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Legislative Document

No. 1833

S.P. 736

In Senate, March 19, 2014

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

Reported by Senator PATRICK of Oxford for the Joint Standing Committee on Labor, Commerce, Research and Economic Development pursuant to Resolve 2013, chapter 40, section 2.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

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 or entity to perform work, but excludes 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6 This subsection is repealed July 1, 2017.

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10 This subsection is repealed July 1, 2017.

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 compensation required by this Act,
15 the prime contractor is liable for compensation under this Act to the employees of the
16 subcontractor unless there is an intermediate subcontractor who has secured the payment
17 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 the injured
29 employee or the dependents of the 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. Repeal.** This section is repealed July 1, 2017.

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

9 **4-A. Payment of bills for medical or health care services prior to July 1, 2017.**
10 Notwithstanding subsection 4, prior to July 1, 2017, when there is not an ongoing dispute,
11 if bills for medical or health care services are not paid within 30 days after the carrier has
12 received notice of nonpayment, \$50 or the amount of the bill due, whichever is less, must
13 be added and paid to the provider of the medical or health care services or, if the bill was
14 paid by the employee, to the Employment Rehabilitation Fund for each day over 30 days
15 in which the bills for medical or health care services are not paid. Not more than \$1,500
16 in total may be added pursuant to this subsection. For purposes of this subsection,
17 "carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter
18 57, subchapter 3.

19 This subsection is repealed July 1, 2017.

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

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

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

32 (1-A) Notwithstanding subparagraph (1), prior to July 1, 2017, the fine for each
33 day of noncompliance must be paid to the Employment Rehabilitation Fund.

34 This subparagraph is repealed July 1, 2017.

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

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

1 (4) Notwithstanding subparagraph (3), prior to July 1, 2017, fines assessed under
2 this subsection may be enforced by the Superior Court in the same manner as
3 provided in section 361, subsection 2.

4 This subparagraph is repealed July 1, 2017.

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

6 **10-A. Employees working for uninsured employers.** The provisions of this
7 subsection apply when an employee is working for an uninsured employer. For the
8 purposes of this subsection, "uninsured employer" means an employer who has failed to
9 secure the payment of compensation in conformity with this Act.

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

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

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

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

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

28 This subsection is repealed July 1, 2017.

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

30 **2-A. Penalty prior to July 1, 2017.** Notwithstanding subsection 2, prior to July 1,
31 2017, in addition to any other penalty assessment permitted under this Act, the board may
32 assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an employer,
33 insurer or 3rd-party administrator for an employer has engaged in a pattern of
34 questionable claims-handling techniques or repeated unreasonably contested claims. The
35 board shall certify its findings to the Superintendent of Insurance, who shall take
36 appropriate action so as to bring any such practices to a halt. This certification by the
37 board is exempt from the provisions of the Maine Administrative Procedure Act. The
38 amount of any penalty assessed pursuant to this subsection must be directly related to the
39 severity of the pattern of questionable claims-handling techniques or repeated
40 unreasonably contested claims. All penalties collected pursuant to this subsection must be
41 deposited in the Employment Rehabilitation Fund. An insurance carrier's payment of any

1 penalty assessed under this section may not be considered an element of loss for the
2 purpose of establishing rates for workers' compensation insurance.

3 This subsection is repealed July 1, 2017.

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

5 D. Notwithstanding paragraph C, prior to July 1, 2017, all penalties assessed under
6 this section are payable to the Employment Rehabilitation Fund.

7 This paragraph is repealed July 1, 2017.

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

9 **§362. Payment to the Employment Rehabilitation Fund; enforcement; prior to July**
10 **1, 2017**

11 Notwithstanding section 361, prior to July 1, 2017, the following provisions apply to
12 penalties assessed under this Act.

13 **1. Payment.** All penalties assessed under this Act are payable to the Employment
14 Rehabilitation Fund, unless otherwise provided by law.

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

17 A. The Attorney General shall prosecute any action necessary to recover penalties
18 payable to the Employment Rehabilitation Fund or the board may retain private
19 counsel for that purpose.

20 B. If a person fails to pay a penalty assessed under this Act that is payable to the
21 Employment Rehabilitation Fund and enforcement by the Superior Court is
22 necessary:

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

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

27 **3. Application; repeal.** This section applies notwithstanding section 361 and is
28 repealed July 1, 2017.

29 **Sec. 10. Application.** That section of this Act that enacts the Maine Revised
30 Statutes, Title 39-A, section 360, subsection 4, paragraph D applies to penalties assessed
31 in connection with employees injured on or after the effective date of this Act.

32 **Sec. 11. Effective date.** Those sections of this Act that enact the Maine Revised
33 Statutes, Title 39-A, section 102, subsections 16-A and 18-A and section 105-B take
34 effect January 1, 2015.

1 **SUMMARY**

2 This bill is reported out by the Joint Standing Committee on Labor, Commerce,
3 Research and Economic Development pursuant to Resolve 2013, chapter 40, section 2.
4 As required by the resolve, the Workers' Compensation Board submitted to the committee
5 its report on the issue of improving protections for injured workers whose employers
6 have wrongfully not secured workers' compensation payments. This bill incorporates the
7 changes to law that the board has recommended in order to address the issue.

8 The committee has not taken a position on the substance of the report or this bill and
9 by reporting this bill out the committee is not suggesting, and does not intend to suggest,
10 that it agrees or disagrees with any aspect of the board's recommendations or this bill.
11 The committee is reporting the bill out for the sole purpose of turning the board's
12 recommendations into a printed bill that can be referred to the committee for an
13 appropriate public hearing and subsequent processing in the normal course. The
14 committee is taking this action to ensure clarity and transparency in the legislative review
15 of the board's recommended legislation.

16 This bill amends the Maine Workers' Compensation Act of 1992 to create protections
17 for injured workers whose employers have not secured workers' compensation insurance
18 in accordance with current law. The bill creates liability for situations when an employee
19 is injured while working for an uninsured subcontractor. In such situations, the general
20 contractor will be responsible for payment of workers' compensation benefits as if it were
21 the direct employer of the injured employee, unless there is an intermediate subcontractor
22 with workers' compensation insurance coverage, in which case, the intermediate
23 subcontractor is responsible for payment of all benefits due under the Act. These
24 provisions would be effective January 1, 2015 and would be repealed July 1, 2017.

25 The bill also amends the laws governing the Employment Rehabilitation Fund. Until
26 July 1, 2017, the fund will be used to pay workers' compensation benefits to injured
27 employees working for illegally uninsured employers when there is no other general
28 contractor or subcontractor liable for payment of benefits. Until July 1, 2017, the fund
29 will not transfer a portion of its funds to the General Fund and penalties recovered for
30 violations of the Maine Workers' Compensation Act of 1992 will be directed to this fund
31 exclusively, instead of being shared with the Workers' Compensation Board
32 Administrative Fund or the General Fund.