

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

S.P. 608 - L.D. 1553

An Act To Improve the Workers' Compensation System**Be it enacted by the People of the State of Maine as follows:**

Sec. 1. 39-A MRSA §154, sub-§6, ¶A, as amended by PL 2009, c. 109, §1 and affected by §2, is further amended to read:

A. The assessments levied under this section may not be designed to produce more than \$10,000,000 beginning in the 2008-09 fiscal year, more than \$10,400,000 beginning in the 2009-10 fiscal year, more than \$10,800,000 beginning in the 2010-11 fiscal year ~~or~~, more than \$11,200,000 beginning in the 2011-12 fiscal year or more than \$13,000,000 beginning in the 2017-18 fiscal year. Assessments collected that exceed the applicable limit by a margin of more than 10% must be used to reduce the assessment that is paid by insured employers pursuant to subsection 3. Any amount collected above the board's allocated budget and within the 10% margin must be used to create a reserve of up to 1/4 of the board's annual budget.

Sec. 2. 39-A MRSA §322, sub-§1, as amended by PL 2015, c. 297, §17, is further amended to read:

1. Appeals. Any party in interest may present a copy of the decision of the division or of the board, if the board has reviewed a decision pursuant to section 320, to the clerk of the Law Court within 20 days after receipt of notice of the filing of the decision by the division or the board. Within 20 days after the copy is filed with the Law Court, the party seeking review by the Law Court shall file a petition seeking appellate review with the Law Court that sets forth a brief statement of the facts, the error or errors of law that are alleged to exist and the legal authority supporting the position of the appellant. For purposes of an appeal from a decision issued pursuant to section 321-B, subsection 3, only a decision of the division may be reviewed on appeal.

Sec. 3. 39-A MRSA §324, sub-§3, as amended by PL 2011, c. 113, Pt. B, §20, is further amended to read:

3. Failure to secure payment. If any employer who is required to secure the payment to that employer's employees of the compensation provided for by this Act fails

to do so, the employer is subject to 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 the employer's employees in compliance with sections 401 and 403 constitutes a failure to secure payment of compensation within the meaning of this subsection.

A. The employer is guilty of a Class D crime. This paragraph applies only to cases in which the employer has committed a knowing violation.

B. The employer is liable to pay a civil penalty of up to \$10,000 or up to an amount equal to 108% of the premium, calculated using Maine Employers' Mutual Insurance Company's standard discounted standard premium, that should have been paid during the period the employer failed to secure coverage, whichever is larger, payable to the Employment Rehabilitation Fund. In determining the amount of the penalty to be assessed under this paragraph, the board shall take into consideration the employer's effort to comply with sections 401 and 403.

C. The employer, if organized as a corporation, is subject to administrative dissolution as provided in Title 13-C, section 1421 or revocation of its authority to do business in this State as provided in Title 13-C, section 1532. The employer, if organized as a limited liability company, is subject to administrative dissolution as provided in Title 31, section 1592. The employer, if licensed, certified, registered or regulated by any board authorized by Title 5, section 12004-A or whose license may be revoked or suspended by proceedings in the District Court or by the Secretary of State, is subject to revocation or suspension of the license, certification or registration. This paragraph applies only to cases in which the employer has committed a knowing violation, has failed to pay a penalty assessed pursuant to this subsection or continues to operate without required coverage after a penalty has been assessed pursuant to this subsection.

For purposes of this subsection, a violation is considered a knowing violation if the employer has previously obtained workers' compensation insurance and that insurance has been cancelled or that insurance has not been continued or renewed, unless the cancellation, failure to continue or nonrenewal is due to a substantial change in the employer's operations that is unrelated to the classification of individuals as employees or independent contractors; the employer has been notified in writing by the board of the need for workers' compensation insurance; the employer has had one or more previous violations of the requirement to secure the payment of the compensation provided for by this Act; or the employer misclassifies an employee as an independent contractor despite a contrary determination by the board.

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

If the employer is a corporation, partnership, limited liability company, professional corporation or any other legal business entity recognized under the laws of the State, any agent of the corporation or legal business entity having primary responsibility for obtaining insurance coverage is liable for punishment under this section. Criminal liability must be determined in conformity with Title 17-A, sections 60 and 61.

Sec. 4. 39-A MRSA §401, sub-§1, as amended by PL 2013, c. 87, §1, is further amended to read:

1. Private employers. Every private employer, including an independent contractor who hires and pays employees, is subject to this Act and shall secure the payment of compensation ~~in conformity with this section and sections 402 to 407~~ with respect to all employees, ~~subject to the provisions of this section~~ by purchasing a workers' compensation policy or self-insuring as set forth in section 403. Unless employed by a private employer, a person engaged in harvesting forest products is subject to this Act and shall secure the payment of compensation ~~in conformity with this section and sections 402 to 407~~ by purchasing a workers' compensation policy or self-insuring as set forth in section 403 with respect to that person individually if that person is an employee as defined in section 102, subsection 11, paragraph B-1.

A private employer who has not secured the payment of compensation ~~under this section and sections 402 to 407~~ by purchasing a workers' compensation policy or self-insuring as set forth in section 403 is not entitled, in a civil action brought by an employee or the employee's representative for personal injuries or death arising out of and in the course of employment, to the defense set forth in section 103. The employee of any such employer may, instead of bringing a civil action, claim compensation from the employer under this Act.

The following employers are not liable under this section for securing the payment of compensation ~~in conformity with this section and sections 402 to 407~~ by purchasing a workers' compensation policy or self-insuring as set forth in section 403 with respect to the employees listed, nor deprived of the defenses listed in section 103:

- A. Employers of employees engaged in domestic service;
- B. Employers of employees engaged in agriculture or aquaculture as seasonal or casual laborers, if the employer maintains coverage by an employer's liability insurance policy with total limits of not less than \$25,000 and medical payment coverage of not less than \$5,000.
 - (1) As used in this subsection, "casual" means occasional or incidental. "Seasonal" refers to laborers engaged in agricultural or aquacultural employment beginning at or after the commencement of the planting or seeding season and ending at or before the completion of the harvest season; and
- C. Employers of agricultural or aquacultural laborers, if the employer maintains an employer's liability insurance policy with total limits of not less than \$100,000 multiplied by the number of full-time equivalent agricultural or aquacultural laborers employed by that employer and medical payment coverage of not less than \$5,000, and either:
 - (1) The employer has 6 or fewer concurrently employed agricultural or aquacultural laborers; or
 - (2) The employer has more than 6 agricultural or aquacultural laborers but the total number of hours worked by all such laborers in a week does not exceed 240 and has not exceeded 240 at any time during the 52 weeks immediately preceding an injury.

For purposes of this paragraph, seasonal and casual workers, immediate family members of unincorporated employers and immediate family members of bona fide

owners of at least 20% of the voting stock of an incorporated employer are not considered agricultural or aquacultural laborers. "Immediate family members" means parents, spouses, brothers, sisters and children and the spouses of parents, brothers, sisters and children.

The burden of proof to establish an exempt status under this subsection is on the employer claiming the exemption.

Sec. 5. 39-A MRSA §401, sub-§2, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

2. Governmental bodies. The State and every county, city and town is subject to this Act and shall secure the payment of compensation ~~in conformity with sections 402 to 407 by purchasing a workers' compensation policy or self-insuring as set forth in section 403.~~

Sec. 6. 39-A MRSA §401, sub-§3, as amended by PL 1999, c. 364, §5, is further amended to read:

3. Failure to conform. The failure of any private employer or of any person engaged in harvesting forest products not exempt under subsection 1 or of any governmental body, as defined in subsection 2, to ~~procure insurance coverage for~~ secure the payment of compensation ~~pursuant to sections 402 to 407 with respect to all employees by purchasing a workers' compensation policy or self-insuring as set forth in section 403~~ constitutes failure to secure payment of compensation provided for by this Act within the meaning of section 324, subsection 3, and subjects the employer or a person engaged in harvesting forest products 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. An employer that purchases a workers' compensation policy or self-insures as set forth in section 403 and misclassifies one or more employees as independent contractors has not complied with the coverage provisions of this Act and is subject to all applicable penalties for failure to secure payment of compensation with respect to all misclassified employees.~~

Sec. 7. 39-A MRSA §407, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

§407. Preservation of existing employer status

An employer with a currently approved workers' compensation policy or a currently accepted self-insurance workers' compensation policy ~~under sections 401 to 407 is deemed to be in compliance with this Act until the expiration or cancellation date of the current assent based on the policy or plan that has misclassified one or more employees has failed to secure payment of compensation within the meaning of section 324, subsection 3 and is subject to the penalties prescribed by that section.~~

Sec. 8. Report. By January 15, 2017, the Workers' Compensation Board shall study the independent contractor predetermination provisions of the Maine Revised Statutes, Title 39-A and report to the joint standing committee of the Legislature having jurisdiction over labor matters any recommended legislation related to those provisions.

The committee may report out a bill relating to the report to the First Regular Session of the 128th Legislature.