

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2218

H. P. 2046

House of Representatives, February 17, 1976

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

EDWIN H. PERT, Clerk

Presented by Mr. Tierney of Durham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Concerning the Workmen's Compensation Statutes.

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

Sec. 1. 39 MRSA § 2, sub-§ 1, as amended by PL 1973, c. 746, § 1, is repealed and the following enacted in place thereof:

1. Employer. The term "employer" includes:

- A. Private employers;
- B. The State;
- C. Counties;
- D. Cities;
- E. Towns; and
- F. Water districts and all other quasi-public corporations of a similar nature.

If the employer is insured, the term "employer" includes the insurer unless the contrary intent is apparent from the context or is inconsistent with the purposes of this Act.

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

1-A. Private employer. The term "private employer" includes corporations, partnerships and natural persons.

Sec. 3. 39 MRSA § 2, sub-§ 5, as last amended by PL 1975, c. 190, is repealed and the following enacted in place thereof:

5. Employee.

A. "Employee" shall include officials of the State, counties, cities, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation, other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except:

(1) Persons engaged in maritime employment, or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States;

(2) Any person whose employment is not in the usual course of the business, profession, trade or occupation of his employer. Municipal firefighters, as defined in Title 30, section 3771, subsection 2, and policemen, shall be deemed employees within the meaning of this Act. Employees who hire workmen within this State to work outside the State may agree with such workmen that the remedies under this Act shall be exclusive as regards injuries received outside this State arising out of and in the course of such employment; and all contracts of hiring in this State, unless otherwise specified, shall be presumed to include such Agreement. Any reference to an employee who has been injured shall, when the employee is dead, include his legal representatives, dependents and other persons to whom compensation may be payable; and

(3) Notwithstanding any other provisions of this Act, any charitable, religious, educational or other nonprofit corporation that may be or become an assenting employer under this Act, may cause any duly elected or appointed executive officer to be an employee of such corporation by specifically including such executive officer among those to whom such corporation secures payment of compensation in conformity with subchapter II; and such executive officer shall remain an employee of such corporation under this Act while such payment is so secured. With respect to any such corporation that secures compensation by making a contract of industrial accident insurance, specific inclusion of such executive officer in such contract shall cause such officer to be an employee of such corporation under this Act.

(4) Any person who states in writing to the commission that he waives all the benefits and privileges provided by the workmen's compensation laws, provided that the commission shall have found such person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which he is employed and that this waiver was not a prerequisite condition to employment.

Any person may revoke or rescind his waiver upon 30 days' written notice to the commission and his employer.

B. The term "employee" shall be deemed to include, if he elects to be personally covered by this Title, any person who regularly operates a business or practices a trade, profession or occupation, whether individually, or in partnership or association with other persons, whether or not he hires

employees. The Superintendent of Insurance is authorized to review for his approval, at his discretion, an appropriate classification for this class of persons and a reasonable rate.

Sec. 4. 39 MRSA § 21, sub-§ 2, is enacted to read:

2. Governmental bodies. The State, every county, every city and town shall be subject to this Act and shall secure the payment of compensation in conformity with sections 21 to 27.

Sec. 5. 39 MRSA § 57, first ¶, as last amended by PL 1973, c. 788, § 226, is further amended to read:

If an employee, who has previously incurred a permanent ~~incapacity~~ impairment by injury, disease or congenital causes, sustains an industrial injury which in combination with the earlier preexisting impairment shall result in total and permanent impairment, the employer shall be liable only for the compensation payable for such second injury. In addition to such compensation and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total ~~incapacity~~ impairment, out of a special fund known as the "Second Injury Fund," and created for such purpose in the following manner:

Sec. 6. 39 MRSA § 57-A, is enacted to read:

§ 57-A. Legal representation of the Second Injury Fund

1. Legal interest of State. The State is declared to have a legal interest under Title 5, section 191, in any claim, other than a claim excepted by subsection 2, of liability towards or liability against the Second Injury Fund. The Attorney General shall therefore provide, on behalf of the Second Injury Fund, legal prosecution or defense of any such claim.

2. Exception. The Attorney General shall not defend the Second Injury Fund against any claim brought by the State.

3. Private counsel. The Industrial Accident Commission is authorized to hire private counsel to defend any claim brought against the Second Injury Fund by the State.

Sec. 7. 39 MRSA § 95, 3rd sentence, as repealed and replaced by PL 1965, c. 408, § 9, is amended to read:

If the employee fails to file said petition within said period because of mistake of fact as to the cause ~~and~~ or nature of the injury, he may file said petition within a reasonable time.

STATEMENT OF FACT

The purpose of this Act is reflected in the Title.