

MAINE STATE LEGISLATURE

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DATE: *April 24, 2002* (Filing No. S-624)

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STATE OF MAINE
SENATE
120TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "C" 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 by striking out all of sections 1 to 5 and inserting in their place the following:

'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:

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

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 In calculating an employee's permanent impairment, the decision
7 of the Maine Supreme Judicial Court in Kotch v. American
8 Protective Services, Inc., 2002 ME 19 must be disregarded and
9 impairment from prior causally unrelated nonwork injuries may not
10 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, regardless of the date of injury, including
17 determinations made in cases pending on or after the effective
18 date of this Act and determinations made with regard to injuries
that occurred on or after January 1, 1993.'

22 FISCAL NOTE

24 This amendment eliminates the cost associated with those
25 elements of the Kotch v. American Protective Services, Inc.
26 decision that allowed for combining current work injuries and
27 unrelated nonwork injuries in determining eligibility for
28 duration-of-disability wage loss benefits.

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

40 SUMMARY

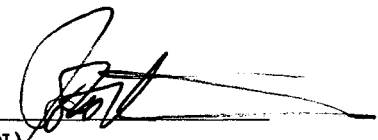
42 This amendment requires the Workers' Compensation Board and
43 its hearing officers to disregard the Maine Supreme Judicial
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2 Court decision in Kotch v. American Protective Services, Inc.
3 regarding impairment from nonwork injuries when calculating the
4 percentage of an injured employee's permanent impairment.

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SPONSORED BY: 
(Senator MARTIN)
COUNTY: Aroostook

SENATE AMENDMENT