

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2296

S. P. 802

In Senate, January 3, 1974

Referred to the Committee on Labor. Sent down for concurrence and ordered sent forthwith.

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Relating to Applicability of Workmen's Compensation Law to
Employers.

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

Sec. 1. R. S., T. 39, § 2, sub-§ 1, amended. Subsection 1 of section 2 of Title 39 of the Revised Statutes is amended to read as follows:

1. Employer. ~~“Assenting employer=~~ Employer” shall include all private employers ~~who have become assenting employers in accordance with sections 21 to 27, and it shall include all towns voting to accept the Act.~~ This Act shall be compulsory as to private employers, the State, counties, cities, water districts and all other quasi-municipal corporations of a similar nature, ~~but said sections 21 to 27 shall not apply thereto or to assenting towns except as hereinafter provided.~~

Sec. 2. R. S., T. 39, § 2, sub-§ 6, amended. Subsection 6 of section 2 of Title 39 of the Revised Statutes is amended to read as follows:

6. Employer further defined. “Employer” shall include corporations, partnerships, natural persons, the State, counties, water districts and all other quasi-municipal corporations of a similar nature, cities and ~~such towns as vote to accept this Act~~; and if the employer is insured, it includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this Act.

Sec. 3. R. S., T. 39, § 2, sub-§ 8, amended. Subsection 8 of section 2 of Title 39 of the Revised Statutes is amended to read as follows:

8. Insurance company. "Insurance company" shall mean any casualty insurance company or association authorized to do business in this State which may issue policies conforming to subsection 7. Whenever in this Act relating to procedure the words "insurance company" are used they shall apply only to cases in which the employer has ~~elected to secure~~ secured the payment of compensation and other benefits by insuring such payment under an industrial accident insurance policy, instead of furnishing satisfactory proof of his ability to pay compensation and benefits direct to his employees.

Sec. 4. R. S., T. 39, § 4, amended. The 4th and 5th sentences of section 4 of Title 39 of the Revised Statutes are amended to read as follows:

Section 3 shall not apply to actions to recover damages for the injuries aforesaid or for death resulting from such injuries, sustained by employees of an employer who has ~~become subject to this Act by securing~~ secured the payment of compensation in conformity with sections 21 to 27. Such ~~assenting~~ employers ~~except as provided by section 28~~ shall be exempt from civil actions because of such injuries either at common law or under sections 141 to 148 or under Title 18, sections 2551 to 2553.

Sec. 5. R. S., T. 39, § 21, amended. Section 21 of Title 39 of the Revised Statutes, as amended, is further amended to read as follows:

§ 21. Liability of employer

Every private employer shall be subject to this Act ~~who has secured and shall secure~~ the payment of compensation in conformity with sections 21 to 27 ~~shall be conclusively presumed to be an assenting employer~~ with respect to employees other than those engaged in domestic service or in agriculture as seasonal or casual farm laborers, subject to the provisions hereinafter stated.

Any private employer who has ~~elected not to be an assenting employer by not securing~~ secured the payment of compensation under sections 21 to 27 shall, in a civil action brought by the employee other than one engaged in domestic service or in agriculture as a seasonal or casual farm laborer to recover for personal injuries or death ~~sustained after such election by the employer~~ arising out of and in the course of his employment, not be entitled to the defenses set forth in section 3 and the employee of any such employer may in lieu of bringing such a civil action claim compensation from such employer under the provisions of this Act.

~~Any employer whose assent is thus presumed may cease to be an assenting employer effective upon the first day of any month, provided said employer gives to the commission at its office in Augusta written notice in such form as the commission approves, not less than 30 days prior to the date on which said employer desires his election to cease to be an assenting employer to become effective, and provided that said employer shall post in conspicuous places in his several places of employment written or printed notices to the effect that on and after the first day of the month upon which such election shall become effective, said employer will not be subject to this Act, which notices shall be posted at least 30 days prior to the date such election shall~~

~~become effective and shall be kept continuously posted thereafter in sufficient places frequented by the employees of said employer to reasonably notify such employees of such election.~~

~~Any private employer who has thus elected not to be an assenting employer may thereafter at any time become an assenting employer by filing with the commission at its office in Augusta his written notice in such form as the commission approves withdrawing his election not to be an assenting employer and by securing the payment of compensation in conformity with sections 24 to 27.~~

Sec. 6. R. S., T. 39, § 23, sub-§§ 1 and 2, amended. The first paragraph and subsection 1 and 2 of section 23 of Title 39 of the Revised Statutes are amended to read as follows :

Every ~~assenting~~ employer **subject to this Act** shall secure such compensation and other benefits to his employees in one or more of the following ways :

1. By insuring and keeping insured the payment of such compensation and other benefits under an industrial accident insurance policy. The insurance company shall file with the commission notice, in such form as the commission approves, of the issuance of any industrial accident policy to an ~~assenting~~ employer. Such insurance shall not be cancelled within the time limited in such policy for its expiration until at least 30 days after mailing to the commission and to the employer a notice of the cancellation of such insurance. In the event that the employer has obtained an industrial accident policy from another insurance company, or has otherwise secured compensation as provided in this section, and such insurance or other security becomes effective prior to the expiration of said 30 days, cancellation shall be effective as of the effective date of such other insurance or receipt of security.

2. By furnishing satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits, and deposit cash, satisfactory securities or a surety bond, in such sum as the commission may determine; such bond to run to the Treasurer of State and his successor in office, and to be conditional upon the faithful performance of this Act relating to the payment of compensation and benefits to any injured employee. In case of cash being deposited, it shall be placed at interest by the Treasurer of State, and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. The commission may at any time in its discretion deny to an ~~assenting~~ employer the right to continue in the exercise of the option granted by this section.

Sec. 7. R. S., T. 39, § 23, sub-§ 3, repealed. Subsection 3 of section 23 of Title 39 of the Revised Statutes is repealed, as follows :

~~3. The effective date of the assent of an employer shall be the date of the insurance policy filed or in the case of a self-insurer the date of the bond or the receipt of the securities required.~~

Sec. 8. R. S., T. 39, § 24, amended. Section 24 of Title 39 of the Revised Statutes, as amended, is further amended to read as follows :

§ 24. Voluntary election

Any private employer, any of whose employees are exempt, may become ~~an assenting employer~~ subject to this Act with respect to his employees and the act of the employer in securing the payment of compensation to such employee or class of employees in conformity with the sections 21 to 27 shall constitute as to such employer his election to become **subject to this Act** ~~an assenting employer~~ without any further act on his part, but only with respect to that employee or that class of employees with respect to whom the employer has secured compensation as provided in sections 21 to 27, provided that, as to any employer who secures compensation by making a contract of industrial accident insurance, such election shall be deemed to have been made on the effective date of the insurance policy. ~~Such election to be an assenting employer shall be deemed to continue as long as compensation continues to be secured as provided.~~

Sec. 9. R. S., T. 39, § 28, amended. The first paragraph of section 28 of Title 39 of the Revised Statutes is amended to read as follows:

An employee of an employer, who shall have **secured the payment of compensation** ~~assented to become subject to this Act~~ as provided in sections 21 to 27 shall be held to have waived his right of action at common law to recover damages for the injuries sustained by him, and under the statutes specified in section 4 if he ~~shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within 10 days thereafter have filed a copy thereof with the commission; or, if the contract of hire was made before the employer so elected, if the employee within 10 days after knowledge by him of such assent shall not have given said notice and filed a copy thereof with the commission.~~ Such waiver of common law and statutory rights shall continue in force for the term of one year, and thereafter without further act on his part for successive terms of one year each, unless the employee shall at least 60 days prior to the expiration of such first or any succeeding year, give his employer notice of claim of such rights and file a copy thereof with the commission.

Sec. 10. R. S., T. 39, § 104-A, amended. Section 104-A of Title 39 of the Revised Statutes, as enacted by chapter 155 of the public laws of 1971, is amended by adding at the end a new paragraph to read as follows:

If an employer who is required to secure the payment to his employees of the compensation provided for by this Act, fails to do so, he shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both. Failure of an employer, after imposition of the foregoing penalty, to secure the payment of compensation under this Act after notice by the commission to such employer to do so shall, as to each such notice, be deemed a further violation in respect thereof and the same penalty shall be imposed. If such employer is a corporation, the president or treasurer, or both, shall be liable for such penalty.

STATEMENT OF FACT

The purpose of this bill is to make Workmen's Compensation coverage mandatory for all employers not specifically exempted.