

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1240

6
7 H.P. 883

House of Representatives, April 9, 1985

8 Reference to the Committee on Labor suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Lisnik of Presque Isle.

11
12 STATE OF MAINE
13

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

17 AN ACT to Clarify the Agricultural Exemption
18 in the Workers' Compensation Laws.
19

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

22 Sec. 1. 39 MRSA §2, sub-§12 is enacted to read:

23 12. Agriculture. "Agriculture" means the opera-
24 tion of farm premises, including:

25 A. The planting, cultivating, producing, growing
26 and harvesting of agricultural or horticultural
27 commodities on those premises;

28 B. The raising of livestock and poultry on those
29 premises; and

30 C. Any work performed as an incident to or in
31 conjunction with these farm operations, including
32 the packing, drying and storing of these commo-
33 dities for market, if these operations:

1 (1) Are incident to or in conjunction with
2 growing and harvesting farm operations of
3 the same employer; and

4 (2) Are not provided as a service for other
5 farm operations or employers.

6 Sec. 2. 39 MRSA §4, as amended by PL 1981, c.
7 70, §2, is repealed and the following enacted in its
8 place:

9 §4. Applicability to certain actions and employers;
10 exemptions

11 An employer who has secured the payment of com-
12 penensation in comformity with sections 21-A to 27 is
13 exempt from civil actions, either at common law or
14 under sections 141 to 148, Title 14, sections 101 to
15 8118, and Title 18-A, section 2-804, involving per-
16 sonal injuries sustained by an employee arising out
17 of and in the course of his employment, or for death
18 resulting from those injuries. This exemption from
19 liability applies to all employees, supervisors, of-
20 icers and directors of the employer for any personal
21 injuries arising out of and in the course of employ-
22 ment, or for death resulting from those injuries.
23 These exemptions also apply to occupational diseases
24 sustained by an employee or for death resulting from
25 those diseases.

26 Sec. 3. 39 MRSA §21, as amended by PL 1981, c.
27 70, §3, is repealed.

28 Sec. 4. 39 MRSA §21-A is enacted to read:

29 §21-A. Liability of employer

30 1. Private employers. Every private employer is
31 subject to this Act and shall secure the payment of
32 compensation in conformity with this section and sec-
33 tions 22 to 27 with respect to all employees, subject
34 to the provisions of this section.

35 Any private employer who has not secured the payment
36 of compensation under this section and sections 22 to
37 27 is not entitled, in a civil action brought by an
38 employee or his representative, for personal injuries

1 or death arising out of and in the course of his em-
2 ployment, to the defense set forth in section 3. The
3 employee of any such employer may, instead of bring-
4 ing a civil action, claim compensation from the em-
5 ployer under this Act.

6 The following employers are not liable under this
7 section for securing the payment of compensation in
8 conformity with this section and sections 22 to 27
9 with respect to the employees listed, nor deprived of
10 the defenses listed in section 3:

11 A. Employers of employees engaged in domestic
12 service;

13 B. Employers of employees engaged in agriculture
14 or aquaculture as seasonal or casual laborers, if
15 the employer maintains coverage by an employer's
16 liability insurance policy with total limits of
17 not less than \$25,000 and medical payment cover-
18 age of not less than \$1,000.

19 (1) As used in this subsection, "casual"
20 means occasional or incidental. "Seasonal"
21 refers to laborers engaged in agricultural
22 or aquacultural employment beginning at or
23 after the commencement of the planting or
24 seeding season and ending at or before the
25 completion of the harvest season; and

26 C. Employers of 4 or fewer agricultural or
27 aquacultural laborers, if the employer maintains
28 an employer's liability insurance policy with to-
29 tal limits of not less than \$25,000 and medical
30 payment coverage of not less than \$1,000.

31 (1) In computing the number of agricultural
32 or aquacultural laborers under this para-
33 graph, immediate family members of unincor-
34 porated employers and seasonal and casual
35 workers are not included.

36 (2) This exemption does not apply if the
37 employer has employed more than 4 agricul-
38 tural or aquacultural laborers, as computed
39 under subparagraph (1), at any time during
40 the 52 weeks immediately preceding the in-
41 jury.

1 The burden of proof to establish an exempt status under
2 this section is on the employer claiming the ex-
3 emption.

4 2. Governmental bodies. The State and every
5 county, city and town is subject to this Act and
6 shall secure the payment of compensation in conformi-
7 ty with sections 22 to 27.

8 Sec. 5. 39 MRSA §96-B, sub-§1, as enacted by PL
9 1983, c. 318, is amended to read:

10 1. Claim of exemption; answer. If an employer
11 carries employer liability insurance as required by
12 sections 27, 4 and 21 21-A and claims to fall within
13 one of the agricultural or aquacultural exemptions in
14 section 27, 4 or 21 21-A, the employer may raise this
15 either in an answer filed under section 97 or by
16 motion. The employer shall file such a motion with
17 the commission within 5 days after receipt of the
18 employee's petition and shall mail a copy thereof to
19 the employee. The employer shall file affidavits,
20 records, proof of insurance and other evidence sup-
21 porting his claim for an exemption, together with the
22 motion. Within 5 days after receipt of the employ-
23 er's motion, the employee may file a reply with the
24 commission, together with affidavits, records and
25 other evidence supporting his claim that the employer
26 does not fall within an agricultural or aquacultural
27 exemption. If the employee files a reply, a copy
28 thereof shall be mailed to the employer.

29 STATEMENT OF FACT

30 This bill is intended to clarify the extent of
31 the agricultural laborer exemption in the Workers'
32 Compensation Act. Drafted with the assistance of the
33 Workers' Compensation Commission, it adds definitions
34 of several undefined terms which created an ambiguity
35 in the application of present law and it also
36 rewrites several sections to maintain logical con-
37 sistency within the Act.

38 Section 1 of this bill adds a definition of "ag-
39 riculture," adapted from the model Workers' Compensa-
40 tion Act.

1 Section 2 completely rewrites the old Maine Re-
2 vised Statutes, Title 39, section 4. It eliminates
3 references to the inapplicability of Title 39, sec-
4 tion 3 to certain situations because those exemptions
5 are also contained in Title 39, section 21-A; the
6 references in Title 39, section 4 are redundant. Al-
7 so, this bill makes it clear that an employer's ex-
8 emption from civil liability other than under the
9 Workers' Compensation Act extends to situations where
10 death results from occupational diseases as well as
11 personal injuries.

12 Sections 3 and 4 repeal and replace former Title
13 39, section 21 with a new section 21-A. The bill
14 ensures that agricultural employers must obtain a li-
15 ability insurance policy covering their casual or
16 seasonal workers within the prescribed limits in order
17 to avoid the requirement that they carry workers'
18 compensation coverage. The bill also clarifies the
19 procedure to be used in computing whether or not an
20 employer meets the exemption offered to employers of
21 4 or fewer agricultural or aquacultural laborers.
22 This bill also adds, in Title 39, section 21-A, a
23 provision placing the burden of proof on the employer
24 seeking an exemption under section 21-A.

25 Section 5 simply changes existing references to
26 sections 4 and 21 to be consistent with their new
27 versions under this bill.

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