

MAINE STATE LEGISLATURE

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NEW DRAFT.

SEVENTY-FOURTH LEGISLATURE

HOUSE.

No. 807

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND NINE.

AN ACT relating to the employment of labor.

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

Section 1. If personal injury is caused to an employee,
2 who, at the time of the injury, is in the exercise of due
3 care, by reason of:

First, A defect in the condition of the ways, works or
5 machinery connected with or used in the business of the
6 employer, which arose from, or had not been discovered
7 or remedied in consequence of, the negligence of the em-
8 ployer or of a person in his service who had been entrusted
9 by him with the duty of seeing that the ways, works or
10 machinery were in proper condition; or,

Second, That the negligence of a person in the service of
12 the employer who was entrusted with and was exercising
13 superintendence and whose sole or principal duty was that
14 of superintendence, or in the absence of such superinten-
15 dent, of a person acting as superintendent with the authority
16 or consent of such employer.

Third, The negligence of a person in the service of the
18 employer who was in charge or control of a signal, switch,
19 locomotive engine or train upon a railroad;

The employee or his legal representatives, shall subject to
21 the provisions of the eight following sections, have the same
22 rights to compensation and of action against the employer
23 as if he had not been an employee, nor in the service, nor
24 engaged in the work, of the employer.

A car which is in use by, or which is in possession of, a
26 railroad corporation shall be considered as a part of the
27 ways, works or machinery of the corporation which uses
28 or has it in possession, within the meaning of clause
29 one of this section, whether it is owned by such corpora-
30 tion or by some other company or person. One or more
31 cars which are in motion, whether attached to an engine or
32 not, shall constitute a train within the meaning of clause
33 three of this section, and whoever, as a part of his duty
34 for the time being, physically controls or directs the move-
35 ments of a signal, switch, locomotive engine or train shall
36 be deemed to be a person in charge or control of a signal,
37 switch, locomotive engine or train within the meaning of
38 said clause.

Sect. 2. If the injury described in the preceding section
2 results in the death of the employee, and such death is not
3 instantaneous or is preceded by conscious suffering, and
4 if there is any person who would have been entitled to
5 bring an action under the provisions of the following sec-
6 tion, the legal representatives of said employee may, in
7 the action brought under the provisions of the preceding
8 section, recover damages for the death in addition to those
9 for the injury.

Sect. 3. If, as the result of the negligence of an employer
2 himself, or of a person for whose negligence an employer
3 is liable under the provisions of section one, an employee
4 is instantly killed, or dies without conscious suffering, his
5 widow or, if he leaves no widow, his next of kin, who, at
6 the time of his death, were dependent upon his wages for
7 support, shall have a right of action for damages against
8 the employer.

Sect. 4. If, under the provisions of either of the two
2 preceding sections, damages are awarded for the death,
3 they shall be assessed with reference to the degree of cul-
4 pability of the employer or of the person for whose negli-
5 gence the employer is liable.

The amount of damages which may be awarded in an
7 action under the provisions of section one for a personal
8 injury to an employee, in which no damages for his death
9 are awarded under the provisions of section two, shall
10 not exceed four thousand dollars.

The amount of damages which may be awarded in such action, if damages for his death are awarded under the provisions of section two, shall not exceed five thousand dollars for both the injury and the death, and shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled, under the provisions of section three, to bring an action for his death if it had been instantaneous or without conscious suffering.

The amount of damages which may be awarded in an action brought under the provisions of section three shall not be less than five hundred nor more than five thousand dollars.

Sect. 5. No action for the recovery of damages for injury or death under the provisions of sections one to four, inclusive, shall be maintained unless notice of the time, place and cause of the injury is given to the employer within sixty days, and the action is commenced within one year, after the accident which causes the injury or death. Such notice shall be in writing, signed by the person injured, or by a person in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in this section, he may give it within ten days after such incapacity has been removed, and if he dies without having given the notice and without having been for ten days at any time after his injury of sufficient capacity to give it, his executor or administrator

15 may give such notice within sixty days after his appoint-
16 ment. A notice given under the provisions of this section
17 shall not be held invalid or insufficient solely by reason of
18 an inaccuracy in stating the time, place or cause of the
19 injury, if it is shown that there was no intention to mislead,
20 and that the employer was not in fact misled thereby.

If a notice given under this section is claimed by the em-
22 ployer to be insufficient for any reason he shall so notify
23 in writing the person giving it within ten days, stating the
24 insufficiency claimed to exist, and thereupon the person
25 whose duty is to give the notice may, within thirty days,
26 give a new notice with the same effect as if originally given.

Sect. 6. If an employer enters into a contract, written or
2 verbal, with an independent contractor to do part of such
3 employer's work, or if such contractor enters into a contract
4 with a sub-contractor to do all or any part of the work
5 comprised in such contractor's contract with the employer,
6 such contract or sub-contract shall not bar the liability of
7 the employer for injuries to the employees of such con-
8 tractor or sub-contractor, caused by any defect in the con-
9 dition of the ways, works, machinery or plant, if they are
10 the property of the employer or are furnished by him, and
11 if such defect arose, or had not been discovered or rem-
12 edied, through the negligence of the employer or of some
13 person entrusted by him with the duty of seeing that they
14 were in proper condition.

Sect. 7. An employee or his legal representatives shall
2 not be entitled under the provisions of section one to four,

3 inclusive, to any right of action for damages against his
4 employer if such employee knew of the defect or negligence
5 which caused the injury, and failed within a reasonable time
6 to give, or cause to be given, information thereof to the
7 employer, or to some person superior to himself in the
8 service of the employer who was entrusted with general
9 superintendence.

Sect. 8. The provisions of the seven preceding sections
2 shall not apply to injuries caused to domestic servants or
3 farm laborers by fellow employees.

Sect. 9. Nothing in this act shall be construed to abridge
2 any common law rights or remedies which the employee
3 may have against his employer, but a judgment recovered
4 under the provisions of this act, or a settlement of any ac-
5 tion commenced or claim made for death or injury, under
6 the provisions of this act, shall be a bar to any claim made
7 or action begun to recover for the same injury or the same
8 death, under the provisions of the common law or under the
9 provisions of any other statute.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES,

Augusta, March 27, 1909.

Reported by Mr. HERSEY from Committee on Judiciary
and ordered printed under joint rules.

E. M. THOMPSON, *Clerk.*