

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)



114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 1942

S.P. 738

In Senate, December 14, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Secretary of the Senate on December 14, 1989. Referred to the Committee on Labor and 1,600 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

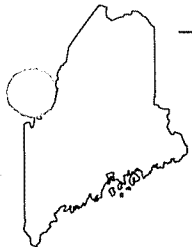
Presented by Senator THERIAULT of Aroostook.

Cosponsored by Representative ALLEN of Washington, Representative CURRAN of Westbrook and Senator WEBSTER of Franklin.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Clarify the Definition of Employer Under the Workers' Compensation Laws.



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

2
3 Sec. 1. 39 MRSA §2, sub-§1-A, as amended by PL 1981, c. 283,
4 §1, is further amended to read:

6 1-A. **Private employer.** The term "private employer" includes
7 corporations, including professional corporations, partnerships
8 and natural persons. Any agricultural employer otherwise included
9 under this Act is not included when harvesting 150 cords of wood
10 or less each year from farm wood lots, provided that, in order to
11 qualify for this exemption, the employer must be covered by an
12 employer's liability insurance policy with total limits of not
13 less than \$25,000 and medical payment coverage of not less than
14 \$1,000.

16 Sec. 2. 39 MRSA §2, sub-§5, ¶A, as amended by PL 1987, c. 737,
17 Pt. C, §§101 and 106; and as amended by PL 1989, c. 6; c. 9, §2;
18 and c. 104, Pt. C, §§8 and 10, is further amended to read:

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

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

34 (2) Firefighters, including volunteer firefighters who
35 are active members of a volunteer fire fighters'
36 association, as defined in Title 30-A, section 3151;
37 volunteer emergency medical services' persons, as
38 defined in Title 32, section 83, subsection 12; and
39 ~~police officers~~ police officers shall be deemed employees
40 within the meaning of this Act. In computing the
41 average weekly wage of an injured volunteer firefighter
42 or volunteer emergency services' person, the average
43 weekly wage shall be taken to be the earning capacity
44 of the injured employee in the occupation in which he
45 the employee is regularly engaged. Employers who hire
46 ~~workmen~~ workers within this State to work outside the
47 State may agree with such ~~workmen~~ workers that the
48 remedies under this Act shall be exclusive as regards
49 injuries received outside this State arising out of and
50 in the course of that employment; and all contracts of
51 hiring in this State, unless otherwise specified, shall
52

2 be presumed to include such an agreement. Any reference
4 to an employee who has been injured shall, when the
6 employee is dead, include his the employee's legal
8 representatives, dependents and other persons to whom
10 compensation may be payable;

12 (3) Notwithstanding any other provisions of this Act
14 any charitable, religious, educational or other
16 nonprofit corporation that may be or may become an
18 assenting employer under this Act may cause any duly
20 elected or appointed executive officer to be an
22 employee of the corporation by specifically including
the executive officer among those to whom the
corporation secures payment of compensation in
conformity with subchapter II; and the executive
officer shall remain an employee of the corporation
under this Act while such payment is so secured. With
respect to any corporation that secures compensation by
making a contract of workers' compensation insurance,
specific inclusion of the executive officer in the
contract shall cause the officer to be an employee of
the corporation under this Act;

24 (4) Any person who states in writing a written
26 statement to the commission, that-he waives all the
28 benefits and privileges provided by the workers'
30 compensation laws, provided that the commission shall
32 have has found that person to be a bona fide owner of
at least 20% of the outstanding voting stock of the
corporation by which he that person is employed or a
shareholder of the professional corporation by which
that person is employed and that this waiver was not a
prerequisite condition to employment.

34 Any person may revoke or rescind his that person's
36 waiver upon 30 days' written notice to the commission
38 and his that person's employer. The parent, spouse or
40 child of a person who has made a waiver under the
42 previous sentence may state, in writing, that he the
44 parent, spouse or child waives all the benefits and
46 privileges provided by the workers' compensation laws
if the commissioner finds that the waiver is not a
prerequisite condition to employment and if the parent,
spouse or child is employed by the same corporation
which employs the person who has made the first waiver;

48 (5) The parent, spouse or child of a sole proprietor
50 who is employed by that sole proprietor or the parent,
52 spouse or child of a partner who is employed by the
partnership of that partner may state, in writing, that
he the parent, spouse or child waives all the benefits
and privileges provided by the workers' compensation

laws if the commission finds that the waiver is not a prerequisite condition to employment;

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

(7) An independent contractor; or

(8) If a person employs an individual contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an independent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. No insurance company may charge a premium to any person for any employee excluded by this subparagraph.

Sec. 3. 39 MRSA §2, sub-§5, ¶B, as amended by PL 1979, c. 539, §1, is further amended to read:

B. The If a person elects to be personally covered by this title, the term "employee" shall be deemed to include, if he elects to be personally covered by this Title, includes any person who regularly operates a business or practices a trade, profession or occupation, whether individually, through a professional corporation, or in partnership or association with other persons, whether or not he that person hires employees. Such a person shall elect personal coverage by insuring and keeping insured the payment of compensation and other benefits under a workers' compensation insurance policy. The insurance policy shall clearly indicate the intention of the parties to provide coverage for the person electing to be personally covered. The insurance company shall file with the commission notice, in such form as the commission approves, of the issuance of any workers' compensation policy to a person electing personal coverage. That insurance shall not be cancelled within the time limited in that policy for its expiration until at least 30 days after mailing a notice of the cancellation of that insurance to the commissioner and the person electing personal coverage. In the event that the person electing personal coverage has obtained a workers' compensation insurance policy from another insurance company, and that insurance becomes effective prior to the expiration of the 30 days, cancellation shall be effective as of the effective date of the other insurance. The Superintendent of Insurance is authorized to review for his

2 approval, at his the superintendent's discretion, an
4 appropriate classification for this class of persons and a
6 reasonable rate.

8 **STATEMENT OF FACT**

10 This bill provides that professional corporations receive
12 the same treatment under the Maine Revised Statutes, Title 39, as
corporations receive. It also keeps in place the provision for
voluntary coverage by certain individuals.