

# MAINE STATE LEGISLATURE

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M  
R. & S.

L.D. 586

DATE: 2/10/2000

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**LABOR**

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**STATE OF MAINE  
SENATE  
119TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 197, L.D. 586, Bill, "An Act to Abolish Apportionment in Workers' Compensation Claims"

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

**Sec. 1. 39-A MRSA §354, sub-§2**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**2. Liability to employee.** If an employee has sustained more than one injury while employed by different employers, or if an employee has sustained more than one injury while employed by the same employer and that employer was insured by one insurer when the first injury occurred and insured by the same or another insurer when the subsequent injury or injuries occurred, the insurer providing coverage at the time of the last injury shall ~~initially--be~~ is responsible to the employee for all benefits payable under this Act.

Notwithstanding section 102, subsection 4, paragraph G, if an employee establishes that that employee's wages at the time of the most recent injury were lower than that employee's wages at the time of the previous injury as a result of the previous injury, then the employee's average weekly wage must be computed based on that employee's wages at the time of the previous injury. The employee's rights relative to earlier injuries must not be extinguished or diminished by operation of this rule of responsibility. The employee may pursue a claim based upon earlier injuries if the subsequent employer or insurer denies

**COMMITTEE AMENDMENT**

2 responsibility for benefits based on a claim that the last injury  
 4 does not contribute or no longer contributes to the condition at  
 6 issue in a manner that makes that employer or insurer responsible  
 8 for compensation or based upon a termination of benefits by  
 10 operation of section 213 or 214. Payment of benefits with notice  
 12 or knowledge that the benefits relate in part to an earlier  
 14 injury tolls the statute of limitation on that earlier injury.  
If the previous injury or injuries concern a separate and  
unrelated injury or condition, the employer or insurer providing  
coverage at the time of that injury remains liable for medical  
benefits related to that injury. This rule applies only to  
multiple injuries after January 1, 1993 and does not affect an  
employee's right to claim or obtain benefits on injuries prior to  
January 1, 1993 consistent with section 201, subsection 6.

16 **Sec. 2. 39-A MRSA §354, sub-§3,** as amended by PL 1999, c. 354,  
 18 §9, is further amended to read:

20 **3. Subrogation.** Any insurer determined to be liable for  
 22 benefits under subsection 2 must be subrogated to the employee's  
 24 rights under this Act for all benefits the insurer has paid and  
 26 for which another insurer may be liable for an injury occurring  
before January 1, 1993 consistent with section 201, subsection  
6. With respect to injuries sustained after January 1, 1993, an  
insurer determined to be responsible for benefits under  
subsection 2 has no subrogation rights. Apportionment decisions  
 28 made under this subsection may not affect an employee's rights  
 30 and benefits under this Act. The board has jurisdiction over  
proceedings to determine the apportionment of liability among  
responsible insurers.'

32 Further amend the bill by inserting at the end before the  
 34 summary the following:

36 **'FISCAL NOTE**

38 The Workers' Compensation Board will realize some minor  
 40 administrative savings from the elimination of the apportionment  
 requirement in certain workers' compensation cases.'

42 **SUMMARY**

44 The amendment replaces the bill. As in the bill, the  
 46 amendment adopts the "last injury rule" that, in cases of  
 48 multiple successive injuries, assigns responsibility for payment  
 50 of claims to the last insurer responsible for an injury that  
 contributes to a condition eligible for compensation under the  
 workers' compensation law. The amendment clarifies the bill and  
 adds several provisions to ensure that the rights of injured

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2 workers are not impaired by adoption of the last injury rule. It  
3 provides that the worker's wages before the first injury are used  
4 to calculate the benefit for subsequent injuries if the worker  
5 can show that current wages are lower than they would have been  
6 as a result of the prior injury. It also specifies the employee's  
7 rights with regard to the earlier injury and adds a fiscal note  
8 to the bill.