

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1193

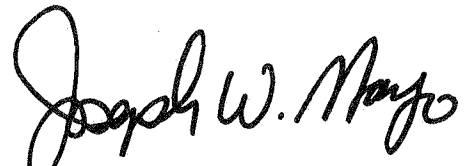
H.P. 876

House of Representatives, February 25, 1997

**An Act to Permit a Suit Against an Employer Who Knowingly Places a  
Worker at Risk of Serious Bodily Injury or Death.**

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Reference to the Committee on Labor suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative BOLDUC of Auburn.  
Cosponsored by Senator RAND of Cumberland and  
Representatives: BULL of Freeport, CHIZMAR of Lisbon, FISHER of Brewer, HATCH of  
Skowhegan, MUSE of South Portland, ROWE of Portland, SAMSON of Jay, STANLEY of  
Medway.

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

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

6           **§104. Applicability to certain actions and employers; exemptions**

8           An employer who has secured the payment of compensation in  
10 conformity with sections 401 to 407 is exempt from civil actions,  
12 either at common law or under sections 901 to 908; Title 14,  
14 sections 8101 to 8118; and Title 18-A, section 2-804, involving  
16 personal injuries sustained by an employee arising out of and in  
18 the course of employment, or for death resulting from those  
20 injuries. An employer that uses a private employment agency for  
22 temporary help services is entitled to the same immunity from  
24 civil actions by employees of the temporary help service as is  
26 granted with respect to the employer's own employees as long as  
28 the temporary help service has secured the payment of  
30 compensation in conformity with sections 401 to 407. "Temporary  
32 help services" means a service where an agency assigns its own  
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.

34           A design professional acting within the course and scope of  
36 providing professional services during the construction, erection  
38 or installation of any project or a design professional's  
40 employee who is acting within the course and scope of assisting  
42 or representing the design professional in the performance of  
44 design professional services on or adjacent to the site of the  
46 project's construction, erection or installation is immune from  
48 liability for any personal injury or death occurring at or  
adjacent to such a site, if compensation is paid to the injured  
person or decedent's representative for the injury or death under  
this Act, and the design professional has no duty under a written  
contract to assume responsibility for construction site safety.  
The immunity provided by this section to any design professional  
does not apply to the negligent preparation of design plans and  
technical specifications. Except as provided by this section, any  
waiver, oral or written, express or implied, of the design

professional's immunity granted by this section is void and unenforceable as a matter of law.

Notwithstanding the provisions of this section, when an employer intentionally requires an employee to perform duties that the employer knows or should reasonably know creates an unreasonable risk of serious bodily injury or death and the employee dies as a direct and proximate result, the heirs or the estate of the employee may have an action for wrongful death against the employer.

#### SUMMARY

This bill allows the heirs or the estate of an employee to bring an action for wrongful death against an employer who intentionally requires that employee to work when the employer knows that there is a risk of serious bodily injury or death.