

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 390

H.P. 304 House of Representatives, February 18, 1987
Reference to the Committee on Labor suggested and ordered
printed.

EDWIN H. PERT, Clerk
Presented by Representative CONLEY of Portland.
Cosponsored by Representative WILLEY of Hampden, Senators
DUTREMBLE of York and BLACK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Clarify Enforcement of Insurance
2 Coverage Requirements of the Workers'
3 Compensation Law.
4

5 Emergency preamble. Whereas, Acts of the Legis-
6 lature do not become effective until 90 days after
7 adjournment unless enacted as emergencies; and

8 Whereas, application of the Workers' Compensation
9 Act has been mandatory for most employers since 1974;
10 and

11 Whereas, records of insurance coverage of employ-
12 ers maintained by the commission suggest that a sig-
13 nificant number of mandatory participant employers
14 are not party to a currently effective workers' com-

1 pensation insurance policy or have allowed gaps in
2 coverage to occur in the past; and

3 Whereas, many industrially-injured employees
4 whose employers fail to maintain a policy are left
5 without any recourse for their work-related injuries;
6 and

7 Whereas, in the judgment of the Legislature,
8 these facts create an emergency within the meaning of
9 the Constitution of Maine and require the following
10 legislation as immediately necessary for the preser-
11 vation of the public peace, health and safety; now,
12 therefore,

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

15 Sec. 1. 26 MRSA §1047, as amended by PL 1979, c.
16 651, §§8, 47, is further amended to read:

17 §1047. Information privileged

18 All information transmitted to the bureau, the
19 commission or its duly authorized representatives
20 pursuant to this chapter shall be absolutely privi-
21 leged and shall not be made the subject matter or ba-
22 sis in any action of slander or libel in any court in
23 this State. The privileged nature of any such infor-
24 information shall not limit or affect the use of that in-
25 formation in any prosecution or action to enforce Ti-
26 tle 39, section 104-A.

27 Sec. 2. 26 MRSA §1082, sub-§13-A is enacted to
28 read:

29 13-A. Certificate of records of payroll reports
30 as evidence. Notwithstanding any other provision of
31 law or rule of evidence, for purposes of any prosecu-
32 tion or action to enforce Title 39, section 104-A, a
33 certificate signed by the Director of Unemployment
34 Compensation or a representative of the commissioner
35 duly authorized by the commissioner stating what the
36 payroll report records show shall be received in any
37 court in this State as prima facie evidence of any
38 fact stated in the certificate or the records at-
39 tached to the certificate.

1 Sec. 3. 39 MRSA §21-A, sub-§3 is enacted to
2 read:

3 3. Failure to conform. The failure of any pri-
4 ivate employer not exempt under subsection 1 or of any
5 governmental body, as defined in subsection 2, to
6 procure insurance coverage for the payment of compen-
7 sation pursuant to sections 22 to 27 shall constitute
8 failure to secure payment of compensation provided
9 for by this Act within the meaning of section 104-A,
10 subsection 2, and shall subject the employer to the
11 penalties prescribed by that section.

12 Sec. 4. 39 MRSA §23, first ¶, as amended by PL
13 1973, c. 746, §6, is further amended to read:

14 Every employer subject to this Act shall secure
15 ~~such~~ compensation and other benefits to his employees
16 in one or more of the ~~following ways-~~ ways described
17 in this section. The failure of any employer subject
18 to this Act to procure insurance coverage for the
19 payment of compensation and other benefits to his em-
20 ployees in some one of the ways described in this
21 section shall constitute failure to secure payment of
22 compensation provided for by this Act within the
23 meaning of section 104-A, subsection 2, and shall
24 subject the employer to the penalties prescribed by
25 that section.

26 Sec. 5. 39 MRSA §104-A, sub-§2, as amended by PL
27 1983, c. 479, §28, is repealed and the following en-
28 acted in its place:

29 2. Failure. Except as otherwise provided by sec-
30 tion 51-B, subsection 9, in the event of failure by
31 the employer or insurance carrier to pay compensation
32 as provided in this section a forfeiture not to ex-
33 ceed \$25 for each day of noncompliance shall be as-
34 essed against the employer or the insurance carrier.

35 If any employer, who is required to secure the pay-
36 ment to his employees of the compensation provided
37 for by this Act, fails to do so, he shall be subject
38 to any and all of the penalties set out in paragraphs
39 A, B and C. The failure of any employer to procure
40 insurance coverage for the payment of compensation
41 and other benefits to his employees in compliance

1 with sections 21-A and 23 constitutes a failure to
2 secure payment of compensation within the meaning of
3 this subsection.

4 A. The employer is guilty of a Class D crime.

5 B. The employer shall be liable to pay a civil
6 penalty of up to \$10,000, payable to the Second
7 Injury Fund.

8 C. The employer, if organized as a corporation,
9 shall be subject to revocation or suspension of
10 its authority to do business in this State as
11 provided in Title 13-A, section 1302. The em-
12 ployer, if licensed, certified, registered or
13 regulated by any board authorized by Title 5,
14 section 12004, subsection 1, or whose license may
15 be revoked or suspended by proceedings in the Ad-
16 ministrative Court or by the Secretary of State,
17 shall be subject to revocation or suspension of
18 its or his license, certification or registra-
19 tion.

20 Prosecution under paragraph A does not preclude ac-
21 tion under paragraph B or C.

22 If that employer is a corporation, the president or
23 treasurer, or both, shall be liable for that punish-
24 ment.

25 Sec. 6. 39 MRSA §104-A, sub-§3. is enacted to
26 read:

27 3. Certificate. Notwithstanding any other pro-
28 vision of law or rule of evidence, the certificate of
29 the Director of Administrative Services, under seal
30 of the commission, shall be received in any court in
31 this State as prima facie evidence of any fact stated
32 in the certificate or documents attached to the cer-
33 tificate.

34 Emergency clause. In view of the emergency cited
35 in the preamble, this Act shall take effect when ap-
36 proved.

1

STATEMENT OF FACT

2 The purpose of this bill is to improve the mecha-
3 nism for ensuring that employers procure workers'
4 compensation insurance coverage for employees. With-
5 out practical enforcement, a minority of employers
6 may refuse to obtain coverage, exposing their
7 employee's to financial hardship and allowing unfair
8 competition with law-abiding employers.

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