

MAINE STATE LEGISLATURE

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R. of S.

L.D. 2202

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DATE: 4-24-02

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the House.

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

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HOUSE AMENDMENT "A" to HOUSE 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"

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Amend the amendment by striking out all of sections 1 to 5
and inserting in their place the following:

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Sec. 1. 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:

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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
adopted by the board pursuant to section 153, subsection 8
resulting from the personal injury is in excess of 15% to the
body. In all other cases an employee is not eligible to receive
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

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2 cases involving extreme financial hardship due to inability to
return to gainful employment. This authority may not be
4 delegated to a hearing officer and such decisions must be made
expeditiously.

6 Until October 1, 2003, in calculating an employee's permanent
7 impairment, the decision of the Maine Supreme Judicial Court in
8 Kotch v. American Protective Services, Inc., 2002 ME 19 must be
9 disregarded and impairment from prior causally unrelated nonwork
10 injuries may not be included.

12 **Sec. 2. Application.** Notwithstanding the Maine Revised
13 Statutes, Title 1, section 302, this Act applies to all
14 determinations of permanent impairment made by the Workers'
15 Compensation Board under Title 39-A on or after the effective
16 date of this Act, and before October 1, 2003, regardless of the
17 date of injury, including determinations made in cases pending on
18 or after the effective date of this Act and determinations made
19 with regard to injuries that occurred on or after January 1,
20 1993.'

22 **FISCAL NOTE**

24 For permanent impairment determinations made between the
25 effective date and October 1, 2003, this amendment eliminates the
26 cost associated with those elements of the Kotch v. American
27 Protective Services, Inc. decision that allowed for combining
28 current work injuries and unrelated nonwork injuries in
29 determining eligibility for duration-of-disability wage loss
30 benefits.

32 As amended, this bill will partially reduce the amount of an
33 unbudgeted increase in costs to state agencies through increased
34 workers' compensation payments and premiums beginning in fiscal
35 year 2002-03 associated with those elements of the Kotch v.
36 American Protective Services, Inc. decision that allows for
37 combining a prior nonwork injury that contributes to the
38 incapacity but does not aggravate or accelerate the current work
39 injury. The total savings to state agencies can not be
40 determined at this time.

42 **SUMMARY**

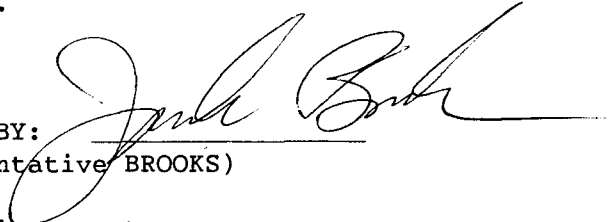
44 This amendment requires the Workers' Compensation Board and
45 its hearing officers to disregard until October 1, 2003 the Maine
46 Supreme Judicial Court decision in Kotch v. American Protective
47 Services, Inc. regarding impairment from nonwork injuries when

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calculating the percentage of an injured employee's permanent
impairment.

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SPONSORED BY: 
(Representative BROOKS)

TOWN: Winterport

HOUSE AMENDMENT