

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 646

H. P. 478

House of Representatives, February 11, 1975

Referred to the Committee on Labor. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Martin of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to Occupational Safety and Health in Public Employment.

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

Sec. 1. 26 MRSA § 1, sub-§ 2, is amended to read:

2. **Person.** "Person" means an individual, corporation, partnership, company or association and includes the State, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions.

Sec. 2. 26 MRSA § 1, sub-§ 4, is enacted to read:

4. **Workplace.** "Workplace" means any plant, yard, premises, room or other place where an employee or employees are engaged in the performance of labor or service over which the employer has the right of access or control.

Sec. 3. 26 MRSA § 2, first sentence, as last amended by PL 1971, c. 620, § 13, is further amended to read:

The person in charge of any ~~factory, workshop, construction activity, or other industrial establishment~~ workplace as defined in section 1 provided by the State, state agency, county, municipal corporation, school district, or other public corporation or political subdivision shall, within 48 hours, exclusive of weekends and holidays, after the occurrence, report in writing or by telephone to the Director of the Bureau of Labor and Industry all deaths or serious physical injuries **requiring immediate hospitalization** sustained by any person therein or on the premises, stating as fully as possible the cause of the death or the extent and cause of the injury, and the place where the injured person has been sent, with such other or further information relative thereto as may

be required by said director, who may investigate the causes thereof and require such precautions to be taken as will prevent the recurrence of similar happenings.

Sec. 4. 26 MRSA § 44, as last amended by PL 1971, c. 620, § 13, is further amended to read:

§ 44. Right of access

The director as state factory inspector, and any authorized agent of the bureau, may enter any ~~factory or mill, construction activity, workshop, private works or state institutions which have shops or factories~~ workplace as defined in section 1, provided by the State, state agency, county, municipal corporation, school district or other public corporation or political subdivision when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by sections 42 to 44, and may examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places, and may make a record of such inspection. Upon petition of the director, a Superior Court in the county in which any refusal was alleged to have occurred may order appropriate injunctive relief against any person in charge of said workplace who refuses entry to the director or authorized agent of the bureau.

Each employer subject to this section shall make, keep and preserve, and make available to the director or his authorized agent such records regarding his activities relating to occupational safety and health as the director may prescribe by regulation as necessary or appropriate for the enforcement of section 45 or any standard, rule or order promulgated pursuant to section 565 or for developing information regarding the causes and prevention of occupational accidents, diseases and illnesses. Any information obtained by the director shall be obtained with a minimum burden upon employers, especially those employing a small work force.

The director shall also issue regulations requiring that employers through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter and chapter 6, including the provisions of applicable standards.

Sec. 5. 26 MRSA § 44-A is enacted to read:

§ 44-A. Walkaround inspections

A representative of the employer and an authorized employee representative shall be given an opportunity to accompany the director or his authorized agent during the physical inspection of the workplace of any employer, subject to this section, for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his authorized agent shall consult with a reasonable number of employees concerning matters of safety in the workplace. The employee representative shall not lose any privilege or compensation during or because of his attendance in any such inspection.

Sec. 6. 26 MRSA § 45, as last amended by PL 1971, c. 620, § 13, is repealed and the following enacted in place thereof:

§ 45. Notice of improper conditions

The workplace, equipment, tools, working conditions and conditions of a construction activity provided by the State, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions shall be reasonably safe and not in such condition as to be hazardous to the employees engaged therein. If, upon inspection, the director or any authorized agent of the bureau shall find that an employer has violated the requirements of this section, or any standard, rule or order promulgated pursuant to section 565, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the standard, rules, regulations or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

Each citation issued under this section, or a copy or copies thereof, shall be prominently posted at or near each place where a violation referred to in the citation occurred or existed.

Sec. 7. 26 MRSA § 45-A, as last amended by PL 1969, c. 274, § 2, is repealed.

Sec. 8. 26 MRSA § 46, last 3 ¶¶, as amended by PL 1971, c. 620, § 13, are repealed and the following enacted in place thereof:

Any employer who willfully or repeatedly violates any requirements of section 45 or any standard, rule or order promulgated pursuant to section 565 may be assessed a civil penalty of not more than \$1,000 for each day during which such violation continues.

Any employer who has received a citation for a serious violation of the requirements of section 45 or of any standard, rule or order issued pursuant to section 565, shall be assessed a civil penalty of up to \$1,000 for each such violation.

Any employer who has received a citation for a violation of the requirements of section 45 or of any standard, rule or order issued pursuant to section 565, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$1,000 for each such violation.

Any employer who fails to correct a violation for which a citation has been issued under section 45 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board in the case of any review proceeding initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues.

Any employer who willfully violates any standard, rule or order promulgated pursuant to section 565 and that violation caused death to any employee shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 6 months, or by both; except that if

the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000, or by imprisonment for not more than one year, or by both.

Any person who gives advance notice of any inspection to be conducted pursuant to this chapter without authority from the director shall, upon conviction, be punished by a penalty of not less than \$500 nor more than \$1,000, or by imprisonment for not more than 6 months, or by both.

Any employer who violates any of the posting requirements, as prescribed in section 45, shall be assessed a penalty of not more than \$1,000 for each violation.

Civil penalties owed under this chapter shall be paid to the director for deposit with the Treasurer of State, and may be recovered in a civil action in the name of the State brought in the Superior Court of the county where the violation is alleged to have occurred or where the employer has its principal office. Interest shall accrue on such penalties at the rate of $1\frac{1}{2}\%$ per month except that the interest shall be suspended during the pendency of an appeal.

For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists or from one or more practices, means, methods, operations or processes which have been adopted or are in use in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

Sec. 9. 26 MRSA § 49 is enacted to read:

§ 49. Imminent danger

A Superior Court in the county in which the imminent danger is alleged to exist shall have jurisdiction, upon petition of the director, to restrain any conditions or practices in any place of employment subject to section 45 which are such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter.

Sec. 10. 26 MRSA § 50 is enacted to read:

§ 50. Inspections in response to complaint

Any employee or a representative of an employee of the State, a state agency, county, municipal corporation, school district or other public corporation or political subdivision who believes that a violation of an occupational safety or health standard exists that threatens physical harm or that an imminent danger exists may request an inspection by giving notice to the director or his authorized agent of such violation or danger. Except in cases of imminent danger, any such notice shall be in writing, shall set forth with reasonable particularity the grounds for the notice, shall be signed by the employee or his representative and a copy shall be provided the employer or his agent no later than the time of the inspection, except that, upon the re-

quest of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or upon any record published, released or made available in any other respect. If upon the receipt of such notification, the director or his authorized agent determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable to determine if such violation or danger exists. If the director or his authorized agent determines that there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employee or representative of the employee in writing of such determination.

No person shall discharge or in any manner discriminate against an employee because such person has filed any complaint concerning alleged violations of occupational safety or health standards or has testified or is about to testify in any proceeding relating to employee safety and health or because of the exercise by such employee on behalf of himself or others of any right granted him by this chapter.

Sec. 11. 26 MRSA c. 5, sub-c. IV, as amended, is repealed.

Sec. 12. 26 MRSA § 562, as enacted by PL 1969, c. 454, is repealed.

Sec. 13. 26 MRSA § 563, as last amended by PL 1971, c. 620, § 13, is repealed and the following enacted in place thereof:

§ 563. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Approved. "Approved" means as approved by the Board of Occupational Safety and Health.
2. Board. "Board" means the Board of Occupational Safety and Health.
3. Bureau. "Bureau" means the Bureau of Labor and Industry.
4. Director. "Director" means the Director of the Bureau of Labor and Industry.
5. Employ. "Employ" means employ, suffer or permit to work.
6. Employee. "Employee" means any person, including a minor whether lawfully or unlawfully employed, who is employed or permitted to work by the State, a state agency, county, municipal corporation, school district or other public corporation or political subdivision.

Sec. 14. 26 MRSA § 564, as last amended by PL 1971, c. 620, § 13, is further amended to read:

§ 564. Establishment of board; purpose

~~For the purpose of formulating and adopting safety rules and regulations to provide reasonably safe and healthful working conditions for all employees, other than those exempt in section 45-A, the Board of Occupational Safety Rules and Regulations is established~~

The ~~board~~ **Board of Occupational Safety and Health** is established and shall consist of ~~7~~ **10** members of which ~~6~~ **9** shall be appointed by the Governor with the advice and consent of the Council. Of the ~~6~~ **9** appointed members of the board, ~~3~~ **3** shall represent employers; ~~2~~ **3** shall represent employees; one shall represent an insurance company licensed to insure workmen's compensation within the State and ~~one~~ **2** shall represent the public. The ~~7th~~ **10th** member of the board shall be the Director of the Bureau of Labor and Industry. ~~Of the 3 employer members, one shall represent state agencies, one shall represent counties within the State and one shall represent municipalities within the State. Of the 3 employee members, one shall represent state employees, one shall represent county employees and one shall represent municipal employees.~~

The term of office for the appointed members shall be 4 years. In the first appointment, ~~2~~ **3** shall be appointed for a term of 2 years, ~~2~~ **3** shall be appointed for a term of 3 years and ~~3~~ **3** shall be appointed for a term of 4 years. The chairman shall be elected biennially by the members of the board. Each member shall hold office until his successor is duly appointed and qualified.

In case of a vacancy in board membership, the Governor, with the advice and consent of the Council, shall appoint a member of the proper classification to fill the unexpired term of the absent member.

The board shall meet at least twice yearly at the State Capitol or any other place designated by the chairman.

The ~~6~~ **9** appointed members of the board shall serve without salary and shall receive their actual expenses while engaged in the performance of their duties as members of the board. The chairman of the board shall approve and countersign all vouchers for expenditures under this section.

Sec. 15. 26 MRSA § 565, as enacted by PL 1969, c. 454, is amended to read:

§ 565. Powers and duties of board

The board shall formulate and adopt reasonable rules and regulations for safe and healthful working conditions, including rules requiring the use of personal protective equipment. The rules and regulations so formulated shall conform as far as practicable to nationally recognized standards of ~~industrial occupational safety and health~~. Such rules and regulations shall become effective 90 days after the date of their adoption and promulgation. Before any rules and regulations are adopted, a public hearing shall be held after suitable notice has been published in at least 3 daily newspapers in the State. ~~The board may at its discretion appoint ad hoc single industry's committees to advise and counsel the board on rules and regulations needed for the protection of the workers engaged in the industry. Such committees shall be composed of an equal number of representatives of employers and from employees engaged in the single industry and not less than one member representing safety engineers engaged by insurance companies licensed to write Workmen's Compensation Insurance in the State. Such committee members shall serve without salary and shall receive their actual expenses in the performance of their duties as members of such committees~~

Sec. 16. ~~26~~ **MRSA § 567**, as last amended by PL 1971, c. 620, § 13, is repealed.

Sec. 17. ~~26~~ **MRSA § 568, first ¶**, as last amended by PL 1971, c. 620, § 13, is further amended to read:

Any person aggrieved by an order or act of the director or of an inspector of the bureau ~~under this chapter~~ **or wishing to contest any citation or penalty issued under sections 45 and 46** may, within 15 **working** days after notice thereof, appeal from such order, ~~or~~ **act, citation or penalty** to the board which shall hold a hearing thereon, and said board shall, after such hearing, issue an appropriate order either approving ~~or~~, disapproving **or modifying** said order ~~or~~, **act, citation or penalty**.

STATEMENT OF FACT

The Federal Occupational Safety and Health Act of 1970 preempted the entire field of occupational safety and health with the exception of public employment on the State, county and municipal levels. The present Maine law is not clear as to whether or not public employment is within the jurisdiction of construction and occupational safety activities of the Bureau of Labor and Industry. This bill would establish such safety jurisdiction and set up procedures for administration similar to that of the Federal Government in the private sector. No additional appropriation would be required.