

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
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5 Legislative Document

No. 1158
6

7 H.P. 893

House of Representatives, March 10, 1983

8 On Motion of Representative Beaulieu of Portland, referred to the
9 Committee on Business Legislation. Sent up for concurrence and ordered
printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Hall of Sangerville.
11

12 STATE OF MAINE
13

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

17 AN ACT to Clarify Independent Contractor
18 Status Under the Workers' Compensation Act.
19

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

22 Sec. 1. 39 MRSA §2, sub-§1, ¶A, as repealed and
23 replaced by PL 1975, c. 749, §1, is amended to read:

24 A. Private employers, including independent con-
25 tractors established by agreement under subsec-
26 tion 5, paragraph A, subparagraph 5-A;

27 Sec. 2. 39 MRSA §2, sub-§5, ¶A, as amended by PL
28 1981, c. 283, §2, is further amended to read:

29 A. "Employee" shall include officials of the
30 State, counties, cities, towns, water districts
31 and all other quasi-public corporations of a
32 similar character, every duly elected or

1 appointed executive officer of a private corpora-
2 tion, other than a charitable, religious, educa-
3 tional or other nonprofit corporation, and every
4 person in the service of another under any con-
5 tract of hire, express or implied, oral or writ-
6 ten, except:

7 (1) Persons engaged in maritime employment,
8 or in interstate or foreign commerce, who
9 are within the exclusive jurisdiction of
10 admiralty law or the laws of the United
11 States; and persons operating as sternmen as
12 defined in Title 36, section 5102, subsec-
13 tion 8-A;

14 (2) Any person whose employment is not in
15 the usual course of the business, profes-
16 sion, trade or occupation of his employer.
17 Firefighters and policemen shall be deemed
18 employees within the meaning of this Act.
19 Employers who hire workmen within this State
20 to work outside the State may agree with
21 such workmen that the remedies under this
22 Act shall be exclusive as regards injuries
23 received outside this State arising out of
24 and in the course of such employment; and
25 all contracts of hiring in this State,
26 unless otherwise ~~specified~~ specified, shall
27 be presumed to include such agreement. Any
28 reference to an employee who has been
29 injured shall, when the employee is dead,
30 include his legal representatives, depend-
31 ents and other persons to whom compensation
32 may be payable;

33 (3) Notwithstanding any other provisions of
34 this Act, any charitable, religious, educa-
35 tional or other nonprofit corporation that
36 may be or become an assenting employer under
37 this Act, may cause any duly elected or
38 appointed executive officer to be an
39 employee of such corporation by specifically
40 including such executive officer among those
41 to whom such corporation secures payment of
42 compensation in conformity with subchapter
43 II; and such executive officer shall remain
44 an employee of such corporation under this

1 Act while such payment is so secured. With
2 respect to any such corporation that secures
3 compensation by making a contract of work-
4 ers' compensation insurance, specific inclu-
5 sion of such executive officer in such con-
6 tract shall cause such officer to be an
7 employee of such corporation under this Act;

8 (4) Any person who states in writing to the
9 commission that he waives all the benefits
10 and privileges provided by the workers' com-
11 pensation laws, provided that the commission
12 shall have found such person to be a bona
13 fide owner of at least 20% of the outstand-
14 ing voting stock of the corporation by which
15 he is employed and that this waiver was not
16 a prerequisite condition to employment.

17 Any person may revoke or rescind his waiver
18 upon 30 days' written notice to the commis-
19 sion and his employer. The parent, spouse or
20 child of a person who has made a waiver
21 under the previous sentence may state, in
22 writing, that he waives all the benefits and
23 privileges provided by the workers' compen-
24 sation laws if the commissioner finds that
25 the waiver is not a prerequisite condition
26 to employment and if the parent, spouse or
27 child is employed by the same corporation
28 which employs the person who has made the
29 first waiver;

30 (5) The parent, spouse or child of a sole
31 proprietor who is employed by that sole pro-
32 prietor or the parent, spouse or child of a
33 partner who is employed by the partnership
34 of that partner may state, in writing, that
35 he waives all the benefits and privileges
36 provided by the workers' compensation laws
37 if the commission finds that the waiver is
38 not a prerequisite condition to employment;

39 (5-A) Any partnership or person otherwise
40 an employee under this Act desiring to
41 assume the status of independent contractor
42 may in writing agree with any other person,
43 partnership or corporation for whom work is

1 woods operator from whom he was trucking wood. This
2 judgment brought great uncertainty to many business
3 relationships. This bill is designed to provide a
4 mechanism whereby a person can establish with cer-
5 tainty his independent contractor status so that
6 those with whom he deals will not be liable to pay
7 compensation under the Workers' Compensation Act.

8 The mode of establishing the status of independ-
9 ent contractor under this bill does not alter the
10 common law rules for determining whether a person is
11 an independent contractor where no written agreement
12 is in force.

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