

# MAINE STATE LEGISLATURE

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Date. 3-16-16

(Filing No. S-399)

**LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT**

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**STATE OF MAINE  
SENATE  
127TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “**A**” to S.P. 608, L.D. 1553, Bill, “An Act To Improve the Workers' Compensation System”

Amend the bill by striking out all of sections 1 and 2.

Amend the bill in section 3 in paragraph A in the 5th line (page 3, line 1 in L.D.) by striking out the following: “2016-17” and inserting the following: “2017-18”

Amend the bill by inserting after section 4 the following:

**Sec. 5. 39-A MRSA §324, sub-§3**, as amended by PL 2011, c. 113, Pt. B, §20, is further amended to read:

**3. Failure to secure payment.** If any employer who is required to secure the payment to that employer's employees of the compensation provided for by this Act fails to do so, the employer is subject to the penalties set out in paragraphs A, B and C. The failure of any employer to procure insurance coverage for the payment of compensation and other benefits to the employer's employees in compliance with sections 401 and 403 constitutes a failure to secure payment of compensation within the meaning of this subsection.

A. The employer is guilty of a Class D crime. This paragraph applies only to cases in which the employer has committed a knowing violation.

B. The employer is liable to pay a civil penalty of up to \$10,000 or up to an amount equal to 108% of the premium, calculated using Maine Employers' Mutual Insurance Company's standard discounted standard premium, that should have been paid during the period the employer failed to secure coverage, whichever is larger, payable to the Employment Rehabilitation Fund. In determining the amount of the penalty to be assessed under this paragraph, the board shall take into consideration the employer's effort to comply with sections 401 and 403.

C. The employer, if organized as a corporation, is subject to administrative dissolution as provided in Title 13-C, section 1421 or revocation of its authority to do business in this State as provided in Title 13-C, section 1532. The employer, if

**COMMITTEE AMENDMENT**

1 organized as a limited liability company, is subject to administrative dissolution as  
 2 provided in Title 31, section 1592. The employer, if licensed, certified, registered or  
 3 regulated by any board authorized by Title 5, section 12004-A or whose license may  
 4 be revoked or suspended by proceedings in the District Court or by the Secretary of  
 5 State, is subject to revocation or suspension of the license, certification or  
 6 registration. This paragraph applies only to cases in which the employer has  
 7 committed a knowing violation, has failed to pay a penalty assessed pursuant to this  
 8 subsection or continues to operate without required coverage after a penalty has been  
 9 assessed pursuant to this subsection.

10 For purposes of this subsection, a violation is considered a knowing violation if the  
 11 employer has previously obtained workers' compensation insurance and that insurance  
 12 has been cancelled or that insurance has not been continued or renewed, unless the  
 13 cancellation, failure to continue or nonrenewal is due to a substantial change in the  
 14 employer's operations that is unrelated to the classification of individuals as employees or  
 15 independent contractors; the employer has been notified in writing by the board of the  
 16 need for workers' compensation insurance; the employer has had one or more previous  
 17 violations of the requirement to secure the payment of the compensation provided for by  
 18 this Act; or the employer misclassifies an employee as an independent contractor despite  
 19 a contrary determination by the board.

20 Prosecution under paragraph A does not preclude action under paragraph B or C.  
 21 If the employer is a corporation, partnership, limited liability company, professional  
 22 corporation or any other legal business entity recognized under the laws of the State, any  
 23 agent of the corporation or legal business entity having primary responsibility for  
 24 obtaining insurance coverage is liable for punishment under this section. Criminal  
 25 liability must be determined in conformity with Title 17-A, sections 60 and 61.'

26 Amend the bill in section 5 in subsection 1 in the first paragraph in the first and 2nd  
 27 lines (page 3, lines 19 and 20 in L.D.) by striking out the following: "~~including an~~  
 28 ~~independent contractor who hires and pays employees,~~" and inserting the following: ',  
 29 including an independent contractor who hires and pays employees,'

30 Amend the bill by striking out all of section 8.

31 Amend the bill in section 9 in §407 in the first paragraph in the 5th line (page 6, line  
 32 14 in L.D.) by striking out the following: "intentionally"

33 Amend the bill in section 9 in §407 in the first paragraph in the last 4 lines (page 6,  
 34 lines 16 to 19 in L.D.) by striking out the following: "Notwithstanding this section, all  
 35 workers' compensation policies and self-insured workers' compensation policies must  
 36 include a provision requiring payment of benefits under this Act to an employee even if  
 37 the employee was misclassified on the date of injury or death."

38 Amend the bill by inserting after section 9 the following:

39 **'Sec. 10. Report.** By January 15, 2017, the Workers' Compensation Board shall  
 40 study the independent contractor predetermination provisions of the Maine Revised  
 41 Statutes, Title 39-A and report to the joint standing committee of the Legislature having  
 42 jurisdiction over labor matters any recommended legislation related to those provisions.

**COMMITTEE AMENDMENT**

1 The committee may report out a bill relating to the report to the First Regular Session of  
2 the 128th Legislature.'

3 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
4 section number to read consecutively.

5 **SUMMARY**

6 This amendment changes the bill by eliminating the sections affecting independent  
7 contractor predeterminations. The amendment instead requires the Workers'  
8 Compensation Board to study the current system for independent contractor  
9 predeterminations and report any recommended legislation to the joint standing  
10 committee of the Legislature having jurisdiction over labor matters.

11 It also requires the Workers' Compensation Board to consider an employer's efforts to  
12 comply with the coverage requirements of the Maine Workers' Compensation Act of  
13 1992 when imposing a monetary penalty, establishes that criminal prosecution may be  
14 pursued only if the employer has committed a knowing violation and establishes that  
15 revocation of authority to operate pursuant to the Maine Revised Statutes, Title 39-A,  
16 section 324, subsection 3, paragraph C may be pursued only if the employer has  
17 committed a knowing violation, has failed to pay a penalty assessed pursuant to that  
18 subsection or continues to operate without required workers' compensation insurance  
19 coverage after a penalty has been assessed pursuant to that subsection. Additionally, the  
20 amendment delays the increase to the Workers' Compensation Board assessment cap  
21 from fiscal year 2016-17 to fiscal year 2017-18.

22 **FISCAL NOTE REQUIRED**

23 **(See attached)**



# 127th MAINE LEGISLATURE

LD 1553

LR 2581(02)

## An Act To Improve the Workers' Compensation System

Fiscal Note for Bill as Amended by Committee Amendment "A" (5-399)  
Committee: Labor, Commerce, Research and Economic Development  
Fiscal Note Required: Yes

### Fiscal Note

Undetermined future biennium cost increase - All Funds

	FY 2015-16	FY 2016-17	Projections FY 2017-18	Projections FY 2018-19
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$0	\$0	\$1,800,000	\$1,800,000
<b>Revenue</b>				
Other Special Revenue Funds	\$0	\$0	\$1,800,000	\$1,800,000

#### Correctional and Judicial Impact Statements

Eliminates Class D crimes.

A reduction in fines will decrease General Fund revenue by minor amounts.

#### Fiscal Detail and Notes

Increasing the cap on the dollar amount that may be assessed by the Workers' Compensation Board on insurance companies and self-insured employers from \$11.2 million to \$13.0 million beginning in fiscal year 2017-18 may increase the cost to all state government agencies for the workers' compensation portion of personal services expense. The fiscal impact on the State's self-insured program can not be determined at this time and will depend on the actual amount assessed.

Additional costs to the Workers' Compensation Board to conduct the required study and submit the required report can be absorbed within existing budgeted resources.