

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1095

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S.P. 327

In Senate, March 5, 2019

### An Act Regarding Workers' Compensation Liens

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Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BELLOWS of Kennebec.  
Cosponsored by Representative SYLVESTER of Portland.

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

2 **Sec. 1. 39-A MRSA §107, 2nd ¶**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
3 affected by §§9 to 11, is amended to read:

4 If the injured employee elects to claim compensation and benefits under this Act, any  
5 employer having paid the compensation or benefits or having become liable for  
6 compensation or benefits under any compensation payment scheme has a lien for the  
7 value of compensation paid on any damages subsequently recovered against the 3rd  
8 person liable for the injury, except that the value of the lien may not exceed the value of  
9 damages received by or on behalf of the employee that are attributable to compensation  
10 for past or future medical treatment and loss of income or earning capacity. If the  
11 employee or the employee's beneficiary fails to pursue the remedy against the 3rd ~~party~~  
12 person within 30 days after written demand by the employer, the employer is subrogated  
13 to the rights of the injured employee and is entitled to enforce liability in its own name or  
14 in the name of the injured party, the accounting for the proceeds to be made on the basis  
15 provided.

16 **Sec. 2. 39-A MRSA §107, last ¶**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
17 affected by §§9 to 11, is amended to read:

18 If the employer recovers from a 3rd person damages in excess of the compensation  
19 and benefits paid, or for which the employer has become liable, that are attributable to  
20 compensation for past or future medical treatment and loss of income or earning capacity,  
21 then any excess must be paid to the injured employee, less a proportionate share of the  
22 expenses and cost of actions or collection, including reasonable attorney's fees.  
23 Settlement of any such subrogation claims and the distribution of the proceeds therefrom  
24 must have the approval of the court in which the subrogation action is pending or to  
25 which it is returnable; or if not in suit, of the board. When the court in which the  
26 subrogation action is pending or to which it is returnable is in vacation, the judge of the  
27 court, or, if the action is pending in or returnable to the Superior Court, any Justice of the  
28 Superior Court has the power to approve the settlement of the action and the distribution  
29 of the proceeds therefrom. The beneficiary is entitled to reasonable notice and the  
30 opportunity to be present in person or by counsel at the approval proceeding.

31 **SUMMARY**

32 When a worker suffers an injury or death that is eligible for workers' compensation  
33 benefits under the Maine Workers' Compensation Act of 1992 and that is sustained under  
34 circumstances that create legal liability for a 3rd person, the injured employee may either  
35 claim workers' compensation benefits or seek damages in a civil suit against that 3rd  
36 person to recover damages. Under current law, if the injured employee chooses to claim  
37 workers' compensation benefits from the employer, the employer has a lien on any  
38 damages subsequently recovered against that 3rd person in the civil action for the value  
39 of workers' compensation benefits paid.

40 This bill limits the amount of the lien of the employer of the injured or deceased  
41 employee to only the value of damages received by or on behalf of the injured or

1       deceased employee that are attributable to compensation for past or future medical  
2       treatment and loss of income or earning capacity.