

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1454, L.D. 2075, Bill, "An Act to Amend the Maine Workers' Compensation Act of 1992 as it Pertains to Occupational Health"

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

'Sec. 1. 26 MRSA §1192, sub-§5, as amended by PL 1991, c. 885, Pt. E, §39 and affected by §47, is further amended to read:

5. **Has earned wages.** For each eligible individual establishing a benefit year on or after January 1, 1980, the individual has been paid wages equal to or exceeding 2 times the annual average weekly wage for insured work in each of 2 different quarters in the individual's base period and has been paid total wages equal to or exceeding 6 times the annual average weekly wage in the individual's base period for insured work. The annual average weekly wage amount to be used for purposes of this subsection is that which is applicable at the time the individual files a request for determination of insured status. For the purpose of this subsection, wages are counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 1043, subsection 9, or section 1222, subsection 3, with respect to becoming an employer; provided that no individual may receive benefits in a benefit year, unless, subsequent to the beginning of the next preceding benefit year during which that individual received benefits, that individual

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performed services and earned remuneration for such service in an amount equal to not less than 8 times that individual's weekly benefit amount in employment by an employer in the benefit year being established. This subsection applies only to any individual requesting determination of insured status on and after January 1, 1972. In determining a claimant's qualification under this subsection, payments pursuant to former Title 39, sections 54 and 55, the Workers' Compensation Act, and former Title 39, sections 188 and 189, Title 39-A, ~~sections 608 and 609~~ section 602, the Occupational Disease Law, are considered wages for insured work.

Sec. 2. 39-A MRSA §602, as amended by PL 1995, c. 462, Pt. A, §80, is further amended to read:

§602. Application

Except as otherwise specifically provided, ~~incapacity--to~~ ~~work~~ injury or death of an employee arising out of and in the course of employment and resulting from an occupational disease must be treated as the happening of a personal injury arising out of and in the course of the employment, within the meaning of the former Workers' Compensation Act or the Maine Workers' Compensation Act of 1992, and all the provisions of the applicable Act apply to that occupational disease. This chapter applies only to cases in which the last exposure to an occupational disease in an occupation subject to the hazards of that disease occurred in the State and after January 1, 1946.

Sec. 3. 39-A MRSA §603-A is enacted to read:

§603-A. Date of injury defined

As used in this chapter, the date of injury is the date on which an employee knew or should have known of the nature and seriousness of the occupational disease and of the causal relationship between the employment and the occupational disease.

Sec. 4. 39-A MRSA §605, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

§605. Aggravation of occupational disease

When an occupational disease is aggravated by any other disease or infirmity not itself compensable, or death or ~~incapacity~~ injury from any other cause not itself compensable is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable must be reduced and limited to the proportion only of the compensation that would be payable if the occupational disease were the sole

cause of the ~~ineapaeity~~ injury or death as the occupational disease, as a causative factor, bears to all the causes of that ~~ineapaeity~~ injury or death, the reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of the payments as, under the circumstances of the particular case, may be for the best interest of the claimant or claimants.

Sec. 5. 39-A MRSA §606, as amended by PL 1995, c. 462, Pt. A, §81, is further amended to read:

§606. Date from which compensation is computed; employer liable

~~The date when--an--employee--becomes--ineapaeitated--by--an occupational disease from performing the employee's work in the last occupation in which the employee was injuriously exposed to the hazards of the occupational disease is the date of the injury~~ of injury as defined in section 603-A is equivalent to the date of injury under the former Workers' Compensation Act or the Maine Workers' Compensation Act of 1992. When compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of the occupational disease and the insurance carrier, if any, on the risk when the employee was last exposed under that employer, are liable. The amount of the compensation must be based on the average wages of the employee when last exposed under that employer and notice of injury and claim for compensation must be given to that employer. The only employer and insurance carrier liable are the last employer in whose employment the employee was last injuriously exposed to the hazards of the disease during a period of 60 days or more and the insurance carrier, if any, on the risk when the employee was last so exposed, under that employer.

Sec. 6. 39-A MRSA §607, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

§607. Notice of injury; filing of claim

Sections 301 to 307 with reference to giving notice, making claims and filing petitions apply to cases under this chapter, except that, in cases under this chapter, the date of ~~ineapaeity~~ injury defined in section 606 ~~603-A~~ is equal to the date of injury in sections 301 to 307, and the notice under section 301 must include the employee's name and address, the nature of the occupational disease, the date of ~~ineapaeity~~ injury, the name of the employer in whose employment the employee was last injuriously exposed for a period of 60 days to the hazards of the disease and the date when employment with that employer ceased. After compensation payments for an occupational disease have been

legally discontinued, claim for further compensation for that occupational disease not due to further exposure to an occupational hazard tending to cause that disease are barred if not made within one year after the last previous payment.

Sec. 7. 39-A MRSA §608, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is repealed.

Sec. 8. 39-A MRSA §609, first ¶, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

~~Compensation for partial or total incapacity or death from occupational disease is payable as provided in sections 212, 213 and 215.~~ Compensation is not payable for incapacity injury by reason of occupational diseases unless the incapacity injury results within 3 years after the last injurious exposure to the occupational disease in the employment.

Sec. 9. 39-A MRSA §611, first ¶, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

On request of a party or on its own motion the board may in occupational disease cases appoint one or more competent and impartial physicians. Upon order of the board, the fees and expenses of the health care provider or health care providers must be paid by the employer. These appointees shall examine the employee and inspect the industrial conditions under which the employee has worked in order to determine the nature, extent and probable duration of the occupational disease, the likelihood of its origin in the industry and the date of incapacity injury. Section 207 applies to the filing and subsequent proceedings on the report of the appointees and to examinations and treatments by the employer.

Sec. 10. 39-A MRSA §612, sub-§8, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

8. Filing of claims. A claim for compensation for occupational deafness may not be filed until after the employee has been separated from the occupational noise for a period of at least 30 days. The last day of this period is the date of disability injury. "Separation from the occupational noise" means the use of hearing protective devices or equipment, including noise attenuators and ear plugs.

Sec. 11. 39-A MRSA §613, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

§613. Silicosis

2 In the absence of evidence in favor of the claim, disability
3 injury or death from silicosis is presumed not to be due to the
4 nature of any occupation, unless during the 15 years immediately
5 preceding the date of disability the employee was exposed to the
6 inhalation of silica dust over a period of at least 2 years. If
7 the employee has been employed by the same employer during the
8 whole of the 2-year period, the employee's right to compensation
9 against such employer is affected by the fact that the employee
10 had been employed during any part of the 2-year period outside of
11 the State.

12 **Sec. 12. 39-A MRSA §614, sub-§§4 and 6**, as enacted by PL 1991,
13 c. 885, Pt. A, §8 and affected by §§ 9 to 11, are amended to read:

14 **4. Last employer liable; notice.** Notwithstanding section
15 606, the only employer and insurance carrier liable is the last
16 employer in whose employment the employee was last injuriously
17 exposed to asbestos, and the insurance carrier, if any, on the
18 risk when the employee was last so exposed under that employer.
19 Notice of incapacity injury under section 607 must include the
20 name of that employer and, if applicable, the date when
21 employment with that employer ceased.

22 **6. Further compensation.** Notwithstanding section 607,
23 after compensation payments for incapacity injury or death caused
24 by an asbestos-related disease have been legally discontinued, a
25 claim for further compensation for that disease not due to
26 further exposure to asbestos in that employment is barred if not
27 made within 40 years after the last previous payment.

28 **Sec. 13. 39-A MRSA §615**, as enacted by PL 1991, c. 885, Pt.
29 A, §8 and affected by §§ 9 to 11, is amended to read:

30 **§615. Disability due to radioactive properties**

31 Notwithstanding section 606 or any other provision of this
32 chapter, the employee need not be exposed to radioactive
33 substances for a period of 60 days or more, ~~and the time for~~
34 ~~filing claims does not begin to run in cases of incapacity due to~~
35 ~~exposure to radioactive substances until the later of the time~~
36 ~~after incapacity or the time the person claiming benefits knew,~~
37 ~~or by exercise of reasonable diligence should have known of the~~
38 ~~causal relationship between the employment and the employee's~~
39 ~~incapacity.~~

40 **Sec. 14. Application.** This Act applies to dates of injury on
41 or after January 1, 2001.'

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

FISCAL NOTE

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.

The state employees' workers' compensation program may incur some minor additional costs due to the change in the definition of date of injury. These costs are not expected to affect the amounts budgeted by state departments and agencies for workers' compensation.'

SUMMARY

This amendment replaces the bill. The current occupational disease laws define "date of injury" as the date on which the employee becomes incapacitated by the disease. This definition means that workers are not eligible to receive medical benefits under the occupational disease laws until they become incapacitated.

This amendment changes the definition of "date of injury" to provide that an employee is considered to have suffered an injury when the employee knows or should know of the nature and seriousness of the disease and the causal relationship between the employee's work and the disease.

The amendment also removes unnecessary language providing cross-references to specific benefits under the Maine Workers' Compensation Act of 1992, since the Maine Revised Statutes, Title 39-A, section 602 sets forth the general rule that persons who suffer injury under the occupational disease laws are entitled to the same benefits as a person whose injury is governed by the Maine Workers' Compensation Act of 1992.