

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 871

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H.P. 671

House of Representatives, February 15, 2001

### An Act to Clarify Work Search.

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Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative BRYANT of Dixfield.  
Cosponsored by Senator EDMONDS of Cumberland and  
Representatives: BUNKER of Kossuth Township, COTE of Lewiston, DUNLAP of Old  
Town, GOODWIN of Pembroke, PATRICK of Rumford, PINEAU of Jay, SAVAGE of  
Buxton, TRACY of Rome.

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

4 **Sec. 1. 39-A MRSA §212, sub-§1**, as enacted by PL 1991, c. 885,  
Pt. A, §8 and affected by §§9 to 11, is amended to read:

6 **1. Total incapacity.** While the incapacity for work  
8 resulting from the injury is total, the employer shall pay the  
injured employee a weekly compensation equal to 80% of the  
10 employee's after-tax average weekly wage, but not more than the  
maximum benefit under section 211. Compensation must be paid for  
12 the duration of the incapacity.

14 Any employee who is not able to perform full-time remunerative  
work in the ordinary competitive labor market ~~in--the--State,~~  
16 ~~regardless of the availability of such work~~ in and around that  
employee's community, is not eligible for compensation under this  
18 ~~section, but may be eligible for compensation under section 213~~  
regardless of the availability of such work in the State.  
20 Employees not eligible for compensation under this section may be  
eligible for compensation under section 213.

22 **Sec. 2. 39-A MRSA §213, sub-§1**, as enacted by PL 1991, c. 885,  
Pt. A, §8 and affected by §§9 to 11, is amended to read:

24 **1. Benefit and duration.** While the incapacity for work is  
26 partial, the employer shall pay the injured employee a weekly  
compensation equal to 80% of the difference between the injured  
28 employee's after-tax average weekly wage before the personal  
injury and the after-tax average weekly wage that the injured  
30 employee is able to earn after the injury, but not more than the  
maximum benefit under section 211. Compensation must be paid for  
32 the duration of the disability if the employee's permanent  
impairment, determined according to the impairment guidelines  
34 adopted by the board pursuant to section 153, subsection 8  
resulting from the personal injury is in excess of 15% to the  
36 body. In all other cases an employee is not eligible to receive  
compensation under this section after the employee has received  
38 260 weeks of compensation under section 212, subsection 1, this  
section or both. The board may in the exercise of its discretion  
40 and in accordance with subsection 1-A extend the duration of  
benefit entitlement beyond 260 weeks in cases involving extreme  
42 financial hardship due to inability to return to gainful  
employment. This authority may not be delegated to a hearing  
44 officer and such decisions must be made expeditiously.

46 **Sec. 3. 39-A MRSA §213, sub-§1-A** is enacted to read:

48 1-A. Work search requirement. If an employee has received  
benefits under this section for 260 weeks or more, in order to  
50 extend the duration of benefit entitlement beyond 260 weeks, the

2 employee bears the burden of establishing the unavailability of  
3 work within that employee's work restrictions. Nothing in this  
4 subsection may be construed to require an employee that has not  
5 received benefits under this section for 260 weeks or more to  
6 establish the unavailability of work in order to receive benefits.

7 **Sec. 4. 39-A MRS §214, sub-§6** is enacted to read:

8  
9 **6. Work search requirement.** Nothing in this section may be  
10 construed to require an employee that has not received benefits  
11 under section 213 for 260 weeks or more to establish the  
12 unavailability of work in order to receive benefits.

### 14 SUMMARY

15  
16 This bill amends the provisions in current law for providing  
17 total compensation for workplace injuries to clarify that  
18 employees who lack the ability to work on a full-time basis in  
19 the ordinary competitive labor market in their communities are  
20 entitled to be paid benefits for total incapacity under the Maine  
21 Revised Statutes, Title 39-A, section 212.

22  
23 In Bureau v. Staffing Network, Inc., 678 A.2d 583 (Me.  
24 1996), the Law Court found that a partially incapacitated  
25 employee bears the initial burden of establishing the  
26 unavailability of work within that employee's work restrictions.  
27 This bill specifically provides that only employees that have  
28 received benefits for 260 weeks or more are subject to the work  
29 search requirement.  
30