

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 396

H.P. 292

House of Representatives, February 6, 1995

An Act to Amend the Laws Governing Wrongful Death Caused by Truck Drivers.

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative LEMKE of Westbrook.

Cosponsored by Representatives: ADAMS of Portland, BENEDIKT of Brunswick, BOUFFARD of Lewiston, CHARTRAND of Rockland, CHIZMAR of Lisbon, DAVIDSON of Brunswick, DORE of Auburn, FITZPATRICK of Durham, GERRY of Auburn, GREEN of Monmouth, JACQUES of Waterville, JOHNSON of South Portland, KERR of Old Orchard Beach, LaFOUNTAIN of Biddeford, LEMAIRE of Lewiston, LEMONT of Kittery, LIBBY of Buxton, MORRISON of Bangor, NADEAU of Saco, POULIOT of Lewiston, RICHARDSON of Portland, SHIAH of Bowdoinham, TOWNSEND of Portland, TRIPP of Topsham, TRUMAN of Biddeford, TUFTS of Stockton Springs, TUTTLE of Sanford, TYLER of Windham, WATSON of Farmingdale, WINGLASS of Auburn, Senators: ESTY of Cumberland, RAND of Cumberland, STEVENS of Androscoggin.

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

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3 **Sec. 1. 17-A MRSA §203, sub-§1**, as amended by PL 1989, c. 873,
4 is further amended to read:

6 **1.** A person is guilty of manslaughter if that person:

8 A. Recklessly, or with criminal negligence, causes the
9 death of another human being;

10 B. Intentionally or knowingly causes the death of another
11 human being under circumstances which do not constitute
12 murder because the person causes the death while under the
13 influence of extreme anger or extreme fear brought about by
14 adequate provocation. Adequate provocation has the same
15 meaning as in section 201, subsection 4. The fact that the
16 person causes the death while under the influence of extreme
17 anger or extreme fear brought about by adequate provocation
18 constitutes a mitigating circumstance reducing murder to
19 manslaughter and need not be proved in any prosecution
20 initiated under this subsection; ~~or~~

22 C. Has direct and personal management or control of any
23 employment, place of employment or other employee, and
24 intentionally or knowingly violates any occupational safety
25 or health standard of this State or the Federal Government,
26 and that violation in fact causes the death of an employee
27 and that death is a reasonably foreseeable consequence of
28 the violation. This paragraph does not apply to:

30 (1) Any person who performs a public function either
31 on a volunteer basis or for minimal compensation for
32 services rendered; or

34 (2) Any public employee responding to or acting at a
35 life-threatening situation who is forced to make and
36 does make a judgment reasonably calculated to save the
37 life of a human being; or

38 D. Has indirect management or control of any employment,
39 place of employment or employee, and intentionally or
40 knowingly causes the violation of a state rule that adopts
41 by reference the federal regulations as found in 49 Code of
42 Federal Regulations, Part 395 and that violation results in
43 the death of another human being.

46 **Sec. 2. 17-A MRSA §203, sub-§3, ¶B**, as enacted by PL 1989, c.
47 505, §2, is amended to read:

48 B. Violation of subsection 1, paragraph C or D is a Class C
49 crime.
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2 **Sec. 3. 17-A MRSA §203, sub-§4** is enacted to read:

4 4. For purposes of subsection 1, paragraph A, a person is
6 presumed to have acted with criminal negligence if, while in
8 violation of a state rule that adopts by reference the federal
10 regulations as found in 49 Code of Federal Regulations, Part 395,
12 that person causes the death of another human being.

14 **Sec. 4. 18-A MRSA §2-804, sub-§(b)**, as amended by PL 1991, c.
16 187, is further amended to read:

18 (b) Every such action must be brought by and in the name of
20 the personal representative of the deceased person, and the
22 amount recovered in every such action, except as otherwise
24 provided, is for the exclusive benefit of the surviving spouse,
26 if no minor children, and of the children if no surviving spouse,
28 and one-half for the exclusive benefit of the surviving spouse
30 and one-half for the exclusive benefit of the minor children to
32 be divided equally among them, if there are both surviving spouse
34 and minor children, and to the deceased's heirs to be distributed
36 as provided in section 2-106, if there is neither surviving
38 spouse nor minor children. The jury may give such damages as it
40 deems a fair and just compensation with reference to the
42 pecuniary injuries resulting from such death to the persons for
44 whose benefit the action is brought, and in addition thereto
46 shall give such damages as will compensate the estate of the
48 deceased person for reasonable expenses of medical, surgical and
50 hospital care and treatment and for reasonable funeral expenses,
52 and in addition thereto may give damages not exceeding \$75,000
for the loss of comfort, society and companionship of the
deceased, including any damages for emotional distress arising
from the same facts as those constituting the underlying claim,
to the persons for whose benefit the action is brought, and in
addition thereto may give punitive damages not exceeding \$75,000,
provided that the action is commenced within 2 years after the
decedent's death, except that, when death is caused by a person
driving a commercial motor vehicle in violation of state rules
that adopted by reference the federal regulations found in 49
Code of Federal Regulations, Part 395, the jury is not limited to
damages of \$75,000 for punitive damages or to damages of \$75,000
for loss of comfort, society and companionship of the deceased
including any damages for emotional distress arising from the
same facts as constituting the underlying claim. If a claim
under this section is settled without an action having been
commenced, the amount paid in settlement must be distributed as
provided in this subsection. No settlement on behalf of minor
children is valid unless approved by the court, as provided in
Title 14, section 1605.

54 **Sec. 5. 29-A MRSA §558, sub-§1**, as enacted by PL 1993, c. 683,
56 Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. Violation. -A- Except as provided in subsection 1-A, a person commits a Class E crime if that person violates or knowingly permits a violation of this subchapter or a rule adopted pursuant to this subchapter.

Sec. 6. 29-A MRSA §558, sub-§1-A is enacted to read:

1-A. Penalty for violating restrictions on hours of service for drivers of commercial vehicles. A person that violates or knowingly permits a violation of a state rule that adopts by reference the federal regulations found in 49 Code of Federal Regulations, Part 395 commits a Class D crime, and in addition to any other penalty that may attach, the commercial vehicle must be impounded for a period of 7 calendar days.

16 STATEMENT OF FACT

18 This bill makes the following changes to the laws governing drivers of commercial trucks.

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22 1. It extends criminal responsibility for manslaughter to a person with indirect control or management over a driver of a commercial truck if that person intentionally or knowingly causes that driver to violate the rules that prohibit commercial truck drivers from driving more than 10 consecutive hours and that require drivers to maintain a record of duty status. Violation of this provision is a Class C crime.

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30 2. It provides that, for purposes of the laws governing manslaughter, a person is presumed to have acted with criminal negligence if, while violating the rules prohibiting commercial truck drivers from driving more than 10 consecutive hours and requiring drivers to maintain a record of duty status, the driver of a commercial truck causes the death of another person.

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38 3. It removes the cap on damages for loss of companionship and punitive damages for wrongful death actions when death is caused by a person driving a commercial vehicle in violation of rules that prohibit such truck drivers from driving more than 10 consecutive hours and that require such drivers to maintain a record of duty status.

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44 4. It increases the penalty for violating rules prohibiting commercial truck drivers from driving more than 10 consecutive hours and requiring maintenance of records of duty status from a Class E crime to a Class D crime and requires the impoundment of the truck for a period of 7 calendar days.