

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 74

H.P. 82

House of Representatives, January 16, 2003

**An Act to Provide a Method of Compensation for Personal Injuries
Caused by Sidestream Tobacco Smoke**

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CLOUGH of Scarborough.

Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 5 MRSA §12004-G, sub-§31-C is enacted to read:

<u>31-C.</u>	<u>Sidestream</u>	<u>\$100 per</u>	<u>22 MRSA</u>
<u>Smoking</u>	<u>Smoke</u>	<u>day:</u>	<u>§1646</u>
	<u>Compensation</u>	<u>expenses</u>	
	<u>Board</u>		

Sec. 2. 22 MRSA c. 266-B is enacted to read:

CHAPTER 266-B

SIDESTREAM SMOKE COMPENSATION

§1645. Definition

As used in this chapter, unless the context otherwise indicates, "sidestream smoke" means tobacco smoke given off by a lighted cigarette, cigar or pipe or other object in a person's possession.

§1646. Sidestream Smoke Compensation Board

1. Board established. Pursuant to Title 5, section 12004-G, subsection 31-C, the Sidestream Smoke Compensation Board, referred to in this chapter as the "board," is established as an independent board composed of 8 members. Except for the Attorney General, who is an ex officio board member, or the Attorney General's designee, members of the board must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over human resources matters and confirmation by the Legislature. Notwithstanding Title 3, chapter 6, the committee shall complete its review of an appointment of the Governor within 15 days of the Governor's written notice of appointment, and the vote of the Legislature must be taken no later than 7 days after the vote of the committee or the reconvening of the Legislature, whichever is earlier.

2. Membership. The board is composed of the following members:

A. The Attorney General or the Attorney General's designee; and

B. The following members appointed by the Governor:

(1) One member chosen from a list provided by the Maine Medical Association or its successor organization;

- 2 (2) One member chosen from a list provided by the
Maine Osteopathic Association or its successor
organization;
- 4
- 6 (3) One member chosen from a list provided by a
statewide association dedicated to eradicating lung
disease;
- 8
- 10 (4) One member chosen from a list provided by a
statewide association dedicated to eradicating heart
disease;
- 12
- 14 (5) One member chosen from a list provided by the
Maine State Bar Association or its successor
organization; and
- 16
- 18 (6) Two public members.

20 Any list submitted to the Governor by an association named or
described in this paragraph must have at least 4 names.

22 A member of the board is not liable in a civil action for any act
performed in good faith in the execution of duties as a board
24 member.

26 A lobbyist required to be registered with the Secretary of State
may not be a member of the board.

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30 3. Terms. Members of the board hold office for staggered
terms of 4 years, except for the initial members of the board and
except for the member representing the Attorney General. An
32 appointed member may not serve more than 2 full terms.

34 The Governor shall initially designate one member for a term
expiring February 1, 2005; 2 members for terms expiring February
36 1, 2006; 2 members for terms expiring February 1, 2007; and 2
members for terms expiring February 1, 2008.

38

40 4. Removal. Board members hold office for the terms
provided, unless removed, and until their successors are
appointed and qualified. They must be sworn and may be removed
42 by the Governor for inefficiency, willful neglect of duty or
malfesance in office, but only with the review and concurrence
44 of the joint standing committee of the Legislature having
jurisdiction over human resources matters upon hearing in
46 executive session. Before removing a board member, the Governor
shall notify the President of the Senate and the Speaker of the
48 House of Representatives of the removal and the reasons for the
removal.

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2 5. Vacancies. If a vacancy occurs during a board member's
4 term of office, the Governor shall appoint a replacement to fill
6 the unexpired part of the term. The replacement must be from the
8 association named or described under subsection 2, paragraph B
 represented by the member being replaced. If the office of chair
 becomes vacant, the board member who has served for the longest
 period of time shall act as chair until the Governor makes an
 appointment to fill the vacancy.

10 6. Chair. The board shall annually elect one of its
12 members to serve as chair for a one-year term expiring February
14 1st each year. The term as chair of the first member elected to
 that position expires February 1, 2005. The chair may vote on
 all matters before the board.

16 7. Quorum. Five members constitute a quorum. A quorum is
18 necessary to transact all business and carry out the duties of
 the board.

20 8. Voting requirements. The board may take action only by
22 majority vote of its membership.

24 9. Salary; expenses. A board member appointed by the
26 Governor is entitled to a per diem of \$100. Members of the board
 receive their actual, necessary cash expenses while on official
 business of the board.

28 10. Headquarters; regional offices. The board must have
30 its central office in the Augusta area. The board may hold
 sessions at any place within the State.

32 11. Hiring personnel. The board may hire personnel as
34 needed to carry out its duties. Personnel hired are unclassified
36 employees, serve at the pleasure of the board and are not subject
 to the Civil Service Law.

38 12. Budget. The board shall administer its budget with the
40 assistance of any personnel hired under subsection 10.

40 **§1647. Powers and duties**

42 1. Rules. Consistent with the requirements of the Maine
44 Administrative Procedure Act, the board shall adopt rules to
46 carry out its duties under this chapter. Rules adopted pursuant
 to this subsection are major substantive rules as defined in
 Title 5, chapter 375, subchapter 2-A.

48 2. Duties. The board shall establish procedures to hear
50 and decide claims of and make monetary awards to persons claiming
 physical injury, loss of work or other damages from the

2 sidestream smoke of a person or persons other than the person
3 making the claim. If the board decides in favor of a person
4 making a claim, the board shall make a monetary award for the
5 amount of lost work, medical costs, legal costs, hardship and
6 suffering and any other damages the board determines just
7 compensation. The burden is on the person making the claim to
8 prove that sidestream smoke caused the person's damages.

10 **§1648. Compensation funds**

12 Funds for monetary awards under section 1647 must be
13 provided from any monetary awards made to the State pursuant to
14 lawsuits brought against tobacco companies.

16 **Sec. 3. Effective date.** This Act takes effect January 1, 2004.

18 **SUMMARY**

20 This bill creates the Sidestream Smoke Compensation Board
21 for the purpose of assessing claims of persons injured by
22 sidestream smoke. If the board determines that a person was
23 damaged by sidestream smoke, the board will make a monetary award
24 to the person to compensate for damages. Funds for this
25 compensation will come from money awarded to the State in
26 lawsuits against tobacco companies.