

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
120TH LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT "B" 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"

Amend the amendment in section 2 by striking out all of subsection 1-A (page 2, lines 4 to 15 in amendment) and inserting in its place the following:

'1-A. Determination of permanent impairment. For purposes of this section, "permanent impairment" includes only permanent impairment resulting from:

A. The work injury at issue in the determination and any preexisting condition or injury that is aggravated or accelerated by the work injury at issue in the determination; or

B. For dates of injury on or after January 1, 2002, the work injury at issue in the determination and:

(1) Any prior verifiable and compensable work injury for which the employee received a benefit or compensation under the workers' compensation laws of this State or of any other jurisdiction and that combines with the work injury at issue in the determination to contribute to the employee's incapacity, except that a prior injury that was the subject of a lump sum settlement that had a finding of permanent impairment equal to or in excess of the then applicable permanent impairment threshold may not be included; or

**SENATE AMENDMENT**

1.000

2                   (2) Any preexisting condition or injury that is  
4                   aggravated or accelerated by the work injury at issue  
                    in the determination.

6                   Except as set forth in this subsection, "permanent impairment"  
8                   does not include conditions that are not caused, aggravated or  
                    accelerated by the work injury.'

10                  Further amend the amendment by inserting after section 3 the  
12                  following:

14                  '**Sec. 4. January 1, 2002 threshold adjustment.** Solely for the  
16                  purposes of establishing the threshold adjustment to be effective  
18                  January 1, 2002, the Workers' Compensation Board shall retain 2  
20                  actuaries who are fellows of the Casualty Actuarial Society to  
22                  each develop a recommendation for the percentage of permanent  
24                  impairment to which the threshold should be adjusted in  
                    accordance with the criteria established in the Maine Revised  
                    Statutes, Title 39-A, section 213, subsection 2. One actuary  
                    must be chosen in the exclusive discretion of the management  
                    representatives of the board and one must be chosen in the  
                    exclusive discretion of the labor representatives of the board.  
                    The retention of each actuary by the board is not subject to  
                    state procurement laws or any other competitive bid requirement.

26                  Any information provided by any person for the purposes of  
28                  this threshold adjustment must be provided to both actuaries.

30                  Each actuary shall submit a recommendation to the board by  
32                  September 30, 2002. The recommendation must detail the  
34                  methodology, modeling, assumptions, data relied upon and any  
36                  adjustments to that data, basis for the recommendation and any  
                    other information the actuary believes is material to the  
                    recommendation. These recommendations must be the subject of  
                    written public comment to be received by the board by 5:00 p.m.,  
                    October 15, 2002.

38                  The threshold adjustment must be made by the board by  
40                  November 1, 2002, based on the recommendations of these actuaries  
42                  and the received written public comment. If the board does not  
44                  adjust the threshold as required under this section, the matter  
46                  must be referred to arbitration and the Executive Director of the  
48                  Workers' Compensation Board shall request the American  
                    Arbitration Association to assign a neutral 3rd party by November  
                    7, 2002, according to its rules and procedures. The arbitrator  
                    must render a decision by December 1, 2002. The arbitrator's  
                    decision may not be appealed. The board shall adopt the  
                    threshold decided upon by the arbitrator.

2 The adoption of the threshold pursuant to this section is  
not subject to Title 5, chapter 375 and is not subject to appeal.'

4 Further amend the amendment in section 5 in the last 2 lines  
6 (page 3, lines 11 and 12 in amendment) by striking out the  
following: "and the line of cases relating to permanent  
8 impairment that preceded the Churchill decision"

10 Further amend the amendment by inserting after section 5 the  
following:

12 'Sec. 6. Appropriations and allocations. The following  
14 appropriations and allocations are made.

16 **WORKERS' COMPENSATION BOARD**

18 **Administration - Workers' Compensation Board**

20 Initiative: Allocates funds for one Planning and Research  
Associate position and other operating costs associated with  
22 actuarial and arbitration services.

24	<b>Other Special Revenue Funds</b>	<b>2001-02</b>	<b>2002-03</b>
26	Positions - Legislative Count	(0.000)	(1.000)
	Personal Services	\$0	\$60,000
28	All Other	0	70,000
30	Total	\$0	\$130,000'

32 Further amend the amendment by relettering or renumbering  
any nonconsecutive Part letter or section number to read  
34 consecutively.

36 **FISCAL NOTE**

38 This amendment eliminates the cost associated with combining  
certain prior work-related injuries with current work injuries  
40 effective January 1, 2002. Costs are eliminated as a result of  
the adjustment of the threshold to maintain the proportion of  
42 injured workers entitled to benefits for the duration of the  
disability at 25%. If the Workers' Compensation Board is unable  
44 to rule on the threshold by November 1, 2002, this amendment  
requires the board to submit to arbitration for the determination  
46 of the permanent impairment threshold.

48 This amendment includes an Other Special Revenue funds  
allocation of \$130,000 in fiscal year 2002-03 for one Planning  
50 and Research Associate position and other costs associated with

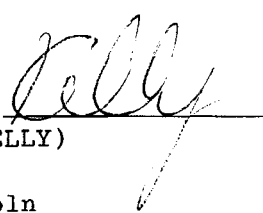
retaining 2 actuaries to develop a recommendation for the permanent impairment threshold and for arbitration services, if required.

The Workers' Compensation Board will also require an increase in the assessment cap of \$130,000 in fiscal year 2002-03 to cover the costs of the position and other expenses. Increasing the assessment cap beginning in fiscal year 2002-03 will result in an increase in dedicated revenue of \$130,000 to the Workers' Compensation Board Administrative Fund.

### SUMMARY

This amendment would permit the stacking of prior unrelated work injuries to be combined or "stacked" when determining the level of an injured employee's permanent impairment under the Maine Revised Statutes, Title 39-A, section 213, effective January 1, 2002. Prior verifiable and compensable work injuries for which the employee received a benefit or compensation under the workers' compensation laws of this State or of any other jurisdiction could be included in the determination of permanent impairment for the work injury at issue in the determination if the prior work injuries combine with the work injury at issue to contribute to the employee's incapacity. Prior injuries that were the subject of a lump sum settlement that had a finding of permanent impairment equal to or in excess of the then applicable permanent impairment threshold may not be included in determinations of permanent impairment.

In order to implement the combination of unrelated work injuries as authorized in this amendment, the amendment also directs the Workers' Compensation Board to hire 2 actuaries to develop recommendations on how the permanent impairment threshold should be adjusted in accordance with the permanent impairment threshold as described in Title 39-A, section 213, subsection 2. If the board fails to make the required adjustment by November 1, 2002, the matter must be referred to an arbitrator for resolution. Because this method applies only to the January 1, 2002 adjustment of the permanent impairment threshold, it is not subject to appeal.

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