

# MAINE STATE LEGISLATURE

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L.D. 2202

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DATE: 4-24-02

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6 Reproduced and distributed under the direction of the Clerk of  
8 the House.

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

16 HOUSE AMENDMENT "B" to SENATE AMENDMENT "C" to S.P. 822,  
18 L.D. 2202, Bill, "An Act to Ensure that 25% of Workers'  
20 Compensation Cases with Permanent Impairment Remain Eligible for  
Duration-of-disability Benefits in Accordance With the Workers'  
Compensation Act"

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

24 'Sec. 1. 39-A MRSA §213, sub-§1, as enacted by PL 1991, c.  
26 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

28 1. **Benefit and duration.** While the incapacity for work is  
30 partial, the employer shall pay the injured employee a weekly  
32 compensation equal to 80% of the difference between the injured  
34 employee's after-tax average weekly wage before the personal  
36 injury and the after-tax average weekly wage that the injured  
38 employee is able to earn after the injury, but not more than the  
40 maximum benefit under section 211. Compensation must be paid for  
42 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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HOUSE AMENDMENT "B" to SENATE AMENDMENT "C" to S.P. 822, L.D. 2202

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 June 30, 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 June 30, 2003.

18 **Sec. 3. Report legislation.** The joint standing committee of the  
19 Legislature having jurisdiction over labor matters shall review  
20 this Act and the issues presented by the determination of  
21 permanent impairment under Title 39-A and, based on their review,  
22 shall report out legislation on this issue to the First Regular  
23 Session of the 121st Legislature to take effect no later than  
24 June 30, 2003.'

26  
28 **FISCAL NOTE**

30 For permanent impairment determinations made between the  
31 effective date and June 30, 2003, this amendment eliminates the  
32 cost associated with those elements of the Kotch v. American  
33 Protective Services, Inc. decision that allowed for combining  
34 current work injuries and unrelated nonwork injuries in  
determining eligibility for duration-of-disability wage loss  
36 benefits.

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

HOUSE AMENDMENT "B" to SENATE AMENDMENT "C" to S.P. 822, L.D. 2202

2 The additional costs associated with meeting and reporting  
3 out legislation can be absorbed by the Legislature assuming that  
4 the joint standing committee of the Legislature having  
5 jurisdiction over labor matters only meets during authorized  
6 meeting dates approved by the Legislative Council.

8 **SUMMARY**

10 This amendment requires the Workers' Compensation Board and  
11 its hearing officers to disregard until June 30, 2003 the Maine  
12 Supreme Judicial Court decision in Kotch v. American Protective  
13 Services, Inc. regarding impairment from nonwork injuries when  
14 calculating the percentage of an injured employee's permanent  
15 impairment.

16 This amendment directs the joint standing committee of the  
17 Legislature having jurisdiction over labor matters to review the  
18 issues presented by determinations of permanent impairment and  
19 authorizes that committee to report out legislation on the issue  
20 to the First Regular Session of the 121st Legislature.

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23  
24 SPONSORED BY: A. Sullivan  
25 (Representative SULLIVAN)

26 TOWN: Biddeford  
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