

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Twin City Printery  
Lewiston, Maine  
1987

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION  
of the  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

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**AN ACT Relating to Major Policy-influencing Positions in State Government.**

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

**Sec. 1.** 5 MRSA §931, sub-§2, ¶¶A and B, as enacted by PL 1985, c. 785, Pt. A, §45, are repealed.

**Sec. 2. Application.** The protection provided to applicable state employees under the Maine Revised Statutes, Title 5, section 931, subsection 2, paragraphs A and B, shall remain with only those employees whose positions become major policy-influencing positions between July 1, 1986, and the effective date of this Act. For those state employees in the Department of Environmental Protection whose positions became major policy-influencing positions pursuant to Public Law 1985, chapter 746, the provisions of Public Law 1985, chapter 746, section 36 apply.

Effective September 29, 1987.

**CHAPTER 77**

H.P. 304 — L.D. 390

**AN ACT to Clarify Enforcement of Insurance Coverage Requirements of the Workers' Compensation Law.**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, application of the Workers' Compensation Act has been mandatory for most employers since 1974; and

Whereas, records of insurance coverage of employers maintained by the commission suggest that a significant number of mandatory participant employers are not party to a currently effective workers' compensation insurance policy or have allowed gaps in coverage to occur in the past; and

Whereas, many industrially-injured employees whose employers fail to maintain a policy are left without any recourse for their work-related injuries; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 26 MRSA §1047, as amended by PL 1979, c.

651, §§8, 47, is further amended to read:

§1047. Information privileged

All information transmitted to the bureau, the commission or its duly authorized representatives pursuant to this chapter shall be absolutely privileged and shall not be made the subject matter or basis in any action of slander or libel in any court in this State. The privileged nature of any such information shall not limit or affect the use of that information in any prosecution or action to enforce Title 39, section 104-A.

**Sec. 2.** 26 MRSA §1082, sub-§13-A is enacted to read:

13-A. Certificate of records of payroll reports as evidence. Notwithstanding any other provision of law or rule of evidence, for purposes of any prosecution or action to enforce Title 39, section 104-A, a certificate signed by the Director of Unemployment Compensation or a representative of the commissioner duly authorized by the commissioner stating what the payroll report records show shall be received in any court in this State as prima facie evidence of any fact stated in the certificate or the records attached to the certificate.

**Sec. 3.** 39 MRSA §21-A, sub-§3 is enacted to read:

3. Failure to conform. The failure of any private employer not exempt under subsection 1 or of any governmental body, as defined in subsection 2, to procure insurance coverage for the payment of compensation pursuant to sections 22 to 27 shall constitute failure to secure payment of compensation provided for by this Act within the meaning of section 104-A, subsection 2, and shall subject the employer to the penalties prescribed by that section. For purposes of this subsection, the term "insurance coverage" includes authorization by the Superintendent of Insurance to self-insure.

**Sec. 4.** 39 MRSA §23, first ¶, as amended by PL 1973, c. 746, §6, is further amended to read:

Every employer subject to this Act shall secure such compensation and other benefits to his employees in one or more of the following ways: ways described in this section. The failure of any employer subject to this Act to procure insurance coverage for the payment of compensation and other benefits to his employees in some one of the ways described in this section shall constitute failure to secure payment of compensation provided for by this Act within the meaning of section 104-A, subsection 2, and shall subject the employer to the penalties prescribed by that section.

**Sec. 5.** 39 MRSA §104-A, sub-§2, as amended by PL 1983, c. 479, §28, is repealed and the following enacted in its place:

2. Failure. Except as otherwise provided by section 51-B, subsection 9, in the event of failure by the employer

or insurance carrier to pay compensation as provided in this section a forfeiture not to exceed \$25 for each day of noncompliance shall be assessed against the employer or the insurance carrier.

If any employer, who is required to secure the payment to his employees of the compensation provided for by this Act, fails to do so, he shall be subject to any and all of 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 his employees in compliance with sections 21-A and 23 constitutes a failure to secure payment of compensation within the meaning of this subsection.

A. The employer is guilty of a Class D crime.

B. The employer shall be liable to pay a civil penalty of up to \$10,000, payable to the Second Injury Fund.

C. The employer, if organized as a corporation, shall be subject to revocation or suspension of its authority to do business in this State as provided in Title 13-A, section 1302. The employer, if licensed, certified, registered or regulated by any board authorized by Title 5, section 12004, subsection 1, or whose license may be revoked or suspended by proceedings in the Administrative Court or by the Secretary of State, shall be subject to revocation or suspension of its or his license, certification or registration.

Prosecution under paragraph A does not preclude action under paragraph B or C.

If that employer is a corporation, any agent of the corporation having primary responsibility for obtaining insurance coverage is liable for punishment under this section. Determination of criminal liability shall be in conformity with Title 17-A, sections 60 and 61.

Sec. 6. 39 MRSA §104-A, sub-§3 is enacted to read:

3. Certificate. Notwithstanding any other provision of law or rule of evidence, the certificate of the Director of Administrative Services, under seal of the commission, shall be received in any court in this State as prima facie evidence of facts pertaining to insurance coverage records contained in the certificate or within the documents attached to the certificate.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 27, 1987.

## CHAPTER 78

H.P. 359 — L.D. 462

## AN ACT to Amend Provisions of the Maine Insurance Code Dealing with Capital and Surplus Requirements of Insurers.

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

Sec. 1. 24-A MRSA §410, sub-§1, ¶C, as enacted by PL 1983, c. 709, §1, is amended to read:

C. Until January 1, 1989, a domestic mutual insurer formed prior to January 1, 1968, and while possessing surplus of not less than \$200,000 may be authorized to transact, in addition to the types of insurance it was transacting prior to July 24, 1984, any other additional kinds of insurance authorized by its charter; subject to those minimum required basic surplus amounts applicable as to foreign mutual insurers as contained in the table in paragraph B, if the insurer is to transact life insurance together with any one or more of property, casualty, surety or marine and transportation insurances.

Sec. 2. 24-A MRSA §410, sub-§1, ¶D, as enacted by PL 1983, c. 709, §1, is amended to read:

D. Domestic mutual insurers holding a certificate of authority upon January 1, 1989, if otherwise qualified ~~therefor~~, and possessed of basic surplus in minimum required amounts as contained in the table in this paragraph may continue to be so authorized, provided those insurers continue to possess and maintain unimpaired basic surplus funds as determined ~~herein~~ in this paragraph and applicable to those lines or kinds of insurance permitted by its certificate of authority immediately prior to January 1, 1989. Upon application by any such insurer and written approval by the superintendent, the insurer's certificate of authority may be extended to permit the writing of other kinds or lines of insurance if the insurer is qualified ~~therefor~~ and possessed of basic surplus funds in amounts contained in the table in this paragraph. A domestic mutual insurer holding a certificate of authority prior to January 1, 1989, but which does not possess and maintain basic surplus in the minimum required amounts contained in the table in this paragraph, may continue to be authorized to transact insurance in this State and to write other kinds or lines of insurance, subject to the approval of the superintendent, as long as it maintains 100% reinsurance and has no liabilities.

For the purposes of this paragraph, any assuming reinsurer must be a corporation which possesses the ability to exercise control of the ceding insurer, must be an insurance company possessed of a certificate of authority to transact the same kinds of insurance in this State as those assumed and shall file a consolidated annual statement as required by section 423.

A health, life and health or multiple line (as described in section 710) insurer may qualify for a certificate of authority to transact a legal services insurance busi-