

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1551

H.P. 1104

House of Representatives, February 25, 1999

**An Act to Provide a Method of Compensation for Personal Injuries
Caused by Side-stream Tobacco Smoke.**

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative McKENNEY of Cumberland. (By Request)

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

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Sec. 1. 5 MRSA §12004-G, sub-§31-C is enacted to read:

<u>31-C.</u>	<u>Side-stream</u>	<u>\$100 per</u>	<u>22 MRSA</u>
<u>Smoking</u>	<u>Smoke</u>	<u>day;</u>	<u>§1646</u>
	<u>Compensation</u>	<u>expenses</u>	
	<u>Board</u>		

Sec. 2. 22 MRSA c. 266-B is enacted to read:

CHAPTER 266-B

SIDE-STREAM SMOKE COMPENSATION

§1645. Definitions

As used in this chapter, unless the context otherwise indicates, "side-stream smoke" means smoke given off while carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off tobacco smoke.

§1646. Side-stream Smoke Compensation Board

1. Board established. Pursuant to Title 5, section 12004-G, subsection 31-C, the Side-stream Smoke Compensation Board, referred to in this chapter as the "board," is established as an independent board composed of 8 members. The members of the board must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review by the joint standing committee of the Legislature having jurisdiction over human resources matters and confirmation by the Legislature. Notwithstanding Title 3, chapter 6, the designated committee shall complete its review of the appointments of the Governor within 15 days of the Governor's written notice of appointment, and the vote of the Legislature must be taken no later than 7 days after the vote of the designated committee or the reconvening of the Legislature, whichever is earlier.

2. Membership. The board is composed of the following members:

A. The Attorney General or the Attorney General's designee; and

B. The following members appointed by the Governor:

(1) One member chosen from a list provided by the Maine Medical Association;

2 (2) One member chosen from a list provided by the
3 Maine Osteopathic Association;

4 (3) One member chosen from a list provided by a
5 statewide association dedicated to eradicating lung
6 disease;

8 (4) One member chosen from a list provided by a
9 statewide association dedicated to eradicating heart
10 disease;

12 (5) One member chosen from a list provided by the
13 Maine State Bar Association; and

14 (6) Two public members.

16 Any list submitted to the Governor must have at least 4 times as
17 many names as there are vacancies for the group represented by
18 the vacancies.

20 A member of the board is not liable in a civil action for any act
21 performed in good faith in the execution of duties as a board
22 member.

24 A lobbyist required to be registered with the Secretary of State
25 may not be a member of the board.

28 3. Terms. Members of the board hold office for staggered
29 terms of 4 years, except for the initial members of the board and
30 except for the member representing the Attorney General. An
31 appointed member may not serve more than 2 full terms.

32 The Governor shall initially designate 2 members for terms
33 expiring February 1, 2001; 2 members for terms expiring February
34 1, 2002; 2 members for terms expiring February 1, 2003; and 2
35 members for terms expiring February 1, 2004.

38 4. Removal. Board members hold office for the terms
39 provided, unless removed, and until their successors are
40 appointed and qualified. They must be sworn and may be removed
41 by the Governor for inefficiency, willful neglect of duty or
42 malfeasance in office, but only with the review and concurrence
43 of the joint standing committee of the Legislature having
44 jurisdiction over human resources upon hearing in executive
45 session. Before removing a board member, the Governor shall
46 notify the President of the Senate and the Speaker of the House
47 of Representatives of the removal and the reasons for the removal.

48 5. Vacancies. If a vacancy occurs during a term of office,
49 the Governor shall appoint a replacement to fill the unexpired
50 term.

2 part of the term. The replacement must be from the group
4 represented by the member being replaced. In case the office of
6 chair becomes vacant, the board member who has served for the
8 longest period of time shall act as chair until the Governor
10 makes an appointment to fill the vacancy.

12 6. Chair. The board shall annually elect one of its
14 members to serve as chair for a one-year term expiring February
16 1st each year. The term as chair of the first member elected to
18 that position expires February 1, 2001. The chair may vote on
20 all matters before the board.

22 7. Voting requirements. The board may take action only by
24 majority vote of its membership.

26 8. Salary; expenses. An appointed board member is entitled
28 to a per diem of \$100 per day. Members of the board receive
30 their actual, necessary cash expenses while on official business
32 of the board.

34 9. Headquarters; regional offices. The board must have its
36 central office in the Augusta area. The board may hold sessions
38 at any place within the State.

40 10. Hiring personnel. The board shall hire personnel as
42 needed to carry out its duties. Personnel hired are unclassified
44 employees, serve at the pleasure of the board and are not subject
46 to the Civil Service Law.

48 11. Budget. The board shall administer its budget with the
50 assistance of any personnel hired under subsection 10.

§1647. Powers and duties

1 1. Rules. Consistent with the requirements of the Maine
3 Administrative Procedure Act, the board shall adopt rules to
5 carry out its duties under this chapter. Rules adopted pursuant
7 to this subsection are major substantive rules as defined in
9 Title 5, chapter 375, subchapter II-A.

11 2. Duties. The board shall establish procedures to hear
13 and decide claims of and make monetary awards to persons claiming
15 physical injury, loss of work and other damages from the
17 side-stream smoke of a person or persons other than the person
19 making the claim. If the board decides in favor of a person
21 making a claim, the board shall make a monetary award to the
23 person that compensates the person for the amount of lost work,
25 medical costs, legal costs, hardship and suffering and any other
27 damages the board determines just compensation. The burden is on
29 the person making the claim to prove that side-stream smoke
31 caused the person's damages.

2 **§1648. Compensation funds**

4 Funds for monetary awards under section 1647 must be
6 provided from any monetary awards made to the State pursuant to
 law suits brought against tobacco companies.

8 **Sec. 3. Effective date.** This Act takes effect January 1, 2000.

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SUMMARY

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14 This bill creates a Side-stream Smoke Compensation Board for
 the purpose of assessing claims of persons injured by side-stream
16 smoke. If the board determines that a person was damaged by
 side-stream smoke, the board will make a monetary award to the
 person to compensate for damages. Funds for this compensation
18 will come from money awarded to the State in lawsuits against
 tobacco companies.