

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)



# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

---

Legislative Document

No. 1913

---

H.P. 1417

House of Representatives, April 12, 2012

### **An Act To Review and Restructure the Workers' Compensation System**

---

Reported by the Majority from the Joint Standing Committee on Labor, Commerce, Research and Economic Development pursuant to Joint Order, H.P. 1345.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

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

2 **Sec. 1. 39-A MRSA §205, sub-§9, ¶B,** as amended by PL 2009, c. 280, §1 and  
3 affected by §2, is further amended to read:

4 B. In all circumstances other than the return to work or increase in pay of the  
5 employee under paragraph A, if the employer, insurer or group self-insurer  
6 determines that the employee is not eligible for compensation under this Act, the  
7 employer, insurer or group self-insurer may discontinue or reduce benefits only in  
8 accordance with this paragraph.

9 (1) If no order or award of compensation or compensation scheme has been  
10 entered, the employer, insurer or group self-insurer may discontinue or reduce  
11 benefits by sending a certificate by certified mail to the employee and to the  
12 board, together with any information on which the employer, insurer or group  
13 self-insurer relied to support the discontinuance or reduction. The employer may  
14 discontinue or reduce benefits no earlier than 21 days from the date the certificate  
15 was mailed to the employee, except that benefits paid pursuant to section 212,  
16 subsection 1 or section 213, subsection 1 may be discontinued or reduced based  
17 on the amount of actual documented earnings paid to the employee during the 21-  
18 day period if the employer files with the board the documentation or evidence  
19 that substantiates the earnings and the employer only reduces or discontinues  
20 benefits for any week for which it possesses evidence of such earning. The  
21 certificate must advise the employee of the date when the employee's benefits  
22 will be discontinued or reduced, as well as other information as prescribed by the  
23 board, including the employee's appeal rights.

24 (2) If an order or award of compensation or compensation scheme has been  
25 entered, the employer, insurer or group self-insurer shall petition the board for an  
26 order to reduce or discontinue benefits and may not reduce or discontinue  
27 benefits until the matter has been ~~finally resolved through the dispute resolution~~  
28 ~~procedures of this Act, any appeal proceedings have been completed and an order~~  
29 ~~of reduction or discontinuance has been entered by the board by a decree issued~~  
30 ~~by a hearing officer. The employer, insurer or group self-insurer may reduce or~~  
31 ~~discontinue benefits pursuant to such a decree pending an appeal from that~~  
32 ~~decree.~~ Upon the filing of a petition, the employer may discontinue or reduce the  
33 weekly benefits being paid pursuant to section 212, subsection 1 or section 213,  
34 subsection 1 based on the amount of actual documented earnings paid to the  
35 employee after filing the petition. The employer shall file with the board the  
36 documentation or evidence that substantiates the earnings and the employer may  
37 discontinue or reduce weekly benefits only for weeks for which the employer  
38 possesses evidence of such earnings.

39 **Sec. 2. 39-A MRSA §211,** as amended by PL 1995, c. 560, Pt. G, §22, is further  
40 amended to read:

1           **§211. Maximum benefit levels**

2           Effective January 1, 1993, the maximum weekly benefit payable under section 212,  
3           213 or 215 is \$441 or 90% of state average weekly wage, whichever is higher. Beginning  
4           on July 1, 1994, the maximum benefit level is ~~the higher of \$441 or 90% of the state~~  
5           average weekly wage as adjusted annually utilizing the state average weekly wage as  
6           determined by the Department of Labor, ~~whichever is higher.~~ If the injured employee's  
7           date of injury is on or after January 1, 2013, the maximum benefit level is \$441 or 100%  
8           of the state average weekly wage as adjusted annually utilizing the state average weekly  
9           wage as determined by the Department of Labor, whichever is higher.

10           **Sec. 3. 39-A MRSA §212, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
11           affected by §§9 to 11, is amended to read:

12           **1. Total incapacity; date of injury prior to January 1, 2013.** ~~While~~ If the injured  
13           employee's date of injury is prior to January 1, 2013, while the incapacity for work  
14           resulting from the injury is total, the employer shall pay the injured employee a weekly  
15           compensation equal to 80% of the employee's after-tax average weekly wage, but not  
16           more than the maximum benefit under section 211. Compensation must be paid for the  
17           duration of the incapacity.

18           Any employee who is able to perform full-time remunerative work in the ordinary  
19           competitive labor market in the State, regardless of the availability of such work in and  
20           around that employee's community, is not eligible for compensation under this section,  
21           but may be eligible for compensation under section 213.

22           **Sec. 4. 39-A MRSA §212, sub-§1-A** is enacted to read:

23           **1-A. Total incapacity; date of injury on or after January 1, 2013.** If the injured  
24           employee's date of injury is on or after January 1, 2013, while the incapacity for work  
25           resulting from the injury is total, the employer shall pay the injured employee a weekly  
26           compensation equal to 2/3 of the employee's gross average weekly wages, earnings or  
27           salary, but not more than the maximum benefit under section 211. Compensation must be  
28           paid for the duration of the incapacity.

29           Any employee who is able to perform full-time remunerative work in the ordinary  
30           competitive labor market in the State, regardless of the availability of such work in and  
31           around that employee's community, is not eligible for compensation under this section,  
32           but may be eligible for compensation under section 213.

33           **Sec. 5. 39-A MRSA §212, sub-§3**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
34           affected by §§9 to 11, is amended to read:

35           **3. Specific loss benefits.** In cases included in the following schedule, the incapacity  
36           is considered to continue for the period specified, and the compensation due is ~~80% of the~~  
37           ~~after tax average weekly wage~~ calculated based on the date of injury subject to the  
38           maximum benefit set in section 211. Compensation under this subsection is available  
39           only for the actual loss of the following:

40           A. Thumb, 65 weeks;

- 1 B. First finger, 38 weeks;  
2 C. Second finger, 33 weeks;  
3 D. Third finger, 22 weeks;  
4 E. Fourth finger, 16 weeks;  
5 F. The loss of the first phalange of the thumb, or of any finger, is considered to be  
6 equal to the loss of 1/2 of that thumb or finger, and compensation is 1/2 of the  
7 amounts specified in paragraphs A to E. The loss of more than one phalange is  
8 considered as the loss of the entire finger or thumb. The amount received for more  
9 than one finger may not exceed the amount provided in this schedule for the loss of a  
10 hand;  
11 G. Great toe, 33 weeks;  
12 H. A toe other than the great toe, 11 weeks. The loss of the first phalange of any toe  
13 is considered to be equal to the loss of 1/2 of that toe, and compensation is 1/2 of the  
14 amounts specified in paragraphs F and G. The loss of more than one phalange is  
15 considered the loss of the entire toe;  
16 I. Hand, 215 weeks. An amputation between the elbow and wrist that is 6 or more  
17 inches below the elbow is considered a hand;  
18 J. Arm, 269 weeks. An amputation above the point specified in paragraph I is  
19 considered an arm;  
20 K. Foot, 162 weeks. An amputation between the knee and the foot 7 or more inches  
21 below the tibial table, or plateau, is considered a foot;  
22 L. Leg, 215 weeks. An amputation above the point specified in paragraph K is  
23 considered a leg; and  
24 M. Eye, 162 weeks. Eighty percent loss of vision of one eye constitutes the total loss  
25 of that eye.

26 **Sec. 6. 39-A MRSA §213, sub-§1**, as amended by PL 2003, c. 52, §1, is repealed  
27 and the following enacted in its place:

28 **1. Benefit and duration.** While the incapacity for work is partial, the employer  
29 shall pay the injured employee a weekly compensation as follows.

30 A. If the injured employee's date of injury is prior to January 1, 2012, the weekly  
31 compensation is equal to 80% of the difference between the injured employee's after-  
32 tax average weekly wage before the personal injury and the after-tax average weekly  
33 wage that the injured employee is able to earn after the injury, but not more than the  
34 maximum benefit under section 211. Compensation must be paid for the duration of  
35 the disability if the employee's permanent impairment, determined according to  
36 subsection 1-A and the impairment guidelines adopted by the board pursuant to  
37 section 153, subsection 8, resulting from the personal injury is in excess of 15% to  
38 the body. In all other cases an employee is not eligible to receive compensation  
39 under this paragraph after the employee has received a total of 260 weeks of  
40 compensation under section 212, subsection 1, this paragraph or both. The board

1 may in the exercise of its discretion extend the duration of benefit entitlement beyond  
2 260 weeks in cases involving extreme financial hardship due to inability to return to  
3 gainful employment. This authority may be delegated by the board, on a case-by-  
4 case basis, to a hearing officer or a panel of 3 hearing officers. Decisions made under  
5 this paragraph must be made expeditiously. A decision under this paragraph made by  
6 a hearing officer or a panel of 3 hearing officers may not be appealed to the board  
7 under section 320, but may be appealed pursuant to section 322.

8 B. If the injured employee's date of injury is on or after January 1, 2013, the weekly  
9 compensation is equal to 2/3 of the difference, due to the injury, between the  
10 employee's average gross weekly wages, earnings or salary before the injury and the  
11 average gross weekly wages, earnings or salary that the employee is able to earn after  
12 the injury, but not more than the maximum benefit under section 211. An employee  
13 is not eligible to receive compensation under this paragraph after the employee has  
14 received a total of 520 weeks of compensation under section 212, subsection 1-A, this  
15 paragraph or both. The board may in the exercise of its discretion extend the duration  
16 of benefit entitlement beyond 520 weeks in cases involving extreme financial  
17 hardship due to inability to return to gainful employment. This authority may be  
18 delegated by the board, on a case-by-case basis, to a hearing officer or a panel of 3  
19 hearing officers. The board, hearing officer or panel shall make a decision under this  
20 paragraph expeditiously. A decision under this paragraph made by a hearing officer  
21 or a panel of 3 hearing officers may not be appealed to the board under section 320,  
22 but may be appealed pursuant to section 321-A.

23 Orders extending benefits beyond 520 weeks are not subject to review more often  
24 than every 2 years from the date of the board order or request allowing an extension.

25 **Sec. 7. 39-A MRSA §213, sub-§1-B** is enacted to read:

26 **1-B. Long-term partial incapacity; date of injury on or after January 1, 2013.**  
27 After the exhaustion of benefits under subsection 1, paragraph B if the whole person  
28 permanent impairment resulting from the injury is in excess of 25% and if the employee  
29 is working and the employee's earnings, as measured by average weekly earnings over the  
30 most recent 26-week period documented by payroll records or tax returns, is 50% or less  
31 of the preinjury average weekly wage, the employer shall pay weekly compensation equal  
32 to 2/3 of the difference between the employee's average weekly wage at the time of the  
33 injury and the employee's postinjury wage, but not more than the maximum benefit under  
34 section 211. In order for the employee to qualify for benefits under this subsection, the  
35 employee's actual earnings must be commensurate with the employee's earning capacity,  
36 which includes consideration of the employee's physical work capacity as determined by  
37 an independent examiner under section 312. In addition, in order for the employee to  
38 qualify for benefits under this subsection, the employee must have earnings from  
39 employment for a period not less than 24 months prior to the expiration of the 520-week  
40 durational limit under subsection 1, paragraph B. Compensation under this subsection  
41 must be paid at a fixed rate.

42 While the employee is claiming or receiving extended partial incapacity benefits under  
43 this subsection, the employee shall complete and provide quarterly employment status

1 reports and provide copies of current tax returns as early as practicable after the return is  
2 filed.

3 The employee's entitlement to extended partial incapacity benefits under this subsection  
4 is determined based upon the facts that exist at the time of expiration of 520 weeks of  
5 benefits under subsection 1, paragraph B. If the employee is not entitled to extended  
6 partial incapacity benefits upon the expiration of 520 weeks of benefits under subsection  
7 1, paragraph B, the employee's entitlement to partial incapacity benefits expires. If the  
8 employee is entitled to extended partial incapacity benefits under this subsection, once  
9 the employee's earnings, as measured by average weekly earnings over the most recent  
10 26-week period, are equal to or greater than the preinjury average weekly wage, the  
11 employee's entitlement to extended partial incapacity benefits under this subsection  
12 terminates permanently.

13 **Sec. 8. 39-A MRSA §213, sub-§3-A** is enacted to read:

14 **3-A. Dates of injury between January 1, 2006 and January 1, 2012.** If the injured  
15 employee's date of injury is between January 1, 2006 and January 1, 2012, the permanent  
16 impairment threshold is adjusted to a whole person impairment in excess of 12%.

17 **Sec. 9. 39-A MRSA §214, sub-§1, ¶B,** as enacted by PL 1991, c. 885, Pt. A, §8  
18 and affected by §§9 to 11, is amended to read:

19 B. If an injured employee's date of injury is prior to January 1, 2013 and the  
20 employee is employed at any job and the average weekly wage of the employee is  
21 less than that which the employee received before the date of injury, the employee is  
22 entitled to receive weekly benefits under this Act equal to 80% of the difference  
23 between the injured employee's after-tax weekly wage before the date of injury and  
24 the after-tax weekly wage that the injured employee is able to earn after the date of  
25 injury, but not more than the maximum weekly rate of compensation, as determined  
26 under section 211.

27 **Sec. 10. 39-A MRSA §214, sub-§1, ¶B-1** is enacted to read:

28 B-1. If an injured employee's date of injury is on or after January 1, 2013 and the  
29 employee is employed at any job and the average weekly wage of the employee is  
30 less than that which the employee received before the date of injury, the employee is  
31 entitled to receive weekly benefits under this Act equal to 2/3 of the difference, due  
32 to the injury, between the employee's average gross weekly wages, earnings or salary  
33 before the injury and the average gross weekly wages, earnings or salary that the  
34 employee is able to earn after the injury, but not more than the maximum weekly rate  
35 of compensation, as determined under section 211.

36 **Sec. 11. 39-A MRSA §215, sub-§1,** as amended by PL 2007, c. 361, §1 and  
37 affected by §2, is further amended to read:

38 **1. Death of employee; date of injury prior to January 1, 2013.** If an injured  
39 employee's date of injury is prior to January 1, 2013 and if death results from the injury of  
40 an the employee, the employer shall pay or cause to be paid to the dependents of the  
41 employee who were wholly dependent upon the employee's earnings for support at the

1 time of the injury, a weekly payment equal to 80% of the employee's after-tax average  
2 weekly wage, but not more than the maximum benefit under section 211, for a period of  
3 500 weeks from the date of death. If the employee leaves dependents only partially  
4 dependent upon the employee's earnings for support at the time of injury, the employer  
5 shall pay weekly compensation equal to the same proportion of the weekly payments for  
6 the benefit of persons wholly dependent, as 80% of the amount contributed by the  
7 employee to such partial dependents bears to the annual earnings of the deceased at the  
8 time of injury. If, at the expiration of the 500-week period, any wholly or partially  
9 dependent person is less than 18 years of age, the employer shall continue to pay or cause  
10 to be paid the weekly compensation until that person reaches the age of 18.

11 If a dependent spouse dies or becomes a dependent of another person, the payments must  
12 cease upon the payment to the spouse of the balance of the compensation to which the  
13 spouse would otherwise have been entitled but in no event to exceed the sum of \$500.00.  
14 The remaining weeks of compensation, if any, are payable to those persons either wholly  
15 or partially dependent upon the employee for support at the employee's death. When, at  
16 the expiration of the 500-week period, any wholly or partially dependent person is less  
17 than 18 years of age, the employer shall continue to pay or cause to be paid the weekly  
18 compensation, until that person reaches the age of 18. The payment of compensation to  
19 any dependent child after the expiration of the 500-week period ceases when the child  
20 reaches the age of 18 years, if at the age of 18 years the child is neither physically nor  
21 mentally incapacitated from earning, or when the child reaches the age of 16 years and  
22 thereafter is self-supporting for 6 months. If the child ceases to be self-supporting  
23 thereafter, the dependency must be reinstated. As long as any of the 500 weeks of  
24 compensation remain, that compensation is payable to the person either wholly or  
25 partially dependent upon the deceased employee for support at the time of the employee's  
26 death, with the exception of a dependent spouse who becomes a dependent of another. If  
27 a wholly dependent or partially dependent child who reaches 18 years of age is either  
28 physically or mentally incapacitated so as to be unable to earn a living as determined by  
29 the board, the payments must continue until such time as the child either dies or is no  
30 longer physically or mentally incapacitated from earning.

31 **Sec. 12. 39-A MRSA §215, sub-§1-A** is enacted to read:

32 **1-A. Death of employee; date of injury on or after January 1, 2013.** If an injured  
33 employee's date of injury is on or after January 1, 2013 and if death results from the  
34 injury of the employee, the employer shall pay or cause to be paid to the dependents of  
35 the employee who were wholly dependent upon the employee's earnings for support at  
36 the time of the injury a weekly payment equal to 2/3 of the employee's gross average  
37 weekly wages, earnings or salary, but not more than the maximum benefit under section  
38 211, for a period of 500 weeks from the date of death. If the employee leaves dependents  
39 only partially dependent upon the employee's earnings for support at the time of injury,  
40 the employer shall pay weekly compensation equal to the same proportion of the weekly  
41 payments for the benefit of persons wholly dependent, as 2/3 of the amount contributed  
42 by the employee to such partial dependents bears to the annual earnings of the deceased  
43 at the time of injury. If, at the expiration of the 500-week period, any wholly or partially  
44 dependent person is less than 18 years of age, the employer shall continue to pay or cause  
45 to be paid the weekly compensation until that person reaches the age of 18.



1 If a dependent spouse dies or becomes a dependent of another person, the payments must  
2 cease upon the payment to the spouse of the balance of the compensation to which the  
3 spouse would otherwise have been entitled but in no event to exceed the sum of \$500.00.  
4 The remaining weeks of compensation, if any, are payable to those persons either wholly  
5 or partially dependent upon the employee for support at the employee's death. When, at  
6 the expiration of the 500-week period, any wholly or partially dependent person is less  
7 than 18 years of age, the employer shall continue to pay or cause to be paid the weekly  
8 compensation, until that person reaches the age of 18. The payment of compensation to  
9 any dependent child after the expiration of the 500-week period ceases when the child  
10 reaches the age of 18 years, if at the age of 18 years the child is neither physically nor  
11 mentally incapacitated from earning, or when the child reaches the age of 16 years and  
12 thereafter is self-supporting for 6 months. If the child ceases to be self-supporting  
13 thereafter, the dependency must be reinstated. As long as any of the 500 weeks of  
14 compensation remain, that compensation is payable to the person either wholly or  
15 partially dependent upon the deceased employee for support at the time of the employee's  
16 death, with the exception of a dependent spouse who becomes a dependent of another. If  
17 a wholly dependent or partially dependent child who reaches 18 years of age is either  
18 physically or mentally incapacitated so as to be unable to earn a living as determined by  
19 the board, the payments must continue until such time as the child either dies or is no  
20 longer physically or mentally incapacitated from earning.

21 **Sec. 13. 39-A MRSA §217, sub-§8** is enacted to read:

22 **8. Presumption.** If an employee is participating in a rehabilitation plan ordered  
23 pursuant to subsection 2, there is a presumption that work is unavailable to the employee  
24 for as long as the employee continues to participate in employment rehabilitation.

25 **Sec. 14. 39-A MRSA §221, sub-§2, ¶A,** as enacted by PL 2009, c. 521, §1 and  
26 affected by §2, is repealed and the following enacted in its place:

27 **A. "After-tax amount" means:**

28 (1) For benefits paid on claims for which the date of injury is prior to January 1,  
29 2013, the gross amount of any benefit under subsection 3, paragraph A,  
30 subparagraph (2), (3), (4) or (5) reduced by the prorated weekly amount that  
31 would have been paid, if any, under the Federal Insurance Contributions Act, 26  
32 United States Code, Sections 3101 to 3126, state income tax and federal income  
33 tax, calculated on an annual basis using as the number of exemptions the disabled  
34 employee's dependents plus the employee, and without excess itemized  
35 deductions. In determining the after-tax amount the tables provided for in section  
36 102, subsection 1 must be used. The gross amount of any benefit under  
37 subsection 3, paragraph A, subparagraph (2), (3), (4) or (5) is presumed to be the  
38 same as the average weekly wage for purposes of the table. The applicable 80%  
39 of after-tax amount as provided in the table, multiplied by 1.25, is conclusive for  
40 determining the after-tax amount of benefits under subsection 3, paragraph A,  
41 subparagraph (2), (3), (4) or (5); and

42 (2) For benefits paid on claims for which the date of injury is on or after January  
43 1, 2013, the net weekly amount of any old-age insurance benefit or benefit under  
44 an employee benefit plan, reduced by the prorated weekly amount that would

1 have been paid, if any, under the Federal Insurance Contributions Act, 26 United  
2 States Code, Sections 3101 to 3126, federal income and state income taxes,  
3 calculated on an annual basis. The after-tax amount of any benefit subject to  
4 income taxes must be determined by using the maximum number of dependents'  
5 allowances to which the employee is entitled and the standard deduction or zero  
6 bracket amount applicable to the employee's filing status.

7 **Sec. 15. 39-A MRSA §301, first ¶**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
8 affected by §§9 to 11, is amended to read:

9 ~~Proceedings~~ For claims for which the date of injury is prior to January 1, 2013,  
10 proceedings for compensation under this Act, except as provided, may not be maintained  
11 unless a notice of the injury is given within 90 days after the date of injury. For claims  
12 for which the date of injury is on or after January 1, 2013, proceedings for compensation  
13 under this Act, except as provided, may not be maintained unless a notice of the injury is  
14 given within 30 days after the date of injury. The notice must include the time, place,  
15 cause and nature of the injury, together with the name and address of the injured  
16 employee. The notice must be given by the injured employee or by a person in the  
17 employee's behalf, or, in the event of the employee's death, by the employee's legal  
18 representatives, or by a dependent or by a person in behalf of either.

19 **Sec. 16. 39-A MRSA §302**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected  
20 by §§9 to 11, is amended to read:

21 **§302. Sufficiency of notice; knowledge of employer; extension of time for notice**

22 A notice given under section 301 may not be held invalid or insufficient by reason of  
23 any inaccuracy in stating any of the facts required for proper notice, unless it is shown  
24 that it was the intention to mislead and that the employer was in fact misled by the notice.  
25 Want of notice is not a bar to proceedings under this Act if it is shown that the employer  
26 or the employer's agent had knowledge of the injury. Any time during which the  
27 employee is unable by reason of physical or mental incapacity to give the notice, or fails  
28 to do so on account of mistake of fact, may not be included in the ~~90-day period specified~~  
29 computation of proper notice. In case of the death of the employee within that period,  
30 there is allowed for giving the notice 3 months after the death.

31 **Sec. 17. 39-A MRSA §306, sub-§1**, as enacted by PL 1999, c. 354, §6 and  
32 affected by §10, is amended to read:

33 **1. Statute of limitations.** Except as provided in this section, a petition brought  
34 under this Act is barred unless filed within 2 years after the date of injury ~~or the date the~~  
35 ~~employee's employer files a first report of injury as required in section 303, whichever is~~  
36 ~~later.~~

37 **Sec. 18. 39-A MRSA §320, 2nd ¶**, as amended by PL 2003, c. 608, §13, is  
38 further amended to read:

39 If a hearing officer asks for review, the time for appeal to the ~~Law Court~~ Appellate  
40 Division pursuant to section ~~322~~ 321-B is stayed and no further action may be taken until

1 a decision of the board has been made. If the board reviews a decision of a hearing  
2 officer, any appeal must be from the decision of the board. The time for appeal begins  
3 upon the board's issuance of a written decision on the merits of the case or written notice  
4 that the board denies review.

5 **Sec. 19. 39-A MRSA §§321-A and 321-B** are enacted to read:

6 **§321-A. Appellate Division**

7 **1. Establishment.** There is established within the board the Appellate Division,  
8 referred to in this subchapter as "the division."

9 **2. Composition.** The division is composed of full-time hearing officers who are  
10 appointed by the executive director of the board to serve on panels to review decisions  
11 under section 318. The executive director of the board shall appoint no fewer than 3 full-  
12 time hearing officers to serve as members of a panel. A hearing officer may not serve as  
13 a member of a panel that reviews a decision of that hearing officer. A hearing officer  
14 may be a member of more than one panel at the discretion of the executive director of the  
15 board.

16 **3. Rules.** The board shall adopt rules of procedure designed to provide a prompt and  
17 inexpensive review of a decision by a hearing officer. Rules adopted pursuant to this  
18 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

19 **§321-B. Appeal from hearing officer decision**

20 **1. Procedure.** An appeal of a decision by a hearing officer pursuant to section 318  
21 to the division must be conducted pursuant to this subsection.

22 **A.** A party in interest may file with the division a notice of intent to appeal a decision  
23 by a hearing officer pursuant to section 318 within 20 days after receipt of notice of  
24 the filing of the decision by the hearing officer.

25 **B.** At the time of filing an appeal under this section, the appellant shall file with the  
26 division a copy of the decision, order or agreement appealed. The failure of an  
27 appellant who timely files an appeal in accordance with paragraph A to provide a  
28 copy of the decision, order or agreement does not affect the jurisdiction of the  
29 division to determine the appeal on its merits unless the appellee shows substantial  
30 prejudice from that failure.

31 **2. Basis.** A finding of fact by a hearing officer is not subject to appeal under this  
32 section.

33 **3. Action.** The division, after due consideration, may reverse or modify a decree of  
34 a hearing officer and shall issue a written decision. The written decision of the division  
35 must be filed with the board and mailed to the parties or their counsel.

36 **4. Publication of decisions.** The division shall publish the decisions issued under  
37 subsection 3 and make them available to the public at such cost as is required to pay for  
38 suitable publication. The division shall distribute copies of all written decisions to the  
39 State Law Library and the county law libraries.



1           2. Changes the calculation for determining the maximum benefit amount for partial  
2 incapacity from 80% of the employee's net average weekly wages, but not more than the  
3 maximum benefit, to 2/3 of the employee's gross average weekly wages, but not more  
4 than the maximum benefit;

5           3. Eliminates the permanent impairment threshold index that is presently calculated  
6 from an adjusted impairment threshold, based on an actuarial review of cases receiving  
7 permanent impairment ratings in which 25% of all cases with permanent impairment are  
8 expected to exceed the threshold and 75% of all cases are expected to be less than the  
9 threshold;

10          4. Establishes 520 weeks as the end date of benefit eligibility for permanently  
11 impaired individuals with partial incapacity;

12          5. Changes the eligibility requirements for extension of benefits for permanently  
13 impaired individuals with partial incapacity. In order to qualify for an extension, the  
14 following requirements must be met:

15           A. The injured employee must have a whole person permanent impairment resulting  
16 from an injury in excess of 25% and the employee's earnings over the most recent  
17 26-week period must be 50% or less of the preinjury average weekly wage; if so the  
18 employer shall pay weekly compensation equal to 2/3 of the difference between the  
19 employee's average weekly wage at the time of the injury and the employee's  
20 postinjury wage, but not more than the maximum benefit allowable;

21           B. The employee's actual earnings must be commensurate with the employee's  
22 earning capacity as determined by an independent medical examiner; and

23           C. The employee must have earnings from employment for a period of not less than  
24 24 months prior to the expiration of the 520-week durational limit.

25 In addition, compensation is at a fixed rate and may be reviewed biennially. While the  
26 employee is receiving extended partial incapacity benefits, the employee must complete  
27 and provide quarterly employment status reports and tax returns. If an employee's weekly  
28 earnings over the most recent 26-week period are equal to or greater than the employee's  
29 preinjury week earnings, the extension of benefits is terminated permanently. Finally, if  
30 an employee does not qualify for an extension at the end of 520 weeks, the employee's  
31 benefits expire;

32          6. Changes the average weekly benefit for partial incapacity for an employee if the  
33 wages were lowered after the injury from 80% of net 2/3 of gross of the difference  
34 between the employee's average weekly wages received before the date of injury and  
35 average weekly wages received postinjury, but not more than the maximum benefit;

36          7. Changes the death benefit for dependents of an employee who were dependent  
37 upon the employee's earnings for support at the time of injury to a weekly payment based  
38 on 80% of the net of the employee's average weekly wages to 2/3 of the employee's gross  
39 average weekly wages, but not more than the maximum benefit; and

40          8. Shortens the time in which a notice of injury must be given from 90 to 30 days.

1           The bill also establishes the calculation for determining an employee's permanent  
2 impairment threshold at 12% for individuals with partial incapacity for injuries incurred  
3 between January 1, 2006 and January 1, 2012.



# 125th MAINE LEGISLATURE

LD 1913

LR 2787(01)

## An Act To Review and Restructure the Workers' Compensation System

### Fiscal Note for Original Bill

Committee: Labor, Commerce, Research and Economic Development

Fiscal Note Required: Yes

---

---

### Fiscal Note

Undetermined fiscal impact - all funds

#### Fiscal Detail and Notes

This bill amends certain provisions of the Maine Workers' Compensation Act of 1992 as well as certain procedures of the Workers' Compensation Board. Although a preliminary analysis conducted by the National Council on Compensation Insurance, Inc. (NCCI) provides estimated fiscal impacts on certain specific changes in this legislation, the fiscal impact of other changes could not be determined until a more comprehensive analysis is performed.

According to the preliminary analysis provided by NCCI, the provision in this legislation that increases the percent of the state average weekly wage that is used in the calculation of the maximum benefit level from 90% to 100% may increase the cost of workers' compensation benefits in the State by between 0.6% and 0.8%.

This bill also changes the calculation for determining the maximum benefit amount for total incapacity and partial incapacity from 80% of the employee's net average weekly wages to 2/3 of the employee's gross average weekly wages for those injuries that occur on or after January 1, 2013. Preliminary estimates provided by NCCI indicates that this provision may reduce the cost of workers' compensation benefits by approximately 0.5%.

The fiscal impact of eliminating the permanent impairment threshold index for individuals with partial incapacity and changing the eligibility requirements for the extension of benefits for permanently impaired individuals with partial incapacity beyond 520 weeks for those injuries that occur on or after January 1, 2013 can not be determined at this time. According to a preliminary analysis of the proposal by NCCI the impact will depend on actual experience and will be reflected in future loss cost filings submitted by NCCI to the Maine Bureau of Insurance.

Additional costs to the Workers' Compensation Board associated with establishing an Appellate Division within the board utilizing individuals currently serving as full-time hearing officers of the board can be absorbed within existing budgeted resources.