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	L.D. 2202										
2	DATE: 4-5-02 (Filing No. H-10)										
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6	Reproduced and distributed under the direction of the Clerk of the House.										
8	STATE OF MAINE										
10	HOUSE OF REPRESENTATIVES 120TH LEGISLATURE										
12	SECOND REGULAR SESSION										
14	HOUSE AMENDMENT "A" to S.P. 822, L.D. 2202, Bill, "An Act										
16	to Ensure that 25% of Workers' Compensation Cases with Permanent Impairment Remain Eligible for Duration-of-disability Benefits in										
18	Accordance With the Workers' Compensation Act"										
20	Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the										
22	following:										
24	'Sec. 1. 39-A MRSA §213, sub-§1, as enacted by PL 1991, c. 885, Pt. A, $\S 8$ and affected by $\S \S 9$ to 11, is amended to read:										
26	1. Benefit and duration. While the incapacity for work is										
28	partial, the employer shall pay the injured employee a weekly compensation equal to 80% of the difference between the injured										
30	employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured										
32	employee is able to earn after the injury, but not more than the maximum benefit under section 211. Compensation must be paid for										
34	the duration of the disability if the employee's permanent impairment, determined according to subsection 1-A and the										
36	impairment guidelines adopted by the board pursuant to section 153, subsection 8 resulting from the personal injury is in excess										
38	of 15% to the body. In all other cases an employee is not										
40	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										
42	exercise of its discretion extend the duration of benefit entitlement beyond 260 weeks in cases involving extreme financial										

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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.

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2	Sec. 2. 39-A MRSA §213, sub-§1-A is enacted to read:
4	1-A. Determination of permanent impairment. For purposes of this section, "permanent impairment" includes only permanent
6	impairment resulting from:
8	A. The work injury at issue in the determination;
10	B. Any work injury other than the work injury at issue in the determination that combines with that injury and
12	contributes to the employee's incapacity; or
14	C. Any preexisting condition or injury that is aggravated or accelerated by the work injury at issue.
16	Sec. 3. 39-A MRSA §213, sub-§2, as enacted by PL 1991, c. 885,
18	Pt. A, $\S 8$ and affected by $\S \S 9$ to 11, is amended to read:
20	2. Threshold adjustment. Effective January 1, 1998 and every other January 1st thereafter, the board, using an
22	independent actuarial review based upon actuarially sound data and methodology, must adjust the 15% impairment threshold
24	established in subsection 1 so that 25% of all cases with permanent impairment will be expected to exceed the threshold and
26	75% of all cases with permanent impairment will be expected to be less than the threshold. The actuarial review must include all
28	cases receiving permanent impairment ratings on or after January 1, 1993, irrespective of date of injury, but may utilize a cutoff
30	date of 90 days prior to each adjustment date to permit the collection and analysis of data. The data must be adjusted to
32	reflect ultimate loss development. In order to ensure the accuracy of the data, the board shall require that all cases
34	involving permanent injury, including those settled pursuant to section 352, include an impairment rating performed in accordance
36	with <u>subsection 1-A and</u> the guidelines adopted by the board and either agreed to by the parties or determined by the board. Each
38	adjusted threshold is applicable to all cases with dates of injury on or after the date of adjustment and prior to the date
40	of the next adjustment.
42	Sec. 4. Application; retroactivity. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies
44	retroactively to pending cases and to injuries occurring on or after January 1, 1993, except that:
46	1. It does not allow a change in the permanent impairment
48	assessment in an individual case in which a previous final decree

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finding the extent of permanent impairment has been issued and

appeal proceedings have been completed; and

	2.	Ιt	does	not	per	mit	the	reo	pening	of	an	indivi	.dual	case
for	which	be	enefit	s un	der	sect	tion	213	have	ехрі	red	under	the	Maine
Work	ers'	Com	pensa	tion	Act	of	1992	•						

Sec. 5. Legislative intent. It is the intent of the Legislature by this Act to override the Maine Law Court's decision in <u>Kotch v. American Protective Services</u>, <u>Inc.</u>, 2002 ME 19, but not to override the Law Court's decision in <u>Churchill v. Central Aroostook Association for Retarded Citizens</u>, <u>Inc.</u>, 1999 ME 192 and the line of cases relating to permanent impairment that preceded the <u>Churchill</u> decision.'

FISCAL NOTE

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

As amended, this bill will partially reduce the amount of an unbudgeted increase in costs to state agencies through increased workers' compensation payment and premiums beginning in fiscal year 2002-03 associated with those elements of the Kotch v. American Protective Services, Inc. decision that allowed for combining prior work injuries that contribute to the incapacity but do not aggravate or accelerate the current work injury. The total savings to state agencies can not be determined at this time.

SUMMARY

This amendment overrides the court decision in the case of Kotch v. American Protective Services, 2002 ME 19, and clarifies the method for determining permanent impairment consistent with case law prior to the Kotch decision. It provides that the determination of permanent impairment for purposes of section 213 of the Maine Workers' Compensation Act of 1992 must include the work injury at issue as well as other work injuries that combine with the work injury at issue and contribute to the incapacity. It also includes permanent impairment arising from other preexisting conditions and injury, but only if those conditions or injuries are aggravated or accelerated by the work injury at issue.

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R.O.S.
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HOUSE AMENDMENT " to S.P. 822, L.D. 2202

2	This	amendment	makes	the	changes	contained	in	this	Act
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