

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2002

Sec. 6. 28-A MRSA §453-C is enacted to read:

§453-C. Reselling agents

1. Agent licensed to resell spirits purchased from the commission. An agent licensed to resell spirits and fortified wine purchased from the State to a retail licensee licensed for on-premises consumption must be licensed as a reselling agent. An agent is prohibited from reselling liquor to a retail licensee licensed for on-premises consumption except for spirits and fortified wine purchased from the commission or a state liquor store. A reselling agent may not resell fortified wine purchased from wholesalers licensed to sell beer and wine in the State.

2. License fee. The fee for a state license to resell spirits and fortified wine to a retail licensee licensed for on-premises consumption is \$50 annually.

Sec. 7. 28-A MRSA §605, sub-§2-A is enacted to read:

2-A. Transfer to surviving spouse or designated heir. When the term of the license of a deceased licensee expires, the bureau shall transfer the license for the existing location to the surviving spouse or a designated heir of the deceased licensee if the surviving spouse or designated heir submits a request for the transfer of that license at least 60 days prior to the expiration of the license. The bureau may deny the transfer of the license if the surviving spouse or designated heir does not meet all of the eligibility requirements for that license set forth in this chapter. If both the surviving spouse and the designated heir request transfer of the license, the bureau shall reissue the license by the same process used if no surviving spouse or designated heir requested that the license be transferred.

Sec. 8. 28-A MRSA §606, sub-§8, as amended by PL 1997, c. 24, Pt. L, §4, is further amended to read:

8. Limits on price. An agency liquor store may not sell spirits and fortified wine for less than 103% of the price paid by the agency liquor store. An agency liquor store may not sell spirits to persons other than on-premises licensees for more than the list price set in accordance with chapters 65 and 67. An agency liquor store shall sell all spirits and fortified wine purchased from the commission at the retail price established by the commission.

See title page for effective date.

CHAPTER 712

S.P. 822 - L.D. 2202

An Act to Ensure that 25% of Workers' Compensation Cases with Permanent Impairment Remain Eligible for Duration-of-disability Benefits in Accordance With the Workers' Compensation Act

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

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

1. Benefit and duration. While the incapacity for work is partial, the employer shall pay the injured employee a weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured employee is able to earn after the injury, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the disability if the employee's permanent impairment, determined according to subsection 1-A and 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 cases involving extreme financial hardship due to inability to return to gainful employment. This authority may not be delegated to a hearing officer and such decisions must be made expeditiously.

Sec. 2. 39-A MRSA §213, sub-§1-A is enacted to read:

1-A. Determination of permanent impairment. For purposes of this section, "permanent impairment" includes only permanent impairment resulting from:

A. The work injury at issue in the determination and any preexisting physical condition or injury that is aggravated or accelerated by the work injury at issue in the determination; or

B. For dates of injury on or after January 1, 2002, the work injury at issue in the determination and;

(1) Any prior injury that arose out of and in the course of employment for which a report of injury was completed pursuant to section 303 and the employee received a benefit or compensation under this Title, which has not been denied by the board, and that combines with the work injury at issue in the determination to contribute to the employee's incapacity, except that a prior injury that was the subject of a lump-sum settlement approved pursuant to section 352 that had a finding of permanent impairment equal to or in excess of the then applicable permanent impairment threshold may not be included; or

(2) Any preexisting physical condition or injury that is aggravated or accelerated by the work injury at issue in the determination.

Except as set forth in this subsection, "permanent impairment" does not include a condition that is not caused, aggravated or accelerated by the work injury.

Sec. 3. 39-A MRSA §213, sub-§2, as enacted by PL 1991, c. 885, Pt. A, §8 and as affected by §§9 to 11, is amended to read:

2. Threshold adjustment. Effective January 1, 1998 and every other January 1st thereafter, the board, using an independent actuarial review based upon actuarially sound data and methodology, must adjust the 15% impairment threshold established in subsection 1 so that 25% of all cases with permanent impairment will be expected to exceed the threshold and 75% of all cases with permanent impairment will be expected to be less than the threshold. The actuarial review must include all cases receiving permanent impairment ratings on or after January 1, 1993, irrespective of date of injury, but may utilize a cutoff date of 90 days prior to each adjustment date to permit the collection and analysis of data. The data must be adjusted to reflect ultimate loss development. In order to ensure the accuracy of the data, the board shall require that all cases involving permanent injury, including those settled pursuant to section 352, include an impairment rating performed in accordance with subsection 1-A and the guidelines adopted by the board and either agreed to by the parties or determined by the board. Each adjusted threshold is applicable to all cases with dates of injury on or after the date of adjustment and prior to the date of the next adjustment.

Sec. 4. January 1, 2002 threshold adjustment. Solely for the purposes of establishing the threshold adjustment to be effective January 1, 2002, as required by the Maine Revised Statutes, Title 39-A, section 213, subsection 2, the Workers' Compensation

Board shall retain 2 actuaries who are fellows of the Casualty Actuarial Society to each develop a recommendation for the percentage of permanent impairment to which the threshold should be adjusted, based upon sound actuarial principles that will produce an unbiased result. One actuary must be chosen in the exclusive discretion of the management representatives of the board and one must be chosen in the exclusive discretion of the labor representatives of the board. The retention of each actuary by the board is not subject to state procurement laws or any other competitive bid requirement.

In addition to actuarial modeling, the analysis must include, to the extent available, actual case data involving known noncausal work injuries for which the permanent impairment level is known or can be determined. Carriers and self-insureds shall cooperate in furnishing the actuaries with requested data. The identity of any claimant is confidential and that confidentiality must be preserved. Any information provided by any person for the purposes of this threshold adjustment must be provided to both actuaries.

Each actuary shall submit a recommendation to the board by September 30, 2002. The recommendation must detail the methodology, modeling, assumptions, data relied upon and any adjustments to that data, basis for the recommendation and any other information the actuary believes is material to the recommendation. These recommendations must be the subject of written public comment to be received by the board by 5:00 p.m., October 15, 2002.

The threshold adjustment must be made by the board by November 1, 2002, based on the recommendations of these actuaries and the received written public comment. If the board does not adjust the threshold as required under this section, the matter must be referred to arbitration and the Executive Director of the Workers' Compensation Board shall request the American Arbitration Association to assign a neutral 3rd party by November 7, 2002, according to its rules and procedures. Preference must be given to an arbitrator with experience in casualty actuarial sciences or statistical issues. The arbitrator must render a decision by December 1, 2002. The arbitrator's decision may not be appealed. The board shall adopt the threshold decided upon by the arbitrator.

The adoption of the threshold pursuant to this section is not subject to the Maine Revised Statutes, Title 5, chapter 375 and is not subject to appeal.

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

WORKERS' COMPENSATION BOARD

Administration - Workers' Compensation Board

Initiative: Allocates funds for one Management Analyst II position and other operating costs associated with determining the permanent impairment threshold.

Other Special Revenue Funds	2001-02	2002-03
Positions - Legislative Count	(0.000)	(1.000)
Personal Services	\$0	\$60,000
All Other	0	5,000
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Total	\$0	\$65,000

Administration - Workers' Compensation Board

Initiative: Allocates funds on a one-time basis for actuarial and arbitration services associated with determining the permanent impairment threshold. The funds allocated for actuarial services of \$60,000 in fiscal year 2002-03 are to be split equally between labor and management. The balance of \$10,000 is allocated for arbitration services.

Other Special Revenue Funds	2001-02	2002-03
All Other	\$0	\$70,000

WORKERS' COMPENSATION BOARD		
DEPARTMENT TOTALS	2001-02	2002-03
OTHER SPECIAL REVENUE FUNDS	\$0	\$135,000
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DEPARTMENT TOTAL - ALL FUNDS	\$0	\$135,000

Sec. 6. Application; retroactivity. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies retroactively to pending cases and to injuries occurring on or after January 1, 1993, except that:

1. It does not allow a change in the permanent impairment assessment in an individual case in which a previous final decree finding the extent of permanent impairment has been issued and appeal proceedings have been completed; and
2. It does not permit the reopening of an individual case for which benefits under Title 39-A, section 213 have expired under the Maine Workers' Compensation Act of 1992.

See title page for effective date.

Sec. 1. 32 MRSA §88, sub-§1, ¶A, as amended by PL 1997, c. 644, §2, is further amended to read:

A. The board has one member representing each regional council, and ~~40~~ 11 persons in addition. Of the additional persons, one is an emergency physician, one an attorney, two representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a fire services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio non-voting member of the board.

See title page for effective date.

CHAPTER 713

H.P. 1745 - L.D. 2219

An Act Amending the Membership of the Emergency Medical Services' Board

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