

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1384

S.P. 500

In Senate, April 2, 2009

An Act To Clarify Apportionment of Benefits for Multiple Work Injuries

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.
Cosponsored by Representative WATSON of Bath and
Senators: BARTLETT of Cumberland, JACKSON of Aroostook, Representatives: CLARK of
Millinocket, DRISCOLL of Westbrook.

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

2 **Sec. 1. 39-A MRSA §354, sub-§3**, as amended by PL 1999, c. 354, §9, is further
3 amended to read:

4 **3. Subrogation.** Any insurer determined to be liable for benefits under subsection 2
5 must be subrogated to the employee's rights under this Act for all benefits the insurer has
6 paid and for which another insurer may be liable. Apportionment decisions made under
7 this subsection may not affect an employee's rights and benefits under this Act.—~~The~~
8 ~~board has jurisdiction over proceedings to determine the apportionment of liability among~~
9 ~~responsible insurers.~~ and there may be no reduction of an employee's benefits from:

10 A. Apportionment of benefits due for a prior settled injury; and

11 B. Apportionment of benefits due when an employee has multiple injuries resulting
12 in permanent impairment under section 213, subsection 1-A and the permanent
13 impairment rating from any one such injury, or a combination of permanent
14 impairment from multiple injuries, is above the applicable threshold for one of the
15 injuries, but one or more than one of the injuries has a permanent impairment rating
16 below that injury's applicable threshold.

17 Notwithstanding section 213, subsection 1-A, paragraph B, this subsection applies to all
18 injuries, regardless of the dates of the injuries.

19 **Sec. 2. 39-A MRSA §354, sub-§5** is enacted to read:

20 **5. Jurisdiction.** The board has jurisdiction over proceedings to determine the
21 apportionment of liability among responsible insurers.

22 **SUMMARY**

23 This bill is in response to the Maine Supreme Judicial Court's decision in Legassie v.
24 Securitas, Inc., 2008 ME 43, 944 A.2d 495. The decision in that case authorized a
25 reduction to an injured worker's wage replacement and medical benefits because of a
26 previously settled workers' compensation claim. This bill specifies that reducing an
27 injured worker's benefits because of a prior settled injury is direct apportionment against
28 the employee and is prohibited.

29 This bill also clarifies the applicability of the Maine Supreme Judicial Court's
30 decision in Cust v. University of Maine, 2001 ME 29, 766 A.2d 566. This bill specifies
31 that when an injured worker's permanent impairment rating under the Maine Revised
32 Statutes, Title 39-A, section 213, subsection 1-A is above the applicable threshold on
33 account of a single injury or the sum of multiple injuries, all of the worker's weekly
34 benefits under the Maine Workers' Compensation Act of 1992 are exempt from the
35 durational limit of Title 39-A, section 213, subsection 1.

36 This bill also clarifies that Title 39-A, section 354 applies to all injuries no matter
37 when the injury occurred.