



# 116th MAINE LEGISLATURE

# FIRST REGULAR SESSION-1993

Legislative Document

No. 667

H.P. 509

House of Representatives, February 25, 1993

An Act Restoring the Right to Sue to Workers Injured Due to Gross Negligence.

Reference to the Committee on Labor suggested and ordered printed.

JOSEPH W. MAYO, Clerk

Presented by Representative COFFMAN of Old Town. Cosponsored by Representatives: CLEMENT of Clinton, HATCH of Skowhegan, TRACY of Rome, Senators: BUSTIN of Kennebec, HANDY of Androscoggin, LUTHER of Oxford, O'DEA of Penobscot.

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

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

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6 An employer who has secured the payment of compensation in conformity with sections 401 to 407 is exempt from civil actions, either at common law or under sections 901 to 908, Title 14, 8 sections 8101 to 8118, and Title 18-A, section 2-804, involving personal injuries sustained by an employee arising out of and in 10 the course of employment, or for death resulting from those exemptions from liability 12 injuries. These apply to all employees, supervisors, officers and directors of the employer for any personal injuries arising out of and in the course of 14 employment, or for death resulting from those injuries. These exemptions also apply to occupational diseases sustained by an 16 employee or for death resulting from those diseases. These exemptions do not apply to an illegally employed minor as described in section 408, subsection 2 and in cases when the 18 20 employee's injury is due to the gross negligence or illegal acts of an employer as described in section 408, subsection 3. 22

Sec. 2. 39-A MRSA §408, first ¶, as enacted by PL 1991, c. 885, 24 Pt. A, §8 and affected by §§9 to 11, is amended to read:

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

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## Sec. 3. 39-A MRSA §408, sub-§3 is enacted to read:

3. Injuries due to gross negligence or illegal acts of employer. A worker injured due to the gross negligence or illegal act of the worker's employer is not deemed to have waived the employee's right of action at common law and under section 104. Any right of action available under this subsection is in addition to any right to compensation and benefits the injured worker may have under this Act and may not be waived or modified by the employee or the employer.

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### STATEMENT OF FACT

This bill restores to the injured employee the right to sue 48 the employer for damages if the injury is due to the gross negligence or illegal act of the employer. Any recovery is in 50 addition to that available to the employee under the Workers'

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Compensation Act. Under this bill, the employee's right to sue may not be waived or modified.

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