

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

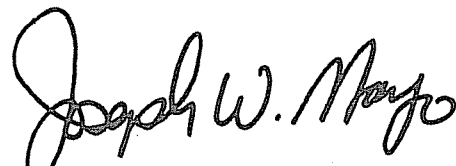
No. 303

H.P. 235

House of Representatives, February 4, 1993

**An Act to Amend the Exclusivity Provisions of the Workers'
Compensation Laws.**

Reference to the Committee on Labor suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative RUHLIN of Brewer.
Cosponsored by Senator HANDY of Androscoggin and
Representatives: CHASE of China, MARTIN of Eagle Lake.

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

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3 **Sec. 1. 39-A MRSA §104, first ¶,** as enacted by PL 1991, c. 885,
4 Pt. A, §8 and affected by §§9 to 11, is amended to read:

6 An employer who has secured the payment of compensation in
7 conformity with sections 401 to 407 is exempt from civil actions,
8 either at common law or under sections 901 to 908, Title 14,
9 sections 8101 to 8118, and Title 18-A, section 2-804, involving
10 personal injuries sustained by an employee arising out of and in
11 the course of employment, or for death resulting from those
12 injuries. These exemptions from liability apply to all
13 employees, supervisors, officers and directors of the employer
14 for any personal injuries arising out of and in the course of
15 employment, or for death resulting from those injuries. These
16 exemptions also apply to occupational diseases sustained by an
17 employee or for death resulting from those diseases. These
18 exemptions do not apply to an illegally employed minor as
19 described in section 408, subsection 2 or in cases when the
20 employee's injury is due to the intentional tort of an employer
21 as described in section 408, subsection 3.

22 **Sec. 2. 39-A MRSA §408,** as enacted by PL 1991, c. 885, Pt. A,
23 §8 and affected by §§9 to 11, is amended to read:

24 **§408. Waiver of right of action; minors; intentional torts**

25 Except as provided in subsections subsections 2 and 3, an
26 employee of an employer who has secured the payment of
27 compensation as provided in sections 401 to 407 is deemed to have
28 waived the employee's right of action at common law and under
29 section 104 to recover damages for the injuries sustained by the
30 employee.

31 **1. Legally employed minors.** A minor is deemed sui juris
32 for the purpose of this Act if the minor's employer was not in
33 violation of Title 26, section 771, 772 or 773 at the time of the
34 minor's injury. No other person has any cause of action or right
35 to compensation for an injury to that minor employee except as
36 provided in this section.

37 **2. Illegally employed minors.** A minor is not deemed to
38 have waived the minor's right of action at common law and under
39 section 104 if the minor's employer was in violation of Title 26,
40 section 771, 772 or 773 at the 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
this Act in addition to any right of action permitted under
this subsection.

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

10 D. If the employer is insured for liability under this Act,
the employer is considered a 3rd party under section 107,
12 and the employer's insurer is entitled to all rights of
subrogation, contribution or other rights granted to an
14 employer under section 107.

16 3. Injuries due to intentional tort of employer. A worker
injured due to an intentional tort of the worker's employer is
18 not deemed to have waived the employee's right of action at
common law and under section 104. An intentional tort occurs
20 when an employer intentionally engages in misconduct knowing it
is substantially certain to cause serious injury or death to an
22 employee.

24 A. The injured employee or any other person as permitted by
common law or statute may file a civil action permitted
26 under this subsection.

28 B. The injured employee is entitled to compensation under
this Act in addition to any right of action permitted under
30 this subsection but the employee may not be compensated
twice for the same loss.

32 C. If the employer is insured for liability under this Act,
34 the employer is considered a 3rd party under section 107 and
the employer's insurer is entitled to all rights of
36 subrogation, contribution or other rights granted to an
employer under section 107.

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STATEMENT OF FACT

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44 This bill gives the injured employee the right to sue the
employer for damages if the injury is due to an intentional tort
of the employer. An intentional tort occurs when an employer
46 intentionally engages in misconduct knowing it is substantially
certain to cause serious injury or death to an employee. The
48 right of action provided by this bill is in addition to the
rights provided under the Maine Workers' Compensation Act of 1992
50 but the employee may not be compensated twice for the same loss.