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Date: (Filing No. H-)

LABOR AND HOUSING

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 561, L.D. 756, Bill, “An Act To Improve the Maine Workers' Compensation Act of 1992”

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 39-A MRSA §102, sub-§4, ¶H, as amended by PL 2003, c. 437, §1, is further amended to read:

H. "Average weekly wages, earnings or salary" does not include any fringe or other benefits paid by the employer that continue during the disability. Any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death. For injuries occurring on or after January 1, 2020, any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of 125% of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of 125% of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death.

Sec. 2. 39-A MRSA §152, sub-§5, as amended by PL 2015, c. 297, §3, is further amended to read:

5. Employment of and contracts with administrative law judges and mediators. The board shall obtain the services of persons qualified by background and training to serve as administrative law judges, who are authorized to take action and enter orders

COMMITTEE AMENDMENT

1 consistent with this Act in all cases assigned to them by the board, and mediators.
2 Beginning January 1, 2020, except for the reappointment of administrative law judges
3 appointed prior to that date, the board may not contract for the services of or employ
4 administrative law judges without a vote supported by 5 of the 7 members of the board
5 notwithstanding section 151, subsection 5. In the exercise of its discretion, the board may
6 obtain the services of administrative law judges and mediators by either of the 2
7 following methods:

8 A. The board may contract for the services of administrative law judges and
9 mediators, in which case they must be paid reasonable per diem fees for their services
10 plus reimbursement of their actual, necessary and reasonable expenses incurred in the
11 performance of their duties, consistent with policies established by the board; or

12 B. The board may employ administrative law judges and mediators to serve at the
13 pleasure of the board and who are not subject to the Civil Service Law. They are
14 entitled to receive reimbursement of their actual, necessary and reasonable expenses
15 incurred in the performance of their duties, consistent with policies established by the
16 board.

17 **Sec. 3. 39-A MRS §205, sub-§2**, as enacted by PL 1991, c. 885, Pt. A, §8 and
18 affected by §§9 to 11, is amended to read:

19 **2. Time for payment.** ~~The~~ Unless otherwise provided in this subsection, the first
20 payment of compensation for incapacity under section 212 or 213 is due and payable
21 within 14 days after the employer has notice or knowledge of the injury or death, on
22 which date all compensation then accrued must be paid. Subsequent incapacity payments
23 must be made weekly and in a timely fashion. Every insurance carrier, self-insured and
24 group self-insurer shall keep a record of all payments made under this Act and of the time
25 and manner of making the payments and shall furnish reports, based upon these records,
26 to the board as it may reasonably require.

27 A. There is no penalty for a failure to make a timely payment under this section if the
28 first payment cannot be paid within 14 days due to an act of God, to a mistake of fact
29 or to unavoidable circumstances. An employer's failure to timely report an injury for
30 which proper notice was given is not an excuse for the insurer.

31 B. If the end of the 14-day period the employer has not filed a notice of controversy,
32 the employer shall begin payments as required by this subsection.

33 C. An employer may cease payments as required under this subsection and file a
34 notice of controversy with the board no later than 45 days after the employer has
35 notice or knowledge of the injury or death. Payments may be made without prejudice
36 under this paragraph and, if so made, do not constitute a compensation payment
37 scheme. If the employer does not file a notice of controversy prior to the expiration
38 of the 45-day period, payments may be discontinued or reduced only in accordance
39 with subsection 9, paragraph B, subparagraph (1) unless the failure to file a notice of
40 controversy within 45 days is due to an act of God.

41 D. The penalty for the failure to make timely payment under this subsection is
42 limited to the penalty established in subsection 3, and further consequences for the
43 failure to make timely payment under this subsection are not a subject for
44 rulemaking.

1 **Sec. 4. 39-A MRSA §211**, as amended by PL 2011, c. 647, §3, is further amended
2 to read:

3 **§211. Maximum benefit levels**

4 Effective January 1, 1993, the maximum weekly benefit payable under section 212,
5 213 or 215 is \$441 or 90% of state average weekly wage, whichever is higher. Beginning
6 on July 1, 1994, the maximum benefit level is \$441 or 90% of the state average weekly
7 wage as adjusted annually utilizing the state average weekly wage as determined by the
8 Department of Labor, whichever is higher. If the injured employee's date of injury is on
9 or after January 1, 2013, the maximum benefit level is \$441 or 100% of the state average
10 weekly wage as adjusted annually utilizing the state average weekly wage as determined
11 by the Department of Labor, whichever is higher. If the injured employee's date of injury
12 is on or after January 1, 2020, the maximum benefit level is \$441 or 125% of the state
13 average weekly wage as adjusted annually utilizing the state average weekly wage as
14 determined by the Department of Labor, whichever is higher.

15 **Sec. 5. 39-A MRSA §212, sub-§4** is enacted to read:

16 **4. Annual adjustment.** For dates of injury on or after January 1, 2020, beginning
17 after the receipt of 260 weeks of benefits under this section, for an injury or injuries that
18 contribute to benefits under this section, weekly compensation benefits under this section
19 must be adjusted annually. The adjustment is equal to the actual percentage increase or
20 decrease in the state average weekly wage, as computed by the Department of Labor, for
21 the previous year or 5%, whichever is less.

22 The annual adjustment must be made after the receipt of 260 weeks of benefits under this
23 section and on each succeeding anniversary date of the injury, except that when the effect
24 of the maximum benefit under section 211 is to reduce the amount of compensation to
25 which the claimant would otherwise be entitled, the adjustment must be made annually on
26 July 1st.

27 **Sec. 6. 39-A MRSA §213, sub-§1, ¶B**, as amended by PL 2015, c. 297, §8, is
28 further amended to read:

29 B. If the injured employee's date of injury is on or after January 1, 2013 but before
30 January 1, 2020, the weekly compensation is equal to 2/3 of the difference, due to the
31 injury, between the employee's average gross weekly wages, earnings or salary before
32 the injury and the average gross weekly wages, earnings or salary that the employee
33 is able to earn after the injury, but not more than the maximum benefit under section
34 211. An employee is not eligible to receive compensation under this paragraph after
35 the employee has received a total of 520 weeks of compensation under section 212,
36 subsection 1-A, this paragraph or both. The board may in the exercise of its
37 discretion extend the duration of benefit entitlement beyond 520 weeks in cases
38 involving extreme financial hardship due to inability to return to gainful employment.
39 This authority may be delegated by the board, on a case-by-case basis, to an
40 administrative law judge or a panel of 3 administrative law judges. The board,
41 administrative law judge or panel shall make a decision under this paragraph
42 expeditiously. A decision under this paragraph made by an administrative law judge
43 or a panel of 3 administrative law judges may not be appealed to the board under
44 section 320, but may be appealed pursuant to section 321-A.

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

3 **Sec. 7. 39-A MRSA §213, sub-§1, ¶C** is enacted to read:

4 C. If the injured employee's date of injury is on or after January 1, 2020, the weekly
5 compensation is equal to 2/3 of the difference, due to the injury, between the
6 employee's average gross weekly wages, earnings or salary before the injury and the
7 average gross weekly wages, earnings or salary that the employee is able to earn after
8 the injury, but not more than the maximum benefit under section 211. An employee
9 is not eligible to receive compensation under this paragraph after the employee has
10 received a total of 624 weeks of compensation under section 212, subsection 1-A, this
11 paragraph or both. The board may in the exercise of its discretion extend the duration
12 of benefit entitlement beyond 624 weeks in cases involving extreme financial
13 hardship due to inability to return to gainful employment. This authority may be
14 delegated by the board, on a case-by-case basis, to an administrative law judge or a
15 panel of 3 administrative law judges. The board, administrative law judge or panel
16 shall make a decision under this paragraph expeditiously. A decision under this
17 paragraph made by an administrative law judge or a panel of 3 administrative law
18 judges may not be appealed to the board under section 320, but may be appealed
19 pursuant to section 321-A.

20 Orders extending benefits beyond 624 weeks are not subject to review more often
21 than every 2 years from the date of the board order or request allowing an extension.

22 **Sec. 8. 39-A MRSA §213, sub-§1-B**, as enacted by PL 2011, c. 647, §8, is
23 amended to read:

24 **1-B. Long-term partial incapacity; date of injury on or after January 1, 2013**
25 **but before January 1, 2020.** After the exhaustion of benefits under subsection 1,
26 paragraph B for an injury occurring on or after January 1, 2013 but before January 1,
27 2020, if the whole person permanent impairment resulting from the injury is in excess of
28 18% and if the employee is working and the employee's earnings, as measured by average
29 weekly earnings over the most recent 26-week period documented by payroll records or
30 tax returns, is 65% or less of the preinjury average weekly wage, the employer shall pay
31 weekly compensation equal to 2/3 of the difference between the employee's average
32 weekly wage at the time of the injury and the employee's postinjury wage, but not more
33 than the maximum benefit under section 211. In order for the employee to qualify for
34 benefits under this subsection, the employee's actual earnings must be commensurate with
35 the employee's earning capacity, which includes consideration of the employee's physical
36 and psychological work capacity as determined by an independent examiner under
37 section 312. In addition, in order for the employee to qualify for benefits under this
38 subsection, the employee must have earnings from employment for a period of not less
39 than 12 months within a 24-month period 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
44 reports and provide copies of current tax returns as early as practicable after the return is
45 filed.

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

11 **Sec. 9. 39-A MRSA §215, sub-§1-B** is enacted to read:

12 **1-B. Death of employee; date of injury on or after January 1, 2020.** If an injured
13 employee's date of injury is on or after January 1, 2020, if death results from the injury of
14 the employee and if the employee has no dependents, the employer shall pay or cause to
15 be paid to the parents of the employee during the parents' lifetime a weekly payment
16 equal to 2/3 of the employee's gross average weekly wages, earnings or salary, but not
17 more than the maximum benefit under section 211, for a period of 500 weeks from the
18 date of death. This subsection does not apply to an injury or death of an employee
19 occurring before January 1, 2020, except that for a death of an employee resulting from
20 an injury the date of which is on or after January 1, 2019 but before January 1, 2020,
21 payment made to the Treasurer of State under section 355, subsection 14, paragraph F
22 must be transferred to the parents of the deceased employee. For the purposes of this
23 subsection, "parent" means a natural or adoptive parent, unless that parent's parental
24 rights have been terminated.

25 **Sec. 10. 39-A MRSA §221, sub-§1, ¶B**, as enacted by PL 1991, c. 885, Pt. A, §8
26 and affected by §§9 to 11, is amended to read:

27 B. Payments under a self-insurance plan, a wage continuation plan, paid time off or
28 a disability insurance policy provided by the employer; or

29 **Sec. 11. 39-A MRSA §221, sub-§3, ¶A**, as amended by PL 2013, c. 152, §1, is
30 further amended to read:

31 A. The employer's obligation to pay or cause to be paid weekly benefits other than
32 benefits under section 212, subsection 2 or 3 is reduced by the following amounts:

33 (1) Fifty percent of the amount of the old-age insurance benefits received or
34 being received under the United States Social Security Act. For injuries
35 occurring on or after October 1, 1995, such a reduction may not be made if the
36 old-age insurance benefits had started prior to the date of injury or if the benefits
37 are spouse's benefits;

38 (2) The after-tax amount of the payments received or being received under a
39 self-insurance plan, paid time off or a wage continuation plan or under a
40 disability insurance policy provided by the same employer from whom benefits
41 under section 212 or 213 are received if the employee did not contribute directly
42 to the plan or to the payment of premiums regarding the disability insurance
43 policy. If the self-insurance plans, paid time off, wage continuation plans or

1 disability insurance policies are entitled to repayment in the event of a workers'
2 compensation benefit recovery, the insurance carrier shall satisfy the repayment
3 out of funds the insurance carrier has received through the coordination of
4 benefits provided for under this section;

5 (3) The proportional amount, based on the ratio of the employer's contributions
6 to the total insurance premiums for the policy period involved, of the after-tax
7 amount of the payments received or being received by the employee pursuant to a
8 disability insurance policy provided by the same employer from whom benefits
9 under section 212 or 213 are received, if the employee did contribute directly to
10 the payment of premiums regarding the disability insurance policy;

11 (5) The proportional amount, based on the ratio of that employer's contributions
12 to the total contributions to the plan or program, of the after-tax amount of the
13 pension or retirement payments received or being received by the employee
14 pursuant to a plan or program established or maintained by the same employer
15 from whom benefits under section 212 or 213 are received, regardless of whether
16 the employee contributed directly to the pension or retirement plan or program;
17 and

18 (6) For those employers who do not provide a pension plan, the proportional
19 amount, based on the ratio of the employer's contributions to the total
20 contributions made to a qualified profit sharing plan under the United States
21 Internal Revenue Code, Section 401(a) or any successor to the United States
22 Internal Revenue Code, Section 401(a) covering a profit sharing plan that
23 provides for the payment of benefits only upon retirement, disability, death, or
24 other separation of employment to the extent that benefits are vested under the
25 plan.

26 **Sec. 12. 39-A MRSA §221, sub-§3, ¶H** is enacted to read:

27 H. An employer may not offset paid time off under this subsection if the use of paid
28 time off is mandated by the employer or if it is paid upon separation from the
29 employer.

30 **Sec. 13. 39-A MRSA §301, first ¶**, as amended by PL 2011, c. 647, §16, is
31 further amended to read:

32 For claims for which the date of injury is prior to January 1, 2013, proceedings for
33 compensation under this Act, except as provided, may not be maintained unless a notice
34 of the injury is given within 90 days after the date of injury. For claims for which the
35 date of injury is on or after January 1, 2013 and prior to January 1, 2020, proceedings for
36 compensation under this Act, except as provided, may not be maintained unless a notice
37 of the injury is given within 30 days after the date of injury. For claims for which the
38 date of injury is on or after January 1, 2020, proceedings for compensation under this Act,
39 except as provided, may not be maintained unless a notice of the injury is given within 60
40 days after the date of injury. The notice must include the time, place, cause and nature of
41 the injury, together with the name and address of the injured employee. The notice must
42 be given by the injured employee or by a person in the employee's behalf, or, in the event

1 of the employee's death, by the employee's legal representatives, or by a dependent or by
2 a person in behalf of either.

3 **Sec. 14. 39-A MRSA §325, sub-§6** is enacted to read:

4 **6. Attorney's fees for lump-sum settlement in cases in which the injury occurred**
5 **on or after January 1, 2020. In cases in which the injury to the employee occurred on**
6 **or after January 1, 2020, attorney's fees for lump-sum settlements must be determined as**
7 **follows.**

8 **A. Before computing the fee, reasonable expenses incurred on the employee's behalf**
9 **must be deducted from the total settlement, including:**

10 **(1) Medical examination fee and witness fee;**

11 **(2) Any other medical witness fee, including cost of subpoena;**

12 **(3) Cost of court reporter service; and**

13 **(4) Appeal costs.**

14 **B. The computation of the fee, based on the amount resulting after deductions**
15 **according to paragraph A, may not exceed 10%.**

16 **C. If a lump-sum settlement includes any amount that is allocated for past due**
17 **benefits, the administrative law judge shall review the allocation to make sure that it**
18 **is not for an amount that is greater than what the employee is claiming.**

19 **Sec. 15. Workers' Compensation Board; rulemaking.** The Workers'
20 Compensation Board may consider adopting a rule to establish time frames for the filing
21 of any petition related to a controversy with the board if a full agreement is not reached
22 by the parties after conclusion of any mediation pursuant to the Maine Revised Statutes,
23 Title 39-A, section 313.

24 **Sec. 16. Study of advocate pay.** No later than January 1, 2020, the Workers'
25 Compensation Board shall study the advocate program established pursuant to the Maine
26 Revised Statutes, Title 39-A, section 153-A, including the salary paid to advocates, and
27 make recommendations for any changes to improve the advocate program and its
28 representation of injured workers. The Joint Standing Committee on Labor and Housing
29 may report out legislation to the Second Regular Session of the 129th Legislature based
30 on the board's report.

31 **Sec. 17. Workers' Compensation Board to establish working group on**
32 **certain issues; report.** The Workers' Compensation Board shall convene a working
33 group of stakeholders to evaluate issues related to work search and vocational
34 rehabilitation requirements for injured workers and protections for injured workers whose
35 employers have wrongfully not secured workers' compensation payments. On behalf of
36 the working group, the Workers' Compensation Board shall report to the Joint Standing
37 Committee on Labor and Housing by January 30, 2020 with recommendations and any
38 draft implementing legislation to address these issues. The Joint Standing Committee on
39 Labor and Housing may report out legislation to the Second Regular Session of the 129th
40 Legislature related to the report and recommendations.'

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
2 section number to read consecutively.

3 **SUMMARY**

4 This amendment replaces the bill, which is a concept draft.

5 The amendment does the following.

6 It amends the definition of "average weekly wages, earnings or salary" to clarify that,
7 for an injury occurring on or after January 1, 2020, any fringe or other benefit paid by the
8 employer that does not continue during the disability must be included to the extent that
9 the inclusion of the fringe or other benefit will not result in a weekly benefit amount that
10 is greater than 2/3 of 125% of the state average weekly wage at the time of the injury.

11 It requires that the Workers' Compensation Board must vote with the support of 5 of
12 the 7 members of the board to contract for the services of or to employ administrative law
13 judges beginning January 1, 2020, except for the reappointment of administrative law
14 judges appointed prior to January 1, 2020.

15 It allows an exception to the requirement that the first payment must be made by an
16 employer within 14 days after notice of the injury or death if the payment cannot be made
17 due to a factual mistake, an act of God or unavoidable circumstances.

18 It increases the maximum benefit level to 125% of the state average weekly wage for
19 an injury occurring on or after January 1, 2020.

20 It requires a cost-of-living adjustment to be applied in cases of total incapacity after
21 260 weeks of benefits.

22 It extends the cap of benefits for partial incapacity from 520 weeks to 624 weeks.

23 It eliminates the provision relating to the extension of benefits for partial incapacity if
24 the whole person impairment resulting from the injury is in excess of 18% for an injury
25 occurring after January 1, 2020.

26 It clarifies how payments for paid time off are coordinated with workers'
27 compensation benefits.

28 It provides that, if a deceased employee has no dependents, the employer must pay
29 benefits to the parents of the deceased employee for a period of 500 weeks.

30 It extends the notice of injury requirement from 30 days to 60 days.

31 It caps the maximum percentage of attorney's fees that may be awarded at 10% in a
32 lump-sum settlement in cases in which the injury occurred on or after January 1, 2020.

33 It authorizes the Workers' Compensation Board to consider adopting a rule to
34 establish time frames for the filing of any petition related to a controversy with the board
35 if a full agreement is not reached by the parties after conclusion of any mediation
36 pursuant to the Maine Revised Statutes, Title 39-A, section 313.

37 It requires the Workers' Compensation Board to study the advocate program
38 established pursuant to the Maine Revised Statutes, Title 39-A, section 153-A, including
39 the salary paid to advocates, and make recommendations for any changes to improve the

1 advocate program and its representation of injured workers to the Joint Standing
2 Committee on Labor and Housing no later than January 1, 2020.

3 It directs the Workers' Compensation Board to convene a working group of
4 stakeholders to evaluate issues related to work search and vocational rehabilitation
5 requirements for injured workers and protections for injured workers whose employers
6 have wrongfully not secured workers' compensation payments. On behalf of the working
7 group, the Workers' Compensation Board is required to report to the Joint Standing
8 Committee on Labor and Housing by January 30, 2020 with recommendations and any
9 draft implementing legislation to address these issues.