

MAINE STATE LEGISLATURE

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L.D. 2202

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STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 822, L.D. 2202, Bill, "An Act to Ensure that 25% of Workers' Compensation Cases with Permanent Impairment Remain Eligible for Duration-of-disability Benefits in Accordance With the Workers' Compensation Act"

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

PART A

Sec. A-1. 39-A MRSA §102, sub-§16, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

16. Permanent impairment. "Permanent impairment" means any anatomic or functional abnormality or loss ~~existing after the date of maximum medical improvement that results from the injury that is caused, aggravated or accelerated by the work injury and that continues after maximum medical improvement.~~ "Permanent impairment" excludes conditions that are not caused, aggravated or accelerated by the work injury.

Sec. A-2. 39-A MRSA §153, sub-§8, ¶B, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

B. The board shall collect and analyze data from Maine cases, studies from other states and generally accepted medical guidelines for occupational impairment to examine the feasibility and desirability of establishing an objectively ascertainable functional capacity standard to be used for determining eligibility for benefits under this Act consistent with former section 213, subsection 2.

2 **Sec. A-3. 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:

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

30 A. The executive director, in the exercise of discretion,
32 may extend the duration of benefit entitlement beyond 520
34 weeks in cases involving extreme financial hardship due to
inability to return to gainful employment. This authority
may not be delegated to a hearing officer and such decisions
must be made expeditiously.

36 **Sec. A-4. 39 MRSA §213, sub-§1-A** is enacted to read:

38 **1-A. Duration of benefits for permanent impairment;
40 determination of permanent impairment.** Notwithstanding
42 subsection 1, compensation must be paid for the duration of the
44 disability if the employee's permanent impairment, determined
46 according to the impairment guidelines adopted by the board
pursuant to section 153, subsection 8, resulting from the work
injury is in excess of 11.8% to the whole body. In determining
whether a partially disabled employee is entitled to benefits for
the duration of the disability under this subsection, the
determination of impairment:

48 A. Includes permanent impairment arising from prior work
50 injuries; and

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B. Excludes conditions that are not caused, aggravated or accelerated by a work injury.

Sec. A-5. 39-A MRSA §213, sub-§2, as enacted by PL 1991, c. 885, Pt. A, 8 and affected by §§9 to 11, is repealed.

Sec. A-6. 39-A MRSA §213, sub-§3, as amended by PL 2001, c. 448, §1, is repealed.

Sec. A-7. 39-A MRSA §213, sub-§4, as amended by PL 2001, c. 448, §2, is repealed.

Sec. A-8. 39-A MRSA §355-A, sub-§1, as enacted by PL 2001, c. 448, §5, is amended to read:

1. Creation of fund. The Supplemental Benefits Fund, referred to in this section and sections 355-B to 356 as the "fund," is created to reimburse insurers and self-insurers for their payments of compensation to employees under former section 213, subsections 3 and 4.

Sec. A-9. 39-A MRSA §355-B, first ¶, as enacted by PL 2001, c. 448, §5, is amended to read:

The Supplemental Benefits Oversight Committee, referred to in this section and sections 355-C and 356 as the "committee," is created and charged with the duty to monitor, facilitate and provide general oversight in the administration of reimbursement of workers' compensation benefit obligations of the fund pursuant to former section 213, subsections 3 and 4.

Sec. A-10. 39-A MRSA §355-B, sub-§11, ¶¶A and B, as enacted by PL 2001, c. 448, §5, are amended to read:

A. Records in the possession of the committee that relate to individual workers' compensation claims, claims for reimbursement by insurers and self-insurers under former section 213, subsection 3 or 4 or claims settlement activities are not public records; and

B. Proceedings of the committee relating to individual workers' compensation claims, claims for reimbursement by insurers and self-insurers under former section 213, subsection 3 or 4 or claims settlement activities are not public proceedings.

Sec. A-11. 39-A MRSA §355-C, first ¶, as enacted by PL 2001, c. 448, §5, is amended to read:

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COMMITTEE AMENDMENT *A* to S.P. 822, L.D. 2202

The committee shall review and evaluate requests for reimbursement of workers' compensation benefits paid or payable under former section 213, subsections 3 and 4.

Sec. A-12. 39-A MRSA §355-C, sub-§2, ¶A, as enacted by PL 2001, c. 448, §5, is amended to read:

A. If the claim for reimbursement is made pursuant to former section 213, subsection 3, evidence that the claimant employee's date of injury is on or after January 1, 1993 and before January 1, 1998. If the claim for reimbursement is made under former section 213, subsection 4, evidence that the claimant employee's date of injury is on or after January 1, 1993 and before January 1, 2000;

Sec. A-13. 39-A MRSA §355-C, sub-§7, ¶A, as enacted by PL 2001, c. 448, §5, is amended to read:

A. The committee shall enter into written contracts with persons or entities qualified by good business reputation, training, education and experience to perform day-to-day duties in administering the fund's responsibilities set forth in former section 213, subsections 3 and 4. Such a person is referred to in this section and sections 355-A, 355-B and 356 as the "service agent." A service agent must hold all licenses, registrations and permits required to engage in activities or undertake responsibilities delegated pursuant to the contract.

Sec. A-14. 39-A MRSA §356, sub-§1-A, as enacted by PL 2001, c. 448, §6, is amended by amending the first paragraph to read:

1-A. Assessment. The committee may levy an assessment against insurers to provide funds to meet the obligations of the fund for reimbursement pursuant to former section 213, subsections 3 and 4. The committee may also delegate its duties and powers under this section to a service agent pursuant to section 355-C, subsection 7.

Sec. A-15. Application; retroactivity. This Part applies retroactively to injuries occurring on or after January 1, 1993, except that it does not apply to those injuries for which a determination of permanent impairment has been made by order of a hearing officer or by agreement of the parties prior to April 1, 2002.

PART B

2 **Sec. B-1. 39-A MRSA §151, sub-§5**, as enacted by PL 1991, c.
885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

4 **5. Voting requirements.** The board may take action only by
majority vote of its membership. Decisions regarding the
6 employment of an executive director ~~and--the--appointment--and~~
~~retention-of-hearing-officers~~ require the affirmative votes of at
8 least 2 board members representing management and at least 2
board members representing labor.

10 **Sec. B-2. 39-A MRSA §152**, as amended by PL 1997, c. 486, §2,
12 is further amended to read:

14 **§152. Authority of board; administration**

16 **1. General responsibility.** The board has general
supervision over the administration of this Act and, along with
18 the executive director, has responsibility for the efficient and
effective management of the board and its employees.

20 **2. Rules.** Subject to any applicable requirements of the
Maine Administrative Procedure Act, the board shall adopt rules
22 to accomplish the purposes of this Act. Those rules may define
terms, prescribe forms and make suitable orders of procedure to
24 ensure the speedy, efficient, just and inexpensive disposition of
all proceedings under this Act.

26 The board shall adopt rules establishing a policy and procedures
28 to safeguard the confidentiality of the records of the former
Workers' Compensation Commission and the Workers' Compensation
30 Board pertaining to individual injured employees. The policy
must make records available on a need-to-know basis only and must
32 include legitimate research purposes while protecting individual
confidentiality.

34 **3. Employment of executive director.** The board shall
36 employ an executive director who shall conduct the day-to-day
operations of the board in accordance with policies established
38 by the board and otherwise implement board policy. The executive
director is appointed for a term of 5 years and may be
40 reappointed for additional 5-year terms at the pleasure of the
board. Except as otherwise provided, the executive director
42 shall, ~~at the direction of the board,~~ hire personnel as necessary
to administer this Act, subject to the Civil Service Law. The
44 executive director is an unclassified employee ~~servng--at--the~~
~~pleasure-of-the-board,~~ removable during the executive director's
46 term, only for cause, by vote of 3/4 of the members of the board.

48 **4. Employment of general counsel.** The board shall employ a
50 general counsel, who is the legal adviser to the board and who

shall perform such other duties as may be assigned by the board,
2 ~~and assistants as necessary.~~ The general counsel is appointed
4 for a term of 5 years and may be reappointed for additional
6 5-year terms at the pleasure of the board. The general counsel
8 and assistants to the general counsel are unclassified employees,
10 serve at the pleasure of the board and are is an unclassified
12 employee, removable during the general counsel's term, only for
14 cause, by vote of 3/4 of the members of the board and is not
16 subject to the Civil Service Law.

~~The board shall appoint a staff attorney to advise the advocates~~
12 ~~pursuant to section 153-A. The staff attorney is subject to the~~
14 ~~Civil Service Law and works under the direction of the general~~
16 ~~counsel.~~

16 A. The general counsel shall appoint a staff attorney to
18 advise the advocates pursuant to section 153, and that staff
20 attorney is subject to the Civil Service Law and works under
22 the direction of the general counsel.

22 B. The general counsel shall appoint assistants as
24 necessary and authorized by the board. Such assistants are
26 unclassified employees, serve at the pleasure of the general
28 counsel and are not subject to the Civil Service Law.

26 **5. Employment of and contracts with hearing officers and**
28 **mediators.** The board executive director shall obtain the
30 services of persons qualified by background and training to serve
32 as hearing officers, who are authorized to take action and enter
34 orders consistent with this Act in all cases assigned to them by
36 the board, and mediators. In the exercise of its discretion, the
38 board executive director may obtain the services of hearing
40 officers and mediators by either of the 2 following methods:

34 A. The board executive director may contract for the
36 services of hearing officers and mediators, in which case
38 they must be paid reasonable per diem fees for their
40 services plus reimbursement of their actual, necessary and
42 reasonable expenses incurred in the performance of their
44 duties, consistent with policies established by the board;
46 or

44 B. The board executive director may employ hearing officers
46 and mediators to serve at the pleasure of the board who are
48 removable only for cause by the executive director and who
50 are not subject to the Civil Service Law. They are entitled
to receive reimbursement of their actual, necessary and
reasonable expenses incurred in the performance of their
duties, consistent with policies established by the board.
Hearing officers employed under this paragraph are appointed

for terms of 5 years, with no limit on the number of terms served.

6. **Hiring of personnel.** The board executive director shall appoint the directors of the bureaus and divisions of the board and their deputies and assistants, who are unclassified employees, ~~serve at the pleasure of the board~~ removable only for cause by the executive director and who are not subject to the Civil Service Law.

7. **Powers and duties of board.** The board has all powers as are necessary to carry out its functions under the law. The board may delegate any powers and duties as necessary.

8. **Conflict of interest.** Each member of the board and each employee, contractor, agent or other representative of the board are is an "executive employees employee" for purposes of Title 5, section 18 and are is subject to the limitations of that section. In addition, Title 17, section 3104 is applicable, in accordance with its provisions, to all such representatives of the board.

9. **Accepting gifts, grants or donations.** The board may accept gifts, grants or donations for the use of the board as provided by rules adopted by the board.

10. **Case administration.** The board shall assume an active and forceful role in the administration of this Act to ensure that the system operates efficiently and with maximum benefit to both employers and employees. It shall continually monitor individual cases to ensure that benefits are provided in accordance with this Act.

11. **Recommending legislative change.** The board shall consider and recommend to the Legislature changes in this Act. Recommended changes must be forwarded to the Legislature annually on or before December 1st.

11-A. Report by the executive director. The executive director shall annually report to the joint standing committee of the Legislature having jurisdiction over labor matters and shall, upon request of the committee, meet with the committee to discuss any matters of interest regarding administration of the workers' compensation system.

12. **Advisory committees.** The board may appoint advisory committees as it determines necessary to assist the board in matters that arise under this Act. Advisory committee members are not entitled to compensation but may be reimbursed for travel and reasonable expenses as determined by the board.

COMMITTEE AMENDMENT "A" to S.P. 822, L.D. 2202

2	Personal Services	\$0	\$101,574
4	Total	\$0	\$101,574
6	Highway Fund	2001-02	2002-03
8	Personal Services	\$0	\$65,498
	Total	\$0	\$65,498

10	ADMINISTRATIVE AND FINANCIAL		
12	SERVICES, DEPARTMENT OF		
14	DEPARTMENT TOTALS	2001-02	2002-03
16	GENERAL FUND	\$0	\$101,574
18	HIGHWAY FUND	\$0	\$65,498
	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$167,072'

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

24 **FISCAL NOTE**

26 **2002-03**

28 **APPROPRIATIONS/ALLOCATIONS**

30	General Fund	\$101,574
32	Highway Fund	65,498

34 Increasing the maximum length of time that an injured worker
 36 may receive compensation to 520 weeks will increase workers'
 38 compensation premium costs to state agencies. The prospective
 40 cost of the benefit increase is estimated to be \$255,853 per
 42 year, beginning in fiscal year 2002-03. An additional General
 44 Fund appropriation of \$101,574 and Highway Fund allocation of
 46 \$65,498 in fiscal year 2002-03 is required in the salary plan
 48 reserve accounts to fund the increases for state employees. The
 cost to accounts in other funds, estimated to be \$88,781, may
 require increased allotments to meet these additional personal
 services expenditures. The additional costs to the State
 associated with this provision being applied retroactively to
 January 1, 1993 can not be determined at this time and are in
 addition to the amounts appropriated.

50 The fiscal impact associated with fixing the injury
 threshold at 11.8% and repealing the adjustment mechanism can not

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be determined at this time but may be significant depending upon the number of injured workers whose work injury is in excess of 11.8% to the whole body.

Section A-1 of this bill will partially reduce the amount of an unbudgeted increase in costs to state agencies through increased workers' compensation payments and premiums beginning in fiscal year 2002-03 associated with the Kotch v. American Protective Services, Inc., 2002 ME 19, decision. The total savings to state agencies and the amount of the unbudgeted costs can not be determined at this time.

Based on an analysis by the National Council of Compensation Insurers, workers' compensation insurance rates in Maine will increase by 15% or more if this bill is not enacted, as a result of the Kotch decision. A 15% increase in the State's workers' compensation rate would increase costs to state agencies by approximately \$1,600,000 beginning in fiscal year 2002-03. Passage of this bill will reduce that increase. The amount can not be determined at this time.

The National Council of Compensation Insurers also estimates a significant cost to Maine's employers as a result of applying the court's ruling retroactively. The cost to the State as a result of the retroactive application is estimated to be approximately \$6,000,000. This bill will reduce that increase as well. The amount can not be determined at this time.

The additional costs associated with preparing the required report can be absorbed by the Workers' Compensation Board utilizing existing budgeted resources.'

SUMMARY

This amendment replaces the bill. It overturns the decision in Kotch v. American Protective Services, Inc., 2002 ME 19, by specifying that a permanent impairment evaluation to determine the employee's entitlement to benefits for the duration of the employee's disability may not include nonwork-related conditions that merely combine with the work injury without being caused, aggravated or accelerated by the work injury. It permits inclusion of unrelated impairments only if they arise from work-related injuries.

The amendment adopts 10 years as the duration for partial benefits for employees whose impairments are below the threshold of 11.8%. It fixes the threshold at 11.8% and repeals the adjustment mechanisms for changing both the threshold and the duration of partial benefits for those below the threshold.

FOIS

COMMITTEE AMENDMENT ~~4~~" to S.P. 822, L.D. 2202

2 The amendment gives the executive director of the board
greater authority to manage the staff and finances of the board.
4 It provides that the executive director, general counsel, hearing
officers and most other staff are removable only for cause, and
6 it requires a vote of 3/4 of members of the board to remove the
executive director.

8

 The amendment also adds a fiscal note.