

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1329

H.P. 982 House of Representatives, April 22, 1987
Reference to the Committee on Labor suggested and ordered
printed:

EDWIN H. PERT, Clerk
Presented by Representative MANNING of Portland.
Cosponsored by Representatives SIMPSON of Casco, CURRAN
of Westbrook, and RYDELL of Brunswick.

STATE OF MAINE

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

AN ACT Relating to Subcontractors Under the
Workers' Compensation Act.

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

39 MRSA §2, sub-§5, ¶A, as amended by PL 1985, c.
819, Pt. A, §44, is further amended to read:

A. "Employee" includes officials of the State,
counties, cities, towns, water districts and all
other quasi-public corporations of a similar
character, every duly elected or appointed execu-
tive officer of a private corporation, other than
a charitable, religious, educational or other
nonprofit corporation, and every person in the
service of another under any contract of hire,
express or implied, oral or written, except:

SEVERAL SALES TAXES

1 (1) Persons engaged in maritime employment
2 or in interstate or foreign commerce, who
3 are within the exclusive jurisdiction of admiralty law or the laws of the United
4 States; and persons operating as sternmen as
5 defined in Title 36, section 5102, subsection
6 8-A;
7

8 (2) Firefighters, including volunteer fire-
9 fighters who are active members of a volun-
10 teer fire fighters' association, as defined
11 in Title 30, section 3771; volunteer emer-
12 gency medical services' persons, as defined
13 in Title 32, section 83, subsection 12; and
14 policemen shall be deemed employees within
15 the meaning of this Act. In computing the
16 average weekly wage of an injured volunteer
17 firefighter or volunteer emergency services'
18 person, the average weekly wage shall be
19 taken to be the earning capacity of the in-
20 jured employee in the occupation in which he
21 is regularly engaged. Employers who hire
22 workmen within this State to work outside
23 the State may agree with such workmen that
24 the remedies under this Act shall be exclu-
25 sive as regards injuries received outside
26 this State arising out of and in the course
27 of that employment; and all contracts of
28 hiring in this State, unless otherwise spec-
29 ified, shall be presumed to include such an
30 agreement. Any reference to an employee who
31 has been injured shall, when the employee is
32 dead, include his legal representatives, de-
33 pendents and other persons to whom compensa-
34 tion may be payable;

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

1 employee of the corporation under this Act
2 while such payment is so secured. With re-
3 spect to any corporation that secures com-
4 pensation by making a contract of workers'
5 compensation insurance, specific inclusion
6 of the executive officer in the contract
7 shall cause the officer to be an employee of
8 the corporation under this Act;

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

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

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

40 (6) Employees of an agricultural employer
41 when harvesting 150 cords of wood or less
42 each year from farm wood lots, provided that
43 the employer is covered under an employer's

1 liability insurance policy as required in
2 subsection 1-A; or

3 (7) An independent contractor; or

4 (8) If a prime contractor employs a subcon-
5 tractor or independent contractor, any em-
6 ployee of the subcontractor or independent
7 contractor is not considered an employee of
8 the prime contractor for purposes of this
9 Act. The prime contractor, when he employs
10 a subcontractor or independent contractor,
11 shall not be responsible for providing work-
12 ers' compensation insurance covering the
13 payment of compensation and benefits to the
14 employees of the subcontractor or indepen-
15 dent contractor. No insurance company may
16 charge a premium to any prime contractor for
17 any employee excluded by this subparagraph.

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STATEMENT OF FACT

2 Current law apparently does not allow the employ-
3 ees of a subcontractor or independent contractor to
4 collect workers' compensation benefits from a prime
5 contractor since no contract of hire exists between
6 the 2 parties. This is true even if the subcontractor
7 or independent contractor fails to provide work-
8 ers' compensation insurance covering his employees.
9 Insurers in the State are, however, currently charg-
10 ing the prime contractor for coverage of the employ-
11 ees of the subcontractor or independent contractor in
12 such an instance.

13 This bill clarifies that the employees of any
14 subcontractor or independent contractor employed by
15 the prime contractor are not to be considered employ-
16 ees of the prime contractor for the purposes of the
17 Workers' Compensation Act. It further clarifies
18 that the prime contractor is exempt from any require-
19 ment to carry workers' compensation insurance for the
20 employees of any subcontractor or independent con-
21 tractor employed by him, whether or not that subcon-
22 tractor or independent contractor provides insurance
23 coverage for this employees. This bill also prevents
24 insurance companies from charging prime contractors
25 with any premium for coverage of any employees of
26 subcontractors or independent contractors since the
27 prime contractor cannot be held liable in any event.

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