

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TENTH LEGISLATURE  
4

5 **Legislative Document**

**No. 1881**  
6

7 H. P. 1906 House of Representatives, January 27, 1982  
Submitted by the Joint Standing Committee on Labor under Joint  
Rule 18, pursuant to H. P. 1629.

8 Reported by Representative Beaulieu from the Committee on  
Labor pursuant to H. P. 1629 and 1,600 ordered printed under Joint  
Rules No. 18.

EDWIN H. PERT, Clerk  
9

10 STATE OF MAINE  
11

12 IN THE YEAR OF OUR LORD  
13 NINETEEN HUNDRED AND EIGHTY-TWO  
14

15 AN ACT to Create a Defense of  
16 Employee Noncompliance with Safety  
17 Procedures under the Workers'  
18 Compensation Act.  
19

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

21 39 MRSA §61 is repealed and the following enacted in  
22 its place:

23 §61. Injury, illness or death due to employee misconduct

24 1. Defense. No compensation or other benefits may be  
25 allowed for the injury, death or occupational disease of an  
26 employee where it was proximately caused by the following:

27 A. The injured employee caused the injury by his  
28 willful intention to bring about the injury, death or  
29 disease of himself or of another;

1 B. The injured employee was intoxicated while on duty,  
2 except that this section shall not apply if the  
3 employer knew that the employee was intoxicated or that  
4 he was in the habit of becoming intoxicated while on  
5 duty;

6 C. The injured employee willfully failed or refused to  
7 use a safety device provided by the employer; or

8 D. The injured employee willfully failed or refused to  
9 follow a reasonable safety rule promulgated by the  
10 employer, including safety rules established by law  
11 which the employer is liable to enforce.

12 2. Burden of proof. The burden of proving the defense  
13 provided by this section is on the party asserting it.

14 3. Employer safety rules. In order for a person to  
15 assert a defense based on violation of a safety rule, that  
16 party must show that there was actual notification of the  
17 rule to the employee, and good faith enforcement of the rule  
18 by the employer.

19 4. Excuse. The defense shall not prevent the payment  
20 of compensation if the commissioner finds that:

21 A. Under the circumstances of the employment, compli-  
22 ance with the rule or use of the device would have cre-  
23 ated a risk of injury or disease outweighing the antic-  
24 ipated benefits to safety; or

25 B. Under the circumstances, the use of the device  
26 would itself create an injury or disease.

## 27 STATEMENT OF FACT

28 This bill expands the current employee misconduct  
29 provision to cover the willful failure or refusal of workers  
30 to use employer-provided safety devices or to follow reason-  
31 able safety rules.

32 A similar defense exists in the workers' compensation  
33 laws of 11 states. Three other states provide for a com-  
34 plete defense of failure to use a safety device and 8 states  
35 provide a complete defense for serious employee misconduct.  
36 Eleven more states provide for a partial defense of some  
37 kind, while the remaining jurisdictions, including Maine,  
38 presently have either no comparable provision or one limited  
39 to the employee's intentional injuries or intoxication.

1           In about 1/2 of the states with similar laws, the only  
2 safety rules included are those which are either statutory  
3 or approved by the appropriate commission. In virtually all  
4 cases, either by statute or judicial interpretation, there  
5 must be effective notification to the employee and good  
6 faith enforcement by the employer. These requirements avoid  
7 the situation of employers shifting costs through the  
8 promulgation of rules whose only purpose or use is to limit  
9 liability, rather than to enhance workplace safety.

10           The provision for excuse allows for occasions where the  
11 employee's conduct is justified by attendant circumstances,  
12 e.g., in case of emergency.

13           The subsection on excuse allows an employee to inter-  
14 pose as a bar to the defense of noncompliance with safety  
15 rules the answer of excuse. This applies only in cases where  
16 the compliance either creates some other hazard, where a  
17 hearing protector affects the worker's balance while working  
18 on a high scaffold, or where a device itself is injurious to  
19 the worker, where an improper harness would cause  
20 strangulation.

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