

# MAINE STATE LEGISLATURE

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LAWS  
OF THE  
STATE OF MAINE

AS PASSED BY THE

One Hundred and Seventh Legislature

AT THE

1ST SPECIAL SESSION

JANUARY 19, 1976 TO APRIL 29, 1976

AND

2ND SPECIAL SESSION

JUNE 14, 1976

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 164, SUBSECTION 6.

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PORTLAND LITHOGRAPH COMPANY  
PORTLAND, MAINE  
1977

**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
One Hundred and Seventh Legislature  
AT THE FIRST SPECIAL SESSION  
January 19, 1976 to April 29, 1976  
AND THE SECOND SPECIAL SESSION  
June 14, 1976

Supplementary to the Acts and Resolves of the Regular Session

[supplied from page 3097 of volume]

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

18 MRSA § 551 is repealed and the following enacted in place thereof:

§ 551. Costs in contested cases in probate court

In all contested cases in the original or appellate court of probate, costs may be allowed to either party, including reasonable witness fees, cost of depositions, hospital records or medical reports and attorney's fees, to be paid to either or both parties, out of the estate in controversy, as justice requires, provided that in those cases where a will is being contested on the grounds of undue influence or mental capacity, counsel fees and costs shall not be allowed if the party contesting the will is unsuccessful.

Depositions may be taken in probate court by either party as in any other court in this State. Parties may also serve interrogatories upon each other and the procedure in both instances shall be governed by the provisions of the Maine Rules of Civil Procedure for discovery generally.

Effective July 29, 1976

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## CHAPTER 749

### AN ACT Concerning the Workmen's Compensation Statutes.

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

Sec. 1. 39 MRSA § 2, sub-§ 1, as amended by PL 1973, c. 746, § 1, is repealed and the following enacted in place thereof:

1. Employer. The term "employer" includes:
  - A. Private employers;
  - B. The State;
  - C. Counties;
  - D. Cities;
  - E. Towns; and
  - F. Water districts and all other quasi-public corporations of a similar nature.

If the employer is insured, the term "employer" includes the insurer unless the contrary intent is apparent from the context or is inconsistent with the purposes of this Act.

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

1-A. Private employer. The term "private employer" includes corporations, partnerships and natural persons.

Sec. 3. 39 MRSA § 2, sub-§ 5, as last amended by PL 1975, c. 190, is repealed and the following enacted in place thereof:

5. Employee.

A. "Employee" shall include officials of the State, counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation, other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except:

(1) Persons engaged in maritime employment, or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States;

(2) Any person whose employment is not in the usual course of the business, profession, trade or occupation of his employer. Firefighters and policemen shall be deemed employees within the meaning of this Act. Employers who hire workmen within this State to work outside the State may agree with such workmen that the remedies under this Act shall be exclusive as regards injuries received outside this State arising out of and in the course of such employment; and all contracts of hiring in this State, unless otherwise specified, shall be presumed to include such agreement. Any reference to an employee who has been injured shall, when the employee is dead, include his legal representatives, dependents and other persons to whom compensation may be payable; and

(3) Notwithstanding any other provisions of this Act, any charitable, religious, educational or other nonprofit corporation that may be or become an assenting employer under this Act, may cause any duly elected or appointed executive officer to be an employee of such corporation by specifically including such executive officer among those to whom such corporation secures payment of compensation in conformity with subchapter II; and such executive officer shall remain an employee of such corporation under this Act while such payment is so secured. With respect to any such corporation that secures compensation by making a contract of industrial accident insurance, specific inclusion of such executive officer in such contract shall cause such officer to be an employee of such corporation under this Act.

(4) Any person who states in writing to the commission that he waives all the benefits and privileges provided by the workmen's compensation laws, provided that the commission shall have found such person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which he is employed and that this waiver was not a prerequisite condition to employment.

Any person may revoke or rescind his waiver upon 30 days' written notice to the commission and his employer. The parent, spouse, or child of a

person who has made a waiver under the previous sentence may state, in writing, that he waives all the benefits and privileges provided by the workmen's compensation laws if the commissioner finds that the waiver is not a prerequisite condition to employment and if the parent, spouse or child is employed by the same corporation which employs the person who has made the first waiver.

(5) The parent, spouse or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse or child of a partner who is employed by the partnership of that partner may state, in writing, that he waives all the benefits and privileges provided by the workmen's compensation laws if the commission finds that the waiver is not a prerequisite condition to employment.

Sec. 4. 39 MRSA § 21, sub-§ 2, is enacted to read:

2. Governmental bodies. The State, every county, every city and town shall be subject to this Act and shall secure the payment of compensation in conformity with sections 21 to 27.

Sec. 5. 39 MRSA § 57, first ¶, as last amended by PL 1973, c. 788, § 226, is further amended to read:

If an employee, who has previously incurred a permanent ~~incapacity~~ impairment by injury, disease or congenital causes, sustains an industrial injury which in combination with the earlier preexisting permanent impairment shall result in total permanent impairment, the employer shall be liable only for the compensation payable for such second injury. In addition to such compensation and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total ~~incapacity~~ impairment, out of a special fund known as the "Second Injury Fund," and created for such purpose in the following manner:

Sec. 6. 39 MRSA § 57-A, is enacted to read:

#### § 57-A. Legal representation of the Second Injury Fund

1. Legal interest of State. The State is declared to have a legal interest under Title 5, section 191, in any claim, other than a claim excepted by subsection 2, of liability towards or liability against the Second Injury Fund. The Attorney General shall therefore provide, on behalf of the Second Injury Fund, legal prosecution or defense of any such claim.

2. Exception. The Attorney General shall not defend the Second Injury Fund against any claim brought by the State. The Industrial Accident Commission is authorized to hire, using funds from the Second Injury Fund, private counsel to defend any claim brought against the Second Injury Fund by the State.

Effective July 29, 1976

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## CHAPTER 750

AN ACT to Establish the Dates of Legislative Sessions and to Clarify Laws Relating to Expenses of Legislators.