

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 1980 to June 19, 1981

AND AT THE

FIRST SPECIAL SESSION
August 3, 1981

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND TENTH LEGISLATURE

1981

CHAPTER 474

H. P. 524 — L. D. 590

AN ACT to Amend the Workers' Compensation Second Injury Fund, to Assist Handicapped Workers in Returning to Employment and to Reduce Multiple Injury Litigation.

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

Sec. 1. 39 MRSA § 57, as last amended by PL 1977, c. 612, § 6, is repealed and the following enacted in its place:

§ 57. Permanent total incapacity due partly to prior injury; Second Injury Fund

1. **Payment for second injuries.** If an employee who has a permanent impairment from any cause or origin which is, or is likely to be, a hindrance or obstacle to his employment, sustains a personal injury arising out of and in the course of employment which, in combination with the earlier preexisting impairment results in total permanent incapacity, the employer or his insurance carrier is liable for all compensation provided by this section. The employer or insurance carrier shall be reimbursed from the Second Injury Fund for compensation payments not attributable to the second injury.

2. **Permanent impairment.** As used in this section, "permanent impairment" means any permanent physical or mental condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.

3. **Employer knowledge.** In order to qualify under this section for reimbursement from the Second Injury Fund, the employer must establish that the employer had knowledge of the permanent impairment at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired that knowledge.

4. **Jurisdiction.** The Workers' Compensation Commission has jurisdiction over all claims brought by employers or insurance carriers against the Second Injury Fund. The Second Injury Fund shall not be bound as to any question of law or fact by reason of any award or any adjudication to which it was not a party or in relation to which it was not notified, at least 3 weeks prior to the award or adjudication, that it might be subject to liability for the injury or death. An employer or its insurance carrier shall notify the Workers' Compensation Commission of any possible claim against the Second Injury Fund as soon as practicable, but in no event later than 3 years after the injury or death.

5. **Legal representation.** The Attorney General shall provide legal

representation for any claim made under this section. The reasonable expense of prosecution or defense by the Attorney General of claims against the Second Injury Fund shall, subject to the approval of the Workers' Compensation Commission, be payable out of the Second Injury Fund. The Attorney General shall not defend the Second Injury Fund against any claim brought by the State. The Workers' Compensation Commission is authorized to hire, using funds from the Second Injury Fund, private counsel to defend any claim brought against the Second Injury Fund by the State.

6. **Second Injury Fund administration and contributions.** There is established in the State Treasury a special fund, known as the Second Injury Fund, for the sole purpose of making payments in accordance with this section. The fund is administered by the chairman of the Workers' Compensation Commission. The Treasurer of State is the custodian of the fund and all moneys and securities in the fund shall be held in trust by the Treasurer of State and shall not be money or property of the State.

The Treasurer of State may disburse moneys from the fund only upon written order of the chairman of the Workers' Compensation Commission. He is required to give bond in an amount to be fixed and with securities approved by the chairman conditioned upon the faithful performance of his duty as custodian of the fund. The premium of the bond shall be paid out of the fund. The moneys of the fund shall be invested by him in accordance with law. Interest, income and dividends from the investments shall be credited to the fund.

In every case of the death of any employee under this section where there is no person entitled to compensation, the employer shall pay to the Treasurer of State a sum equal to 100 times the average weekly wage in the State as computed by the Employment Security Commission for benefit of the Second Injury Fund and the chairman of the Workers' Compensation Commission shall direct the distribution thereof in a manner consistent with this section.

All moneys in the original Second Injury Fund upon the effective date of this section shall be deposited with the Treasurer of State as part of the new fund created by this section.

7. **Exemption for liability.** The State is not liable for any claim against the Second Injury Fund that is in excess of the fund's current ability to pay.

Sec. 2. 39 MRSA § 57-A, as last amended by PL 1979, c. 446, is repealed.

Sec. 3. 39 MRSA § 66-A, as enacted by PL 1971, c. 417, is repealed and the following enacted in its place:

§ 66-A. **Transfer to suitable work**

When an employee has suffered a compensable injury which disables him from performing his customary or most recent work, his employer at the time of the injury shall transfer him to a position which is suitable to his physical condition

when such position is available. The employer's obligation to transfer the employee shall continue until one year after the employee has reached the stage of maximum medical improvement in the judgment of the commission.

Upon the request of an injured employee, the commission shall, after making the due inquiry, require that the employee be transferred under this section.

The exercise of this authority shall not conflict with any provisions of a collective bargaining agreement between the employer and a labor organization which is the collective bargaining representative of the unit of which the injured workman is a part, if that agreement grants the injured employee greater rights than are provided in this section.

This section does not obligate an employer to offer employment or reemployment in supervisory or confidential positions within the meaning of the United States Code, Title 29, Section 152, and shall not obligate an employer to offer an injured employee employment or reemployment in a position for which he is not qualified.

The employer's failure to comply with an order of the commission under this section disqualifies the employer from exercising any right it may otherwise have to reduce or terminate the employee's benefits under this Act. The disqualification shall continue only as long as the employer fails to make an offer of suitable work which is available or until the employee accepts other employment.

If any injured employee refuses to accept an offer of suitable work, the employer or insurer may, in addition to exercising any other rights it may have, file a petition for a reduction of benefits. If, after hearing, the commission finds that an employee refused to accept the offer and the position offered was suitable to his physical condition, it shall order the reduction of all benefits payable under sections 54 and 55. The reduction shall be in an amount equal to the difference between the employee's weekly benefit and the benefits he would have been entitled to receive if he had accepted the offer. The order reducing benefits shall remain in effect only as long as the employee fails to accept the offer of suitable work.

If the commission determines that the employee has refused to accept an offer of work suitable to his physical condition, all or a portion of the benefits paid between the time the offer was refused and the commission's determination shall be considered an overpayment. The amount of the overpayment shall be the difference between the employee's benefits for that period and the benefits, if any, he would have been entitled to receive if he had accepted the offer. The amount of the overpayment shall be recoverable by the employer or insurer by making deductions from future benefit payments in such amounts as the commission may determine. If no benefits are payable, the employer or insurer may recover the amount of the overpayment by civil action.

Sec. 4. 39 MRSA § 104-B, as enacted by PL 1977, c. 368, is repealed and the following enacted in its place:

§ 104-B. Multiple injuries; apportionment of liability

1. **Applicability.** Where 2 or more occupational injuries occur, during either a single employment or successive employments, which combine to produce a single incapacitating condition, and more than one insurer is responsible for that condition, their liability shall be governed by this section.

2. **Liability to employee.** If an employee has sustained more than one injury while employed by different employers, or if an employee has sustained more than one injury while employed by the same employer and that employer was insured by one insurer when the first injury occurred and insured by another insurer when the subsequent injury or injuries occurred, the insurer providing coverage at the time of the last injury shall initially be responsible to the employee for all benefits payable under this Act.

3. **Subrogation.** Any insurer determined to be liable for benefits under subsection 2 shall be subrogated to the employee's rights under this Act for all benefits the insurer has paid and for which another insurer may be liable. Any such insurer may, in accordance with rules prescribed by the commission, file a petition for an apportionment of liability among the responsible insurers. The commission has jurisdiction over all claims for apportionment under this section. In any proceeding for apportionment, no insurer is bound as to any finding of fact or conclusion of the law made in a prior proceeding in which it was not a party.

4. **Consolidation.** The commission or any commissioner may consolidate some or all proceedings arising out of multiple injuries.

Effective September 18, 1981

CHAPTER 475

H. P. 556 — L. D. 635

AN ACT to Amend Provisions Concerning the Operation of the Operation after Suspension and Habitual Offender Laws and Certain Nonsentencing Provisions of the Operating under the Influence Law.

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

Sec. 1. 29 MRSA § 787, sub-§ 7, first sentence is amended to read:

Any person whose operator's license or registration certificates or other privilege to operate a motor vehicle, trailer or ~~semi-trailer~~ **semitrailer** has been suspended or revoked, restoration thereof or the issuance of a new license or registration being contingent upon the furnishing of security or proof of financial responsibility, and who during such suspension or revocation or in the absence of