

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 389

7 H.P. 330

House of Representatives, February 1, 1983

8 On Motion of Representative Beaulieu of Portland referred to the
9 Committee on Labor. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Tammaro of Baileyville.

Cosponsors: Senator Dutremble of York, Representative Beaulieu of
Portland and Representative Tuttle of Sanford.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Protect Workers Injured while
18 in the Employ of Uninsured Employers.
19

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

22 39 MRSA §57, as repealed and replaced by PL 1981,
23 c. 474, §1, is amended to read:

24 §57. Second Injury Fund and Fund to Protect Workers
25 Injured While in the Employ of Uninsured
26 Employers

27 1. Payment for second injuries. If an employee
28 who has a permanent impairment from any cause or
29 origin which is, or is likely to be, a hindrance or
30 obstacle to his employment, sustains a personal
31 injury arising out of and in the course of employment
32 which, in combination with the earlier preexisting
33 impairment results in total permanent incapacity, the

1 employer or his insurance carrier is liable for all
2 compensation provided by this section. The employer
3 or insurance carrier shall be reimbursed from the
4 Second Injury Fund for compensation payments not
5 attributable to the second injury.

6 2. Permanent impairment. As used in this
7 section, "permanent impairment" means any permanent
8 physical or mental condition, whether congenital or
9 due to injury or disease, of such seriousness as to
10 constitute a hindrance or obstacle to obtaining
11 employment or to obtaining reemployment if the
12 employee should become unemployed.

13 3. Employer knowledge. In order to qualify under
14 this section for reimbursement from the Second Injury
15 Fund, the employer must establish that the employer
16 had knowledge of the permanent impairment at the time
17 that the employee was hired or at the time the
18 employee was retained in employment after the
19 employer acquired that knowledge.

20 4. Jurisdiction. The Workers' Compensation Com-
21 mission has jurisdiction over all claims brought by
22 employers or insurance carriers against the Second
23 Injury Fund. The Second Injury Fund shall not be
24 bound as to any question of law or fact by reason of
25 any award or any adjudication to which it was not a
26 party or in relation to which it was not notified, at
27 least 3 weeks prior to the award or adjudication,
28 that it might be subject to liability for the injury
29 or death. An employer or its insurance carrier shall
30 notify the Workers' Compensation Commission of any
31 possible claim against the Second Injury Fund as soon
32 as practicable, but in no event later than 3 years
33 after the injury or death.

34 5. Legal representation. The Attorney General
35 shall provide legal representation for any claim made
36 under this section. The reasonable expense of prose-
37 cution or defense by the Attorney General of claims
38 against the Second Injury Fund shall, subject to the
39 approval of the Workers' Compensation Commission, be
40 payable out of the Second Injury Fund. The Attorney
41 General shall not defend the Second Injury Fund
42 against any claim brought by the State. The Workers'
43 Compensation Commission is authorized to hire, using

1 funds from the Second Injury Fund, private counsel to
2 defend any claim brought against the Second Injury
3 Fund by the State.

4 6. Second Injury Fund administration and contri-
5 butions. There is established in the State Treasury a
6 special fund, known as the Second Injury Fund, for
7 the sole purpose of making payments in accordance
8 with this section. The fund is administered by the
9 chairman of the Workers' Compensation Commission. The
10 Treasurer of State is the custodian of the fund and
11 all moneys and securities in the fund shall be held
12 in trust by the Treasurer of State and shall not be
13 money or property of the State.

14 The Treasurer of State may disburse moneys from the
15 fund only upon written order of the chairman of the
16 Workers' Compensation Commission. He is required to
17 give bond in an amount to be fixed and with securi-
18 ties approved by the chairman conditioned upon the
19 faithful performance of his duty as custodian of the
20 fund. The premium of the bond shall be paid out of
21 the fund. The moneys of the fund shall be invested by
22 him in accordance with law. Interest, income and
23 dividends from the investments shall be credited to
24 the fund.

25 In every case of the death of any employee under this
26 section where there is no person entitled to compen-
27 sation, the employer shall pay to the Treasurer of
28 State a sum equal to ~~100~~ 200 times the average weekly
29 wage in the State as computed by the Employment
30 Security Commission for benefit of the Second Injury
31 Fund and the chairman of the Workers' Compensation
32 Commission shall direct the distribution thereof in a
33 manner consistent with this section.

34 All moneys in the original Second Injury Fund upon
35 the effective date of this section shall be deposited
36 with the Treasurer of State as part of the new fund
37 created by this section.

38 7. Exemption for liability. The State is not
39 liable for any claim against the Second Injury Fund
40 that is in excess of the fund's current ability to
41 pay.

1 8. Claim. Where an employee sustains a personal
2 injury arising out of and in the course of employment
3 while in the employ of an employer who is uninsured
4 and is not self-insured as defined by the Act, that
5 employee may bring a claim against the Fund to Pro-
6 ject Workers Injured While in the Employ of Uninsured
7 Employers for any benefits to which he is entitled
8 under the Act. The Attorney General may, on behalf
9 of the fund, bring an action against the uninsured
10 employer to protect workers injured while in the
11 employ of uninsured employers, the amount paid to the
12 employee by the fund.

13 STATEMENT OF FACT

14 A significant number of workers are employed by
15 employers who are without workers' compensation
16 insurance. As a result, several injured workers do
17 not receive workers' compensation benefits despite
18 their clear entitlement to them. At best, these
19 workers receive only a small fraction of the benefits
20 they are entitled to after long delays and after
21 bringing suits in Superior Court or making claims in
22 bankruptcy court after their employers file for bank-
23 ruptcy. Because of these long delays, the burden of
24 supporting these injured workers while they are
25 unable to work and the cost of their medical treat-
26 ment falls upon the taxpayers of the State.

27 The purpose of the change to Title 39, section
28 57, subsection 6 and the addition of Title 39,
29 section 57, subsection 8 is to provide a fund by
30 which workers injured while in the employ of unin-
31 sured employers can collect compensation and medical
32 treatment without the long delays that currently
33 exist. The Attorney General, on behalf of the fund,
34 can then bring an action against the uninsured
35 employer to recover any funds advanced to the injured
36 worker.

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