

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 152

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H.P. 109

House of Representatives, January 22, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative McHENRY of Madawaska.

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STATE OF MAINE

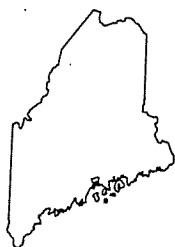
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Encourage Safety in the Workplace.**

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

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4       **Sec. 1. 39 MRSA §4, first ¶**, as amended by PL 1985, c. 737, Pt. A, §117, is further amended to read:

6       An employer who has secured the payment of compensation in ~~conformity~~ conformity with sections 21-A to 27 is exempt from  
8       civil actions, either at common law or under sections 141 to 148, Title 14, sections 8101 to 8118, and Title 18-A, section 2-804,  
10       involving personal injuries sustained by an employee arising out of and in the course of his employment, or for death resulting  
12       from those injuries. This exemption from liability applies to all employees, supervisors, officers and directors of the  
14       employer for any personal injuries arising out of and in the course of employment, or for death resulting from those  
16       injuries. These exemptions also apply to occupational diseases sustained by an employee or for death resulting from those  
18       diseases. These exemptions do not apply to an employee who suffers an injury caused by the employer's violation of any  
20       federal or state occupational safety and health law, rule or regulation as provided in section 28-A.

22       **Sec. 2. 39 MRSA §28, first ¶**, as amended by PL 1989, c. 502, Pt. A, §149, is further amended to read:

26       An Except as provided in section 28-A, an employee of an employer, who shall-have has secured the payment of compensation  
28       as provided in sections 21-A to 27 ~~shall-be-held~~ is deemed to have waived the employee's right of action at common law to  
30       recover damages for the injuries sustained by the employee, and under the statutes specified in section 4.

32       **Sec. 3. 39 MRSA §28-A** is enacted to read:

34       **§28-A. Employer violation of safety and health laws;  
36       employee right of action**

38       An employee is not deemed to have waived the employee's  
40       right of action at common law and under the statutes specified in  
42       section 4 if the employee's injury was caused by the employer's  
44       violation of any applicable federal or state occupational health  
46       and safety law, rule or regulation. The employee or any other  
48       person, as permitted by common law or statute, may file a civil  
50       action authorized under this section. The employee is entitled  
52       to compensation under this Act in addition to any right of action  
54       authorized under this section.

56       **1. Liability if employer is self-insured.** If the employer  
58       is self-insured for liability under this Act, any award received  
60       by the employee in an action authorized by this section must be  
62       reduced by the amount of compensation received under this Act.

2       2. Liability if employer is insured. If the employer is  
3       insured for liability under this Act, the employer is deemed to  
4       be a 3rd party under section 68, and the employer's insurer is  
5       entitled to all rights of subrogation, contribution or other  
6       rights granted to an employer by section 68.

7       **Sec. 4. Application.** This Act applies only to injuries  
8       occurring on or after the effective date of this Act.

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#### STATEMENT OF FACT

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13       This bill is intended to provide an additional incentive in  
14       Maine's Workers' Compensation Act for employers to provide a safe  
15       workplace for their employees. It allows an employee whose  
16       workplace injury was caused by the employer's violation of any  
17       federal or state occupational safety or health law, rule or  
18       regulation to sue the employer in court for damages resulting  
19       from the injury. The employee is also entitled to collect  
20       workers' compensation benefits, but the amount of those benefits  
      is deducted from any award the employee obtains in a court suit.