

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)

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 657

S.P. 238

In Senate, March 9, 1987

Reference to the Committee on Labor suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator CLARK of Cumberland.

Cosponsored by Representative WEBSTER of Cape Elizabeth,
Senator COLLINS of Aroostook, Representative BOUTILIER of
Lewiston.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT Amending the Workers' Compensation Laws
2 Exempting Design Professionals from
3 General Civil Liability for Injuries
4 on Construction Projects.
5

6 Be it enacted by the People of the State of Maine as
7 follows:

8 Sec. 1. 39 MRSA §2, sub-§1, ¶¶G and H, as en-
9 acted by PL 1979, c. 663, §240, are amended to read:

10 G. Municipal school committees; and

11 H. Union school committees; and

12 Sec. 2. 39 MRSA §2, sub-§1, ¶I is enacted to
13 read:

1 I. Design professional.

2 Sec. 3. 39 MRSA §2, sub-§4-A is enacted to read:

3 4-A. Design professional. The term "design pro-
4 fessional" includes an architect, professional engi-
5 neer, landscape architect, land surveyor, geologist
6 or soil scientist licensed to practice such profes-
7 sion in the State in accordance with Title 32 or any
8 corporation or partnership, professional or general,
9 which employs design professionals and whose purpose
10 includes the rendering of professional services
11 through the practice of one or more of those profes-
12 sions.

13 Sec. 4. 39 MRSA §4, as amended by PL 1985, c.
14 737, Pt. A, §117, is further amended by adding at the
15 end a new paragraph to read:

16 No design professional who provides professional
17 services during the construction, erection or instal-
18 lation of any project or any employee of a design
19 professional who is assisting or representing the de-
20 sign professional in the performance of professional
21 services on or adjacent to the site of the project's
22 construction, erection or installation may be liable
23 for any personal injury or death, occurring at or ad-
24 acent to such a site, if compensation for the injury
25 or death is secured in conformity with this action,
26 unless responsibility for safety on or adjacent to
27 such a site is expressly assumed by the design pro-
28 fessional under a written contract. The immunity pro-
29 vided by this section to any design professional
30 shall not apply to the negligent preparation of de-
31 sign plans and technical specifications. Except as
32 provided by this section, any waiver, oral or writ-
33 ten, express or implied, of the design professional's
34 immunity granted by this section shall be void and
35 unenforceable as a matter of law.

1

STATEMENT OF FACT

2 Workers' compensation laws originally were
3 adopted in the early 1900's in response to the industrial
4 revolution and the resultant increase in industrial
5 accidents. In exchange for the employer's
6 no-fault assumption of the cost of occupational disabilities,
7 these laws prohibit employees from suing
8 their employer.

9 The existing system contemplates a single employer
10 at a work place, but sizeable construction
11 projects usually involve multiple employers on the
12 common project site, one or more general contractors,
13 a number of subcontractors, consultants, etc. Within
14 this context, the system is often inequitable to design
15 professionals. When a construction project begins,
16 the owner gives a significant right of ownership
17 to the contractor or contractors -- a limited
18 possession of the land for the purpose of constructing
19 the improvement. In addition, most construction
20 agreements make the contractor or contractors responsible
21 for effectively supervising and directing their
22 employees and subcontractors, vendors, etc., the construction
23 means, methods and techniques and jobsite
24 safety.

25 On the other hand, standard agreements explicitly
26 state that the design professional does not have responsibility
27 for supervising or managing the contractor's work, personnel,
28 etc., the construction means or jobsite safety. It is inequitable
29 for the design professional to be found responsible for workers'
30 safety or even to have to defend the allegation when
31 it is the contractor or contractors that have authority
32 and control over the site and personnel doing the work,
33 unless the design professional has expressly assumed
34 responsibility for jobsite safety under a written contract.
35
36

37 The bill seeks to reform the inequities of the
38 present law by confirming that suits brought against
39 design professionals are barred when the injured
40 employee's employer is an insured person under the
41 Act and the design professional has not assumed the
42 contractual obligation for safety.

1 The bill does not strike new ground in the con-
2 struction industry. Standard contracts currently pro-
3 vide that construction contractors are responsible
4 for the safety of on-site construction methods and
5 means. For example, all federal contracts require
6 contractors to initiate, maintain and supervise safe-
7 ty precautions at construction sites. This standard
8 industry practice is adopted through government-wide
9 regulation at 48 Code of Federal Regulations, Section
10 52.236-7 and Section 52.236-13. Standard industry
11 forms published by the Association of General Con-
12 tractors, the American Institute of Architects, AIA
13 Document 201-1976, Section 10.1 and the Engineering
14 Joint Contract Documents Committee, EJCDC 1910-8,
15 1983, Section 6.20, are in widespread use throughout
16 the country. All follow this contractual approach. In
17 practice, only the contractor and his subcontractors
18 have the means, presence and physical capability to
19 initiate, maintain, control and supervise safety and
20 safety precautions at construction sites.

21 The bill would not alter existing laws regarding
22 design malpractice, that is, when the design profes-
23 sional has negligently prepared the plans and techni-
24 cal specifications being used, nor would the proposal
25 alter existing laws if the injured employee's employ-
26 er is not an "insured person" under the Act. The pro-
27 posed bill permits design professionals to contractu-
28 ally assume responsibility for jobsite safety if they
29 choose. In addition, the bill places an appropriate
30 burden on firms to check whether or not contractors
31 have workers' compensation insurance. These princi-
32 ples are all consistent with the purpose of Maine's
33 Workers' Compensation Act.

34 Similar laws have been enacted in Connecticut,
35 Oklahoma, Kansas and Florida and are under considera-
36 tion in additional states.

37

0987022187