifies evidentiary presumptions to be applied by
the court. It allows recovery by an individual, insurers or the
State.

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6 It authorizes the Commissioner of Human Services to sue on
behalf of the State for economic loss incurred by the State,
through the Attorney General. It allows the commissioner to
8 contract with private consultants and attorneys as needed. It
specifies that any funds recovered pay the costs and expenses of
10 the suit and the remainder must be remitted to the General Fund.

12 It imposes strict liability for tobacco manufacturers whose
products are distributed, marketed or sold to Maine consumers
14 after December 31, 1995.

16 It adds a fiscal note to the bill.

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