

MAINE STATE LEGISLATURE

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L.D. 657

(Filing No. H- 502)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to S.P. 238, L.D. 657, Bill,
"AN ACT Amending the Workers' Compensation Laws
Exempting Design Professionals from General Civil
Liability for Injuries on Construction Projects."

Amend the bill in section 3 by striking out all of
subsection 4-A (page 2, lines 3 to 12 in L.D.) and
inserting in its place the following:

'4-A. Design professional. "Design professional"
means:

A. An architect, professional engineer, landscape
architect, land surveyor, geologist or soil
scientist licensed to practice that profession in
the State in accordance with Title 32; or

B. Any corporation or partnership, professional
or general, which employs one or more of any of
the professionals described in paragraph A and
whose sole purpose is the rendering of
professional services practiced by any
professional described in paragraph A.'

Further amend the bill by striking out all of
section 4 and inserting in its place the following:

'Sec. 4. 39 MRSA §4, sub-§1, is enacted to read:

1 1. Liability. No design professional may be
2 liable for personal injury or death if:

3 A. The design professional provides design
4 professional services during the construction,
5 erection or installation of any project;

6 B. The personal injury or death occurs at or
7 adjacent to the construction, erection or
8 installation of any project;

9 C. The personal injury or death is proximately
10 caused by the design professional's negligent
11 failure to undertake responsibility for
12 construction site safety or the design
13 professional's negligent failure to warn others of
14 conditions on or adjacent to the construction,
15 erection or installation of any project; and

16 D. Compensation for the injury or death is
17 secured in conformity with this Act.

18 This section applies to any employee of a design
19 professional who is assisting or representing the
20 design professional in the performance of professional
21 services on or adjacent to the site of the project's
22 construction, erection or installation.

23 2. Exception to immunity. The immunity provided
24 to any design professional by this section shall not
25 apply:

26 A. To the negligent preparation of design plans
27 and technical specifications; or

28 B. When the design professional expressly assumes
29 responsibility for job site safety under a written
30 contract.'

31 Further amend the bill by inserting at the end
32 before the statement of fact the following:

33 'Sec. 5. Application. This Act applies to
34 causes of action that accrue on or after the effective
35 date of this Act.'

1 STATEMENT OF FACT

2 This amendment:

3 1. Clarifies the definition of design
4 professional so that a corporation or partnership
5 employing a design professional will benefit from the
6 immunity provided by the bill only if the
7 corporation's or partnership's sole purpose is the
8 rendering of design professional services;

9 2. Corrects an error in the use of the word
10 "action" rather than "Act." Thus, the immunity
11 accorded design professionals by the bill will apply
12 only if the injured employee receives compensation
13 under the Workers' Compensation Act;

14 3. Clarifies that the immunity only applies to
15 the design professional's failure to undertake
16 responsibility for construction site safety or
17 failure to warn others of conditions on the job site.
18 The design professional is not usually on the job
19 site, nor does he have authority over the actions of
20 the contractor's employees. Thus the design
21 professional should not be liable for job site safety
22 unless he expressly assumes that responsibility in a
23 written contract. By narrowing the scope of the
24 immunity, this amendment also clarifies that, when a
25 design professional is on the job site and causes an
26 injury through his personal negligence, the design
27 professional would be liable. For example, if a
28 design professional removed a barrier to an elevator
29 shaft and someone fell down the shaft and was injured,
30 the design professional would be liable. The immunity

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1 would not apply in that type of case; and

2 4. Adds an application section.

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Filed by Rep. Boutilier of Lewiston
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