

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1648

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H.P. 1151

House of Representatives, March 3, 1999

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

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Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative HATCH of Skowhegan.  
Cosponsored by Senator DOUGLASS of Androscoggin and  
Representatives: MATTHEWS of Winslow, SAMSON of Jay, TRACY of Rome.

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

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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  
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. An employer that uses a private employment agency for  
13 temporary help services is entitled to the same immunity from  
14 civil actions by employees of the temporary help service as is  
15 granted with respect to the employer's own employees as long as  
16 the temporary help service has secured the payment of  
17 compensation in conformity with sections 401 to 407. "Temporary  
18 help services" means a service where an agency assigns its own  
19 employees to a 3rd party to work under the direction and control  
20 of the 3rd party to support or supplement the 3rd party's work  
21 force in work situations such as employee absences, temporary  
22 skill shortages, seasonal work load conditions and special  
23 assignments and projects. These exemptions from liability apply  
24 to all employees, supervisors, officers and directors of the  
25 employer for any personal injuries arising out of and in the  
26 course of employment, or for death resulting from those  
27 injuries. These exemptions also apply to occupational diseases  
28 sustained by an employee or for death resulting from those  
29 diseases. These exemptions do not apply to an illegally employed  
30 minor as described in section 408, subsection 2 or in cases when  
31 the employee's injury is due to the gross negligence or illegal  
32 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 ~~subsection~~ subsections 2 and 3, an  
37 employee of an employer who has secured the payment of  
38 compensation as provided in sections 401 to 407 is deemed to have  
39 waived the employee's right of action at common law and under  
40 section 104 to recover damages for the injuries sustained by the  
41 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  
47 employer. A worker injured due to the gross negligence or  
48 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

2 104. Any right of action available under this subsection is in  
4 addition to any right to compensation and benefits the injured  
6 worker has under this Act and may not be waived or modified by  
8 the employee or the employer.

### SUMMARY

10 This bill restores to an injured employee the right to sue  
12 the employer for damages if the injury is due to the gross  
14 negligence or illegal act of the employer. Any recovery is in  
addition to that available to the employee under the Maine  
Workers' Compensation Act of 1992. Under this bill, the  
employee's right to sue may not be waived or modified.