

# MAINE STATE LEGISLATURE

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*R.S.*

L.D. 762

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DATE: May 7, 1999

(Filing No. S-240 )

**LABOR**

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

COMMITTEE AMENDMENT " B " to S.P. 269, L.D. 762, Bill, "An Act to Eliminate the Requirement That the Employment Rehabilitation Fund Reimburse Employers and Insurers for Benefits Paid pursuant to the Benefits Adjustments"

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

**'An Act to Eliminate the Requirement that the Employment Rehabilitation Fund Reimburse Employers and Insurers for Benefits Paid pursuant to the Benefits Adjustment and to Eliminate Future Benefit Adjustments'**

Further 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 §213, sub-§§1, 2 and 4,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

**1. Benefit and duration.** While the incapacity for work is partial, the employer shall pay the injured employee a weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured employee is able to earn after the injury, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the disability if the employee's permanent impairment, determined according to the impairment guidelines

**COMMITTEE AMENDMENT**

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COMMITTEE AMENDMENT "B " to S.P. 269, L.D. 762

2 adopted by the board pursuant to section 153, subsection 8  
3 resulting from the personal injury is in excess of 15% to the  
4 body. In all other cases, an employee is not eligible to receive  
5 compensation under this section after the employee has received  
6 ~~260~~ 312 weeks of compensation under section 212, subsection 1,  
7 this section or both. The board may in the exercise of its  
8 discretion extend the duration of benefit entitlement beyond ~~260~~  
9 312 weeks in cases involving extreme financial hardship due to  
10 inability to return to gainful employment. This authority may  
11 not be delegated to a hearing officer and such decisions must be  
12 made expeditiously.

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14 **2. Threshold adjustment.** Effective January 1, 1998 and  
15 every other January 1st thereafter, the board, using an  
16 independent actuarial review based upon actuarially sound data  
17 and methodology, must adjust the 15% impairment threshold  
18 established in subsection 1 for injuries occurring prior to  
19 January 1, 2000 so that 25% of all cases with permanent  
20 impairment will be expected to exceed the threshold and 75% of  
21 all cases with permanent impairment will be expected to be less  
22 than the threshold. The actuarial review must include all cases  
23 receiving permanent impairment ratings on or after January 1,  
24 1993, irrespective of date of injury, but may utilize a cutoff  
25 date of 90 days prior to each adjustment date to permit the  
26 collection and analysis of data. The data must be adjusted to  
27 reflect ultimate loss development. In order to ensure the  
28 accuracy of the data, the board shall require that all cases  
29 involving permanent injury, including those settled pursuant to  
30 section 352, include an impairment rating performed in accordance  
31 with the guidelines adopted by the board and either agreed to by  
32 the parties or determined by the board. Each adjusted threshold  
33 is applicable to all cases with dates of injury on or after the  
34 date of adjustment and prior to the date of the next adjustment.

35  
36 **4. Extension of 312-week limitation.** Effective January 1,  
37 1998 and every January 1st thereafter, the ~~260-week~~ 312-week  
38 limitation contained in subsection 1 must be extended 52 weeks  
39 for every year the board finds that the frequency of such cases  
40 involving the payment of benefits under section 212 or 213 is no  
41 greater than the national average based on frequency from the  
42 latest unit statistical plan aggregate data for Maine and on a  
43 countrywide basis, adjusted to a unified industry mix. The  
44 ~~260-week~~ 312-week limitation contained in subsection 1 may not be  
45 extended under this subsection to more than 520 weeks.  
46 Reimbursement to the employer, insurer or group self-insurer for  
47 the payment of all benefits for additional weeks payable pursuant  
48 to this subsection must be made from the Employment  
49 Rehabilitation Fund. This subsection applies only to payments  
50 for injuries occurring prior to January 1, 2000.'

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

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**FISCAL NOTE**

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8 This bill extends by 2 years the requirement that the  
Employment Rehabilitation Fund reimburse employers and insurers  
for the costs of benefits related to certain injuries. The  
10 impact of this extension on the balance of the fund can not be  
determined at this time.

12

The bill is not expected to have any significant impact on  
14 the State's workers' compensation plan.'

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**SUMMARY**

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This amendment is the minority report. It provides that the  
20 Employment Rehabilitation Fund will continue to reimburse  
employers, insurers and group self-insurers for additional weeks  
22 of benefits payable under the benefits adjustment law for  
injuries that occurred prior to January 1, 2000. There will be  
24 no reimbursement from the fund for payments relating to injuries  
occurring on or after January 1, 2000. In addition, the cap on  
26 weeks of benefits will not be extended for injuries occurring on  
or after January 1, 2000 and the impairment threshold will not be  
28 adjusted for those injuries. The amendment also adds a fiscal  
note to the bill.