



125th MAINE LEGISLATURE

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Legislative Document

No. 1065

H.P. 800

House of Representatives, March 15, 2011

**An Act To Amend the Laws Governing the Determination of
Permanent Impairment under the Maine Workers' Compensation
Act of 1992**

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

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

HEATHER J.R. PRIEST
Clerk

Presented by Representative PRESCOTT of Topsham.
Cosponsored by Senator SHERMAN of Aroostook and
Representatives: BURNS of Whiting, CUSHING of Hampden, DOW of Waldoboro,
HAMPER of Oxford, HARVELL of Farmington, WINTLE of Garland.

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

2 **Sec. 1. 39-A MRSA §153, sub-§8, ¶A**, as enacted by PL 1991, c. 885, Pt. A, §8
3 and affected by §§9 to 11, is amended to read:

4 A. In order to reduce litigation and establish more certainty and uniformity in the
5 rating of permanent impairment, the board shall establish by rule a schedule for
6 determining the existence and degree of permanent impairment based upon medically
7 or scientifically demonstrable findings. The schedule must be based on ~~generally~~
8 ~~accepted medical standards for determining impairment and may incorporate all or~~
9 ~~part of any one or more generally accepted schedules used for that purpose, such as~~
10 ~~the American Medical Association's "Guides to the Evaluation of Permanent~~
11 ~~Impairment." Pending the adoption of a permanent schedule, "Guides to the~~
12 ~~Evaluation of Permanent Impairment," 3rd 4th edition, copyright 1990 1993, by the~~
13 ~~American Medical Association, is the temporary schedule and must be used for the~~
14 ~~purposes of this subsection except as otherwise provided in this paragraph.~~

15 (1) A determination of permanent impairment of the spine must be based on a
16 medical opinion formulated using the "diagnosis related estimate" model and
17 may not be based on a medical opinion formulated using the "range of motion"
18 model.

19 (2) A determination of permanent impairment may not include an assessment of
20 permanent impairment based on behavioral, emotional or psychiatric conditions.

21 **Sec. 2. 39-A MRSA §312, sub-§7**, as amended by PL 2005, c. 24, §2, is further
22 amended to read:

23 **7. Weight.** The board shall adopt the medical findings of the independent medical
24 examiner unless there is clear and convincing evidence to the contrary in the record that
25 does not support the medical findings, except that the medical findings of the independent
26 medical examiner regarding the extent of permanent impairment must be adopted by the
27 board. Contrary evidence does not include medical evidence not considered by the
28 independent medical examiner. The board shall state in writing the reasons for not
29 accepting the medical findings of the independent medical examiner.

30 **SUMMARY**

31 This bill amends the law governing the determination of permanent impairment for
32 workers' compensation purposes as follows:

33 1. It specifies that the schedule adopted by the Workers' Compensation Board for
34 determining the existence and degree of permanent impairment based upon medically or
35 scientifically demonstrable findings must be based on the American Medical
36 Association's "Guides to the Evaluation of Permanent Impairment," 4th edition;

37 2. It requires that a determination of permanent impairment of the spine must be
38 based on a medical opinion formulated using the "diagnosis related estimate" model and
39 may not be based on a medical opinion formulated using the "range of motion" model;

1 3. It specifies that a determination of permanent impairment may not include an
2 assessment of permanent impairment based on behavioral, emotional or psychiatric
3 conditions; and

4 4. It requires that the medical findings of the independent medical examiner
5 regarding the extent of permanent impairment must be adopted by the board.