

MAINE STATE LEGISLATURE

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

HOUSE AMENDMENT "C" 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:

'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 subsection 1-A and 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 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.

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Sec. 2. 39-A MRSA §213, sub-§1-A is enacted to read:

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;

B. Any preexisting condition or injury that is aggravated or accelerated by the work injury at issue in the determination; and

C. Any prior work injury that combines with the work injury at issue in the determination to contribute to the employee's incapacity, if the employer had completed a report of the prior work injury and there was no denial of a claim regarding the injury by the board or other agency having jurisdiction over the workers' compensation laws of this State or of any other state or jurisdiction. This paragraph does not include a prior work injury that was subject to a lump-sum settlement, if there was a finding of permanent impairment for that injury equal to or in excess of the then applicable permanent impairment threshold.

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

Sec. 3. 39-A MRSA §213, sub-§2, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

2. **Threshold adjustment.** Effective January 1, 1998 and every other January 1st thereafter, the board, using an independent actuarial review based upon actuarially sound data and methodology, must adjust the 15% impairment threshold established in subsection 1 so that 25% of all cases with permanent impairment will be expected to exceed the threshold and 75% of all cases with permanent impairment will be expected to be less than the threshold. The actuarial review must include all cases receiving permanent impairment ratings on or after January 1, 1993, irrespective of date of injury, but may utilize a cutoff date of 90 days prior to each adjustment date to permit the collection and analysis of data. The data must be adjusted to reflect ultimate loss development. In order to ensure the accuracy of the data, the board shall require that all cases involving permanent injury, including those settled pursuant to section 352, include an impairment rating performed in accordance with subsection 1-A and the guidelines adopted by the board and either agreed to by the parties or determined by the board. Each adjusted threshold is applicable to all cases with dates of

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2 injury on or after the date of adjustment and prior to the date
of the next adjustment.

4 **Sec. 4. Actuarial determinations.** This section provides a
method for assisting the Workers' Compensation Board with its
6 obligation under the Maine Revised Statutes, Title 39-A, section
213, subsection 2.

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10 1. The Workers' Compensation Board shall retain 2 actuaries
who are fellows of the Casualty Actuarial Society to each develop
12 recommendations on the issue set forth in subsection 2 of this
section. One actuary must be chosen in the exclusive discretion
14 of the management representatives of the board and one must be
chosen in the exclusive discretion of the labor representatives
16 of the board. The retention of each actuary by the board is not
subject to state procurement laws or any other competitive bid
18 requirement. Any information provided by any person for the
purpose set forth in this section must be provided to both
20 actuaries. Notwithstanding any confidentiality law to the
contrary, any person or entity that holds records relating to
22 employees who are subject to study by the actuaries shall make
those records available to the actuaries or their agents for the
purposes of this section.

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26 2. The actuaries selected in subsection 1 shall each
prepare a report recommending a permanent impairment threshold
28 for all new determinations made on or after May 1, 2002 that
meets the 25/75% standard set forth in the Maine Revised
Statutes, Title 39-A, section 213, subsection 2. To determine
30 the threshold, each actuary shall develop a methodology that
includes actual case studies of a relevant sample of persons with
32 dates of injury on or after January 1, 1993, and any additional
methodology the actuary considers appropriate. Notwithstanding
34 the last sentence of Title 39-A, section 213, subsection 2, the
permanent impairment threshold established pursuant to this
36 section must apply to all determinations of permanent impairment
made on or after May 1, 2002, regardless of date of injury, until
38 a different threshold is established under that law for dates of
injury on or after the date of the new threshold.

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42 3. Each actuary shall submit a recommendation on the
permanent impairment threshold to the Workers' Compensation Board
44 by September 30, 2002. The recommendation must detail the
methodology, modeling, assumptions, data relied upon and any
46 adjustments to that data, basis for the recommendation and any
other information the actuary believes is material to the
48 recommendation. The board shall accept written public comment on
the actuaries' recommendations until 5:00 p.m., October 15, 2002.

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2 4. The Workers' Compensation Board shall take affirmative
3 action on setting the permanent impairment threshold by November
4 1, 2002, based on recommendations of the actuaries and written
5 public comment received on those recommendations. If the board
6 does not take affirmative action on that issue, it must be
7 referred to arbitration. The Executive Director of the Workers'
8 Compensation Board shall request the American Arbitration
9 Association to assign a neutral 3rd party by November 7, 2002,
10 according to its rules and procedures. By December 1, 2002, the
11 arbitrator must render a decision as to what the impairment
12 threshold should be, based on the Maine Revised Statutes, Title
13 39-A, section 213 and information presented by the actuaries.
14 The arbitrator's decision may not be appealed, except as provided
15 in the Uniform Arbitration Act, Title 14, chapter 706. The board
16 shall adopt the threshold finding decided upon by the
17 arbitrator.

18 5. The adoption of the permanent impairment threshold made
19 pursuant to this section is not subject to the Maine Revised
20 Statutes, Title 5, chapter 375 and is not subject to appeal.

22 **Sec. 5. Transition.** Except as provided in this section, the
23 Workers' Compensation Board shall discontinue making permanent
24 impairment determinations until a permanent impairment threshold
25 is established consistent with section 4 of this Act. If the
26 benefits of an injured employee will expire prior to January 1,
27 2003, the board or a hearing officer employed by the board shall
28 determine that person's permanent impairment and, if the
29 impairment exceeds the 11.8% threshold, shall order that benefits
30 continue for the duration of the disability or until the new
31 threshold is established, whichever is sooner. Entitlement to
32 benefits after the date the new threshold is established will be
33 determined by comparison to the new threshold.

34 **Sec. 6. Review.** The joint standing committee of the
35 Legislature having jurisdiction over labor matters shall review
36 the use of actuaries to assist the Workers' Compensation Board in
37 its adjustment duties under the Maine Revised Statutes, Title
38 39-A, section 213 to determine whether to enact a law calling for
39 such assistance in future adjustment determinations. The
40 committee is authorized to report out legislation to the First
41 Regular Session of the 121st Legislature following this review.

44 **Sec. 7. Application.** Notwithstanding the Maine Revised
45 Statutes, Title 1, section 302, the provisions of this Act
46 relating to the determination of permanent impairment apply to
47 determinations of permanent impairment made by the Workers'
48 Compensation Board on or after May 1, 2002, regardless of the
date of injury, including determinations for dates of injury on

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or after January 1, 1993 and determinations made in cases pending before the board.

4 **Sec. 8. Funding of actuarial studies and arbitration.**
Notwithstanding the Maine Revised Statutes, Title 39-A, section
6 154, subsection 6, the Workers' Compensation Board may use
8 collected amounts or savings above the allowed reserve to fund
10 the actuarial studies and arbitration process required in this
Act, rather than using the funds to reduce the assessment for the
following fiscal year.

12 **Sec. 9. Legislative intent.** It is the intent of the Legislature
by this Act to override the Maine Law Court's decision regarding
14 stacking of certain prior non-work-related injuries in Kotch v.
American Protective Services, Inc., 2002 ME 19, but not to
16 override the Law Court's decision in Churchill v. Central
Aroostook Association for Retarded Citizens, Inc., 1999 ME 192.

18 **Sec. 10. Appropriations and allocations.** The following
20 appropriations and allocations are made.

22 **WORKERS' COMPENSATION BOARD**

24 **Administration - Workers' Compensation Board**

26 Initiative: Allocates funds for one Management Analyst II
28 position and other operating costs associated with determining
the permanent impairment threshold.

30	Other Special Revenue Funds	2001-02	2002-03
	Positions - Legislative Count	(0.000)	(1.000)
32	Personal Services	\$0	\$60,000
	All Other	0	5,000
34		—	—
	Total	\$0	\$65,000

36 **Administration - Workers' Compensation Board**

38 Initiative: Allocates funds on a one-time basis for actuarial
40 and arbitration services associated with determining the
permanent impairment threshold. The funds allocated for
42 actuarial services of \$60,000 in fiscal year 2002-03 are to be
split equally between labor and management. The balance of
44 \$10,000 is allocated for arbitration services.

46	Other Special Revenue Funds	2001-02	2002-03
	All Other	\$0	\$70,000

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WORKERS' COMPENSATION BOARD

DEPARTMENT TOTALS	2001-02	2002-03
OTHER SPECIAL REVENUE FUNDS	\$0	\$135,000
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$135,000'

FISCAL NOTE

2002-03

APPROPRIATIONS/ALLOCATIONS

Other Funds \$135,000

REVENUES

Other Funds \$65,000

This amendment eliminates the cost associated with combining certain prior work-related injuries with current work injuries for permanent impairment determinations made on or after enactment of this bill. Costs are eliminated as a result of the adjustment of the threshold to maintain the proportion of injured workers entitled to benefits for the duration of the disability at 25%. If the Workers' Compensation Board is unable to rule on the threshold by November 1, 2002, this amendment requires the board to submit to arbitration for the determination of the permanent impairment threshold. There may be minor additional costs to continue benefits for a limited number of persons until the new threshold is determined. The amount can not be determined at this time.

This amendment provides Other Special Revenue funds allocations totaling \$135,000 in fiscal year 2002-03 to the Workers' Compensation Board. This amendment includes an Other Special Revenue funds allocation of \$65,000 in fiscal year 2002-03 for one Management Analyst II position and other costs associated with determining the permanent impairment threshold. The estimated future costs in fiscal year 2003-04 and 2004-05 will be approximately \$66,950 and \$68,959, respectively.

This amendment also includes a one-time Other Special Revenue funds allocation of \$70,000 in fiscal year 2002-03 for the costs associated with retaining 2 actuaries to develop a

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2 recommendation for the permanent impairment threshold and for
arbitration services, if required. This amendment allows the
4 board to use collected amounts or savings above the allowed
reserve to fund the required actuarial studies and arbitration
6 process.

8 The Workers' Compensation Board will also require an
increase in the assessment cap of \$65,000 in fiscal year 2002-03
10 to cover the costs of the position and other expenses.
Increasing the assessment cap in fiscal year 2002-03 will result
12 in an increase in dedicated revenue of \$65,000 to the Workers'
Compensation Board Administrative Fund.

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SUMMARY

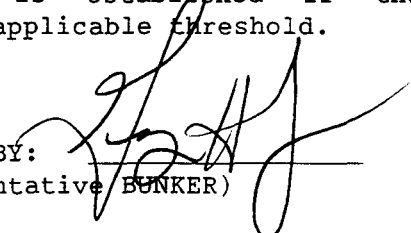
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18 This amendment replaces the bill. It provides that the
calculation of "permanent impairment" includes preexisting
20 conditions or injuries that are aggravated or accelerated by the
current work injury and other prior work injuries that combine
22 with the current injury and contribute to the incapacity, as long
as there was a contemporaneous record of the prior injury, there
24 was not a denial of a claim regarding that prior injury by the
Workers' Compensation Board or comparable agency in another state
and the injury was not settled in a lump sum representing
26 duration-of-disability benefits.

28 The amendment also requires the Workers' Compensation Board
to retain 2 actuaries to assist the board in setting the
30 appropriate permanent impairment threshold to meet the standard
required by the statute for all determinations made on or after
32 May 1, 2002, regardless of date of injury. If the board is
unable to settle on an appropriate threshold and benefit
34 duration, the issues are submitted to an arbitrator who must
determine the appropriate threshold. The amendment freezes the
36 process for determining permanent impairment and for determining
who is entitled to duration-of-disability benefits until the new
38 threshold is set, except that persons whose benefits would expire
before that date may have their benefits continued until the new
40 threshold is established if their impairments exceed the
currently applicable threshold.

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SPONSORED BY: 
(Representative BUNKER)

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TOWN: Kossuth Township

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