

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1255

6
7 S.P. 452

In Senate, April 4, 1985

8 Referred to the Committee on Labor. Sent down for concurrence and
9 ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Webster of Franklin.

Cosponsored by Representative Dexter of Kingfield.

11
12 STATE OF MAINE
13

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

17 AN ACT Allowing an Exemption from the
18 Requirements of the Workers'
19 Compensation Act for Certain Employers
20 Employing less than 3 Persons.
21

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

24 Sec. 1. 39 MRSA §2, sub-§1-A, as amended by PL
25 1981, c. 283, §1, is further amended to read:

26 1-A. Private employer. The term "private employ-
27 er" includes corporations, partnerships and natural
28 persons. Any agricultural employer otherwise in-
29 cluded under this Act is not included when harvesting
30 150 cords of wood or less each year from farm wood
31 lots, provided that, in order to qualify for this ex-
32 emption, the employer must be covered by an employ-
33 er's liability insurance policy with total limits of
34 not less than \$25,000 and medical payment coverage of
35 not less than \$1,000. After January 1, 1983, a pri-
36 vate employer is not included if:

1 A. He does not employ more than 2 persons regu-
2 larly in the usual course of business and those
3 employees are employed in nonhazardous positions,
4 as specified by the commission by rule;

5 B. He provides at least \$200,000 worth of lia-
6 bility insurance for each employee in lieu of the
7 coverage available under this Act; and

8 C. Each new employee states in writing that he
9 waives all benefits and privileges provided by
10 this Act in exchange for the coverage required in
11 paragraph B, and that he was informed of his
12 right to be covered under this Act. This waiver
13 cannot be exercised by employees currently in-
14 jured under this Act, as long as they work for
15 their current employer.

16 Sec. 2. 39 MRSA §2 sub-§5, ¶A, as amended by PL
17 1983, c. 402, and c. 554, is repealed and the follow-
18 ing enacted in its place:

19 A. "Employee" shall include officials of the
20 State, counties, cities, towns, water districts
21 and all other quasi-public corporations of a sim-
22 ilar character, every duly elected or appointed
23 executive officer of a private corporation, other
24 than a charitable, religious, educational or oth-
25 er nonprofit corporation, and every person in the
26 service of another under any contract of hire,
27 express or implied, oral or written, except:

28 (1) Persons engaged in maritime employment,
29 or in interstate or foreign commerce, who
30 are within the exclusive jurisdiction of ad-
31 miralty law or the laws of the United
32 States; and persons operating as sternmen as
33 defined in Title 36, section 5102, subsec-
34 tion 8-A;

35 (2) An independent contractor. Firefight-
36 ers, including volunteer firefighters who
37 are active members of a volunteer firefight-
38 ers' association, as defined in Title 30,
39 section 3771; volunteer emergency medical
40 services' persons, as defined in Title 32,
41 section 83, subsection 12; and policemen

1 shall be deemed employees within the meaning
2 of this Act. In computing the average week-
3 ly wage of an injured volunteer firefighter
4 or volunteer emergency services' person, the
5 average weekly wage shall be taken to be the
6 earning capacity of the injured employee in
7 the occupation in which he is regularly en-
8 gaged. Employers who hire workmen within
9 this State to work outside the State may
10 agree with such workmen that the remedies
11 under this Act shall be exclusive as regards
12 injuries received outside this State arising
13 out of and in the course of such employment;
14 and all contracts of hiring in this State,
15 unless otherwise specified, shall be pre-
16 sumed to include such agreement. Any refer-
17 ence to an employee who has been injured
18 shall, when the employee is dead, include
19 his legal representatives, dependents and
20 other persons to whom compensation may be
21 payable;

22 (3) Notwithstanding any other provisions of
23 this Act, any charitable, religious, educa-
24 tional or other nonprofit corporation that
25 may be or become an assenting employer under
26 this Act, may cause any duly elected or ap-
27 pointed executive officer to be an employee
28 of such corporation by specifically includ-
29 ing such executive officer among those to
30 whom such corporation secures payment of
31 compensation in conformity with subchapter
32 II; and such executive officer shall remain
33 an employee of such corporation under this
34 Act while such payment is so secured. With
35 respect to any such corporation that secures
36 compensation by making a contract of work-
37 ers' compensation insurance, specific inclu-
38 sion of such executive officer in such con-
39 tract shall cause such officer to be an em-
40 ployee of such corporation under this Act;

41 (4) Any person who states in writing to the
42 commission that he waives all the benefits
43 and privileges provided by the workers' com-
44 pensation laws, provided that the commission
45 shall have found such person to be a bona

1 fide owner of at least 20% of the outstand-
2 ing voting stock of the corporation by which
3 he is employed and that this waiver was not
4 a prerequisite condition to employment.

5 Any person may revoke or rescind his waiver
6 upon 30 days' written notice to the commis-
7 sion and his employer. The parent, spouse or
8 child of a person who has made a waiver un-
9 der the previous sentence may state, in
10 writing, that he waives all the benefits and
11 privileges provided by the workers' compen-
12 sation laws if the commissioner finds that
13 the waiver is not a prerequisite condition
14 to employment and if the parent, spouse or
15 child is employed by the same corporation
16 which employs the person who has made the
17 first waiver;

18 (5) The parent, spouse or child of a sole
19 proprietor who is employed by that sole pro-
20 prietor or the parent, spouse or child of a
21 partner who is employed by the partnership
22 of that partner may state, in writing, that
23 he waives all the benefits and privileges
24 provided by the workers' compensation laws
25 if the commission finds that the waiver is
26 not a prerequisite condition to employment;

27 (6) Employees of an agricultural employer
28 when harvesting 150 cords of wood or less
29 each year from farm wood lots, provided that
30 the employer is covered under an employer's
31 liability insurance policy as required in
32 subsection 1-A; and

33 (7) Any employee of a business which does
34 not employ more than 2 persons regularly in
35 the usual course of the business, and who
36 has waived in writing all benefits and priv-
37 ileges of the Workers' Compensation Act and
38 who are employed in nonhazardous positions,
39 as specified by the commission by rule.

40 Sec. 3. 39 MRSa §24, as amended by PL 1977, c.
41 696, §403, is further amended by adding at the end a
42 new paragraph to read:

1 For the purpose of becoming subject to this Work-
2 ers' Compensation Act under this section, the term
3 "private employer" includes any corporation, partner-
4 ship or natural person who does not employ more than
5 2 persons regularly in the usual course of the busi-
6 ness and who are employed in nonhazardous positions,
7 as specified by the commission by rule.

8 STATEMENT OF FACT

9 The purpose of this bill is to permit small em-
10 ployers who employ 2 or fewer employees who are em-
11 ployed in nonhazardous positions the option of not
12 being covered by the Workers' Compensation Act.

13 0404030685