

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

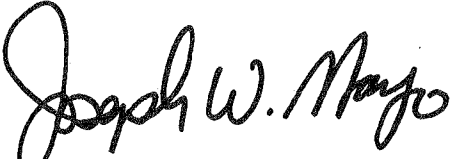
No. 1131

H.P. 826

House of Representatives, February 20, 1997

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 RINES of Wiscasset.
Cosponsored by Representatives: HATCH of Skowhegan, SAMSON of Jay, STANLEY of Medway, WRIGHT of Berwick.

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

2
4 **Sec. 1. 39-A MRSA §104, first ¶**, as amended by PL 1995, c. 297, §1, is further amended to read:

6 An employer who has secured the payment of compensation in
8 conformity with sections 401 to 407 is exempt from civil actions,
10 either at common law or under sections 901 to 908; Title 14,
12 sections 8101 to 8118; and Title 18-A, section 2-804, involving
14 personal injuries sustained by an employee arising out of and in
16 the course of employment, or for death resulting from those
18 injuries. An employer that uses a private employment agency for
20 temporary help services is entitled to the same immunity from
22 civil actions by employees of the temporary help service as is
24 granted with respect to the employer's own employees as long as
26 the temporary help service has secured the payment of
28 compensation in conformity with sections 401 to 407. "Temporary
30 help services" means a service where an agency assigns its own
32 employees to a 3rd party to work under the direction and control
of the 3rd party to support or supplement the 3rd party's work
force in work situations such as employee absences, temporary
skill shortages, seasonal work load conditions and special
assignments and projects. These exemptions from liability apply
to all employees, supervisors, officers and directors of the
employer for any personal injuries arising out of and in the
course of employment, or for death resulting from those
injuries. These exemptions also apply to occupational diseases
sustained by an 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 or in cases when
the employee's injury is due to the gross negligence or illegal
acts of an employer as described in section 408, subsection 3.

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

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

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

46 3. Injuries due to gross negligence or illegal acts of
48 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
50 104. Any right of action available under this subsection

2 is in addition to any right to compensation and benefits the
3 injured worker has under this Act and may not be waived or
4 modified by the employee or the employer.

6
8
SUMMARY

10 This bill restores to the injured employee the right to sue
11 the employer for damages if the injury is due to the gross
12 negligence or illegal act of the employer. Any recovery is in
13 addition to that available to the employee under the Workers'
14 Compensation Act. Under this bill, the employee's right to sue
may not be waived or modified.