

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 720

6  
7 H.P. 572

House of Representatives, February 10, 1983

8 On Motion of Representative Murray of Bangor referred to the  
9 Committee on Business Legislation. Sent up for concurrence and ordered  
10 printed.

EDWIN H. PERT, Clerk

Presented by Representative Stevens of Bangor.

Cosponsor: Representative Cashman of Old Town.  
11

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Permit Real Estate Agents to  
18 be Considered Independent Contractors for  
19 Purposes of Workers' Compensation Insurance.  
20

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

23 39 MRSA §2, sub-§5, ¶D is enacted to read:

24 D. The term "employee" does not include a real  
25 estate broker or salesman whose services are per-  
26 formed for remuneration solely by way of commis-  
27 sion.

28 STATEMENT OF FACT

29 The purpose of this bill is to clarify the status  
30 of real estate agents as independent contractors  
31 under the Workers' Compensation Act.

1           The determination of whether a worker is an  
2 employee or an independent contractor under the Act  
3 is both a question of law and a question of fact.  
4 Timberlake v. Frigon & Frigon, 438 A.2d 1294, at 1296  
5 (Me., 1982). Depending upon the organization and  
6 operating policies of a particular firm, one agency's  
7 sales staff might be determined to be employees while  
8 that of another agency might be found to be independ-  
9 ent contractors. The possibility of case by case  
10 determinations may put firms in a difficult position  
11 when deciding whether to insure.

12           In at least 2 states, agents have been held not  
13 to be employees, under workers' compensation laws,  
14 while 2 other jurisdictions held agents to be employ-  
15 ees. This has led in some states to an exemption  
16 similar to that proposed in this bill.

17           There are strong policy reasons for taking this  
18 approach. First, the unemployment compensation law,  
19 in Title 26, section 1043, makes a similar exemption.  
20 Second, under the federal tax laws, brokers are  
21 generally treated as independent contractors. Third,  
22 the real estate agent, unlike the typical employee,  
23 is paid by and works under an employment contract  
24 with the property seller. Under principles of agency  
25 law the agent's primary duty is to further the best  
26 interests of that seller. Finally, the real estate  
27 agent typically exercises independent judgment as to  
28 the time, place and manner of performing his duties,  
29 with minimal control by the agency management.

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