

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1500

S.P. 462

In Senate, April 4, 2019

**An Act To Improve Workers' Compensation Protection for Injured
Workers Whose Employers Have Wrongfully Not Secured Workers'
Compensation Insurance**

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 President JACKSON of Aroostook.
Cosponsored by Representative CUDDY of Winterport and
Representatives: SYLVESTER of Portland, TUCKER of Brunswick.

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

2 **Sec. 1. 39-A MRSA §102, sub-§16-A** is enacted to read:

3 **16-A. Prime contractor.** "Prime contractor" means a person that contracts with a
4 person to perform work, but does not include an owner or occupant of real property who
5 hires a prime contractor or subcontractor to perform work on that real property.

6 This subsection is repealed July 1, 2022.

7 **Sec. 2. 39-A MRSA §102, sub-§18-A** is enacted to read:

8 **18-A. Subcontractor.** "Subcontractor" means a person who contracts with a prime
9 contractor or another subcontractor to perform work.

10 This subsection is repealed July 1, 2022.

11 **Sec. 3. 39-A MRSA §105-B** is enacted to read:

12 **§105-B. Contractor's liability for subcontractors**

13 **1. Liability.** Notwithstanding section 102, subsection 11, paragraph A,
14 subparagraph (8), when a subcontractor fails to secure the payment of compensation
15 required by this Act, the prime contractor is liable for compensation under this Act to the
16 employees of the subcontractor unless there is an intermediate subcontractor who has
17 secured the payment of compensation in conformity with this Act.

18 **2. Indemnification.** This subsection governs contractors' liability for
19 subcontractors.

20 **A.** A prime contractor or subcontractor or the prime contractor's or subcontractor's
21 insurance carrier who becomes liable under subsection 1 for the payment of
22 compensation on account of injury to or death of an employee of a subcontractor may
23 recover from that subcontractor the amount of the compensation paid or for which
24 liability is incurred and reasonable attorney's fees and expenses.

25 **B.** A claim for recovery under paragraph A constitutes a lien against any money due
26 or to become due to a subcontractor from the prime contractor or another
27 subcontractor.

28 **C.** A claim for recovery under paragraph A does not affect the right of an injured
29 employee or the dependents of a deceased employee to recover compensation due
30 from the prime contractor or subcontractor or the prime contractor's or
31 subcontractor's insurance carrier.

32 **3. Exceptions.** This section does not apply to:

33 **A.** A person who regularly operates a business or practices a trade, profession or
34 occupation, whether individually or in partnership or association with other persons
35 or as a member of a limited liability company, and who has not elected to be
36 personally covered as provided in section 102, subsection 11, paragraph B;

1 B. A person who has waived all the benefits and privileges provided by the workers'
2 compensation laws as provided in section 102, subsection 11, paragraph A,
3 subparagraphs (4) and (5); or

4 C. An owner or occupant of real property who hires a prime contractor or
5 subcontractor to perform work on that real property. The prime contractor or
6 subcontractor hired by the owner or occupant is subject to this section.

7 **4. Effective date.** This section takes effect January 1, 2020.

8 **5. Repeal.** This section is repealed July 1, 2022.

9 **Sec. 4. 39-A MRSA §205, sub-§4-A** is enacted to read:

10 **4-A. Payment of bills for medical or health care services prior to July 1, 2022.**
11 Notwithstanding subsection 4, prior to July 1, 2022, when there is not an ongoing dispute,
12 if bills for medical or health care services are not paid within 30 days after the carrier has
13 received notice of nonpayment, \$50 or the amount of the bill due, whichever is less, must
14 be added and paid to the provider of the medical or health care services or, if the bill was
15 paid by the employee, to the Employment Rehabilitation Fund under section 355 for each
16 day over 30 days in which the bills for medical or health care services are not paid. Not
17 more than \$1,500 in total may be added pursuant to this subsection. For purposes of this
18 subsection, "carrier" includes the Maine Insurance Guaranty Association under Title
19 24-A, chapter 57, subchapter 3.

20 This subsection is repealed July 1, 2022.

21 **Sec. 5. 39-A MRSA §324, sub-§2, ¶A**, as amended by PL 2007, c. 265, §1, is
22 further amended to read:

23 A. Except as otherwise provided by section 205, if an employer or insurance carrier
24 fails to pay compensation as provided in this section, the board may assess against the
25 employer or insurance carrier a fine of up to \$200 for each day of noncompliance. If
26 the board finds that the employer or insurance carrier was prevented from complying
27 with this section because of circumstances beyond its control, a fine may not be
28 assessed.

29 (1) The fine for each day of noncompliance must be divided as follows: Of each
30 day's fine amount, the first \$50 is paid to the employee to whom compensation is
31 due and the remainder must be paid to the board and be credited to the Workers'
32 Compensation Board Administrative Fund.

33 (1-A) Notwithstanding subparagraph (1), prior to July 1, 2022, the fine for each
34 day of noncompliance must be paid to the Employment Rehabilitation Fund
35 under section 355.

36 This subparagraph is repealed July 1, 2022.

37 (2) If a fine is assessed against any employer or insurance carrier under this
38 subsection on petition by an employee, the employer or insurance carrier shall
39 pay reasonable costs and attorney's fees related to the fine, as determined by the
40 board, to the employee.

1 (3) Fines assessed under this subsection may be enforced by the Superior Court
2 in the same manner as provided in section 323.

3 (4) Notwithstanding subparagraph (3), prior to July 1, 2022, fines assessed under
4 this subsection may be enforced by the Superior Court in the same manner as
5 provided in section 361, subsection 2.

6 This subparagraph is repealed July 1, 2022.

7 **Sec. 6. 39-A MRSA §355, sub-§10-A** is enacted to read:

8 **10-A. Employees working for uninsured employers.** The provisions of this
9 subsection apply when an employee is working for an uninsured employer. For the
10 purposes of this subsection, "uninsured employer" means an employer who has failed to
11 secure the payment of compensation in conformity with this Act.

12 A. The fund must be used to pay to an injured employee of an uninsured employer
13 for whom there is no other responsible prime contractor or subcontractor the same
14 benefits the employee would have received if the employer had secured coverage as
15 required by this Act.

16 B. The fund must be used to pay the costs of adjusting and representing the fund in
17 any actions relating to claims for benefits made by employees working for uninsured
18 employers.

19 C. The board is entitled to recover from the uninsured employer the amount of the
20 compensation paid under this subsection, interest and all other costs associated with
21 the claim, including, but not limited to, adjusting and representing the fund.

22 D. If an uninsured employer fails to reimburse the board as set forth in this
23 subsection, the uninsured employer shall also pay the costs of recovering the amounts
24 due, including reasonable attorney's fees.

25 E. The board, by contract, may delegate day-to-day administration and adjusting of
26 claims against the fund to a service agent. A service agent may subcontract with
27 attorneys approved by the board to advise or represent the fund in actions under this
28 subsection as necessary. Expenses of the service agent and attorneys retained by the
29 service agent, upon approval by the board, are paid from the fund.

30 This subsection is repealed July 1, 2022.

31 **Sec. 7. 39-A MRSA §359, sub-§2-A** is enacted to read:

32 **2-A. Penalty prior to July 1, 2022.** Notwithstanding subsection 2, prior to July 1,
33 2022, in addition to any other penalty assessment permitted under this Act, the board may
34 assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an employer,
35 insurer or 3rd-party administrator for an employer has engaged in a pattern of
36 questionable claims-handling techniques or repeated unreasonably contested claims. The
37 board shall certify its findings to the Superintendent of Insurance, who shall take
38 appropriate action so as to bring any such practices to a halt. This certification by the
39 board is exempt from the provisions of the Maine Administrative Procedure Act. The
40 amount of any penalty assessed pursuant to this subsection must be directly related to the
41 severity of the pattern of questionable claims-handling techniques or repeated

1 unreasonably contested claims. All penalties collected pursuant to this subsection must be
2 deposited in the Employment Rehabilitation Fund under section 355. An insurance
3 carrier's payment of any penalty assessed under this subsection may not be considered an
4 element of loss for the purpose of establishing rates for workers' compensation insurance.

5 This subsection is repealed July 1, 2022.

6 **Sec. 8. 39-A MRSA §360, sub-§4, ¶D** is enacted to read:

7 D. Notwithstanding paragraph C, prior to July 1, 2022, all penalties assessed under
8 this section in connection with employees injured on or after the effective date of this
9 paragraph are payable to the Employment Rehabilitation Fund under section 355.

10 This paragraph is repealed July 1, 2022.

11 **Sec. 9. 39-A MRSA §362** is enacted to read:

12 **§362. Payment to the Employment Rehabilitation Fund; enforcement; prior to July**
13 **1, 2022**

14 Notwithstanding section 361, prior to July 1, 2022, the following provisions apply to
15 penalties assessed under this Act.

16 **1. Payment.** All penalties assessed under this Act are payable to the Employment
17 Rehabilitation Fund under section 355, unless otherwise provided by law.

18 **2. Enforcement and collection.** All penalties assessed under this Act are
19 enforceable by the Superior Court under section 323.

20 A. The Attorney General shall prosecute any action necessary to recover penalties
21 payable to the Employment Rehabilitation Fund under section 355 or the board may
22 retain private counsel for that purpose.

23 B. If a person fails to pay a penalty assessed under this Act that is payable to the
24 Employment Rehabilitation Fund under section 355 and enforcement by the Superior
25 Court is necessary:

26 (1) That person shall pay the costs of prosecuting the action in Superior Court,
27 including reasonable attorney's fees; and

28 (2) If the failure to pay was without due cause, any penalty assessed on that
29 person under this Act must be doubled.

30 **3. Application; repeal.** This section applies notwithstanding section 361 and is
31 repealed July 1, 2022.

32 **SUMMARY**

33 This bill amends the Maine Workers' Compensation Act of 1992 to create protections
34 for injured workers whose employers have not secured workers' compensation insurance
35 in accordance with current law. The bill creates liability for situations when an employee
36 is injured while working for an uninsured subcontractor. In such situations, the prime

1 contractor will be responsible for payment of workers' compensation benefits as if it were
2 the direct employer of the injured employee, unless there is an intermediate subcontractor
3 with workers' compensation insurance coverage, in which case, the intermediate
4 subcontractor is responsible for payment of all benefits due under the Act. These
5 provisions take effect January 1, 2020 and are repealed July 1, 2022.

6 The bill also amends the laws governing the Employment Rehabilitation Fund. Until
7 July 1, 2022, the fund will be used to pay workers' compensation benefits to injured
8 employees working for illegally uninsured employers when there is no other prime
9 contractor or subcontractor liable for payment of benefits. Until July 1, 2022, the fund
10 will not transfer a portion of its funds to the General Fund and penalties recovered for
11 violations of the Maine Workers' Compensation Act of 1992 will be directed to this fund
12 exclusively, instead of being shared with the Workers' Compensation Board
13 Administrative Fund or the General Fund.