

# MAINE STATE LEGISLATURE

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L.D. 657

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(Filing No. H-506 )

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STATE OF MAINE

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HOUSE OF REPRESENTATIVES

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113TH LEGISLATURE

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SECOND REGULAR SESSION

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HOUSE AMENDMENT "<sup>B</sup>" 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."

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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:

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

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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

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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.'

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

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

HOUSE AMENDMENT "B" to S.P. 233, L.D. 657

1       1. Immunity. A design professional shall be  
2       immune from liability 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 failure to  
11       undertake responsibility for construction site  
12       safety or the design professional's failure to  
13       warn others of conditions on or adjacent to the  
14       construction, erection or installation of any  
15       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

HOUSE AMENDMENT "B" to S.P. 238, L.D. 657

1 would not apply in that type of case; and

2 4. Adds an application section.

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