

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 509

S.P. 200

In Senate, February 11, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator ESTY of Cumberland  
Cosponsored by Senator BUSTIN of Kennebec.

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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 Concerning Illegally Employed Minors and Workers'  
Compensation.**

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

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

6       An employer who has secured the payment of compensation in  
7       conformity with sections 21-A to 27 is exempt from  
8       civil actions, either at common law or under sections 141 to 148,  
9       Title 14, sections 8101 to 8118, and Title 18-A, section 2-804,  
10      involving personal injuries sustained by an employee arising out  
11      of and in the course of his employment, or for death resulting  
12      from those injuries. This exemption from liability applies to  
13      all employees, supervisors, officers and directors of the  
14      employer for any personal injuries arising out of and in the  
15      course of employment, or for death resulting from those  
16      injuries. These exemptions also apply to occupational diseases  
17      sustained by an employee or for death resulting from those  
18      diseases. These exemptions do not apply to an illegally employed  
19      minor as described in section 28-A, subsection 2.

20       Sec. 2. 39 MRSA §28, as amended by PL 1989, c. 502, Pt. A,  
21       §149, is repealed.

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

23       §28-A. Waiver of right of action; minors

24       Except as provided in subsection 2, an employee of an  
25       employer who has secured the payment of compensation as provided  
26       in sections 21-A to 27 is deemed to have waived the employee's  
27       right of action at common law and under the statutes specified in  
28       section 4 to recover damages for the injuries sustained by the  
29       employee.

30       1. Legally employed minors. A minor is deemed sui juris  
31       for the purpose of this Act if the minor's employer was not in  
32       willful violation of Title 26, chapter 7, subchapter IV, at the  
33       time of the minor's injury. No other person has any cause of  
34       action or right to compensation for an injury to that minor  
35       employee except as expressly provided.

36       2. Illegally employed minors. A minor is not deemed to  
37       have waived the minor's right of action at common law and under  
38       the statutes specified in section 4 if the minor's employer is in  
39       willful violation of Title 26, chapter 7, subchapter IV, at the  
40       time of the minor's injury.

41       A. The minor employee, the minor's parent or guardian, or  
42       any other person, as permitted by common law or statute, may  
43       file a civil action permitted under this subsection.  
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2 B. The minor employee is entitled to compensation under  
4 this Act in addition to any right of action permitted under  
6 this subsection.

8 C. If the employer is self-insured for liability under this  
10 Act, any award received by the minor in an action permitted  
12 under this subsection must be reduced by the amount of  
14 compensation received under this Act.

16 D. If the employer is insured for liability under this Act,  
18 the employer is deemed to be a 3rd party under section 68,  
20 and the employer's insurer is entitled to all rights of  
22 subrogation, contribution or other rights granted to an  
24 employer by section 68.

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

### 30 STATEMENT OF FACT

32 The Law Court's decision in Fanion v. McNeal, 577 A.2d 2  
34 (Me. 1990), held that an illegally employed minor who is injured  
36 or killed while working is subject to the exclusive remedy  
38 provisions of the Workers' Compensation Act. Neither the minor  
40 nor the minor's parents can file a civil action for damages  
42 caused by the workplace accident.

44 This bill permits minors who are employed in willful  
46 violation of the child labor laws to sue their employers under  
the common law or any statutory cause of action. Under the bill,  
an illegally employed minor who is injured in the workplace  
continues to receive compensation under the Workers' Compensation  
Act, whether or not the employer was at fault. The bill also  
allows a minor or any other person who has a cause of action to  
pursue civil actions against the employer if the employer was in  
willful violation of the child labor laws at the time the injury  
occurred. If the minor prevails in this action, the employer's  
workers' compensation liability is deducted from the civil action  
damages. If the employer is insured for workers' compensation  
liability, the employer's insurer can recover any compensation  
paid to the minor from the employer.

This bill clearly reestablishes the policy of this State to  
protect working minors and to place the burden of that protection  
upon the persons who benefit from their labor.