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Legislative Document

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S.P. 312

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Reference to the Committee on Labor suggested and ordered printed.

Sun

JOY J. O'BRIEN Secretary of the Senate

Presented by Senator ESTY of Cumberland Cosponsored by Representative PINEAU of Jay, Senator CARPENTER of York and President PRAY of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

An Act to Permit Predetermination of Independent Contractor Status.

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

39 MRSA §5 is enacted to read:

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<u>§5. Predetermination of independent contractor status</u>

1. Predetermination permitted. A worker, an employer or a workers' compensation insurance carrier, or any together, may apply to the commission for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor.

<u>A. The predetermination by the commission creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act.</u>

<u>B. Nothing in this section requires a worker, an employer</u> or a workers' compensation insurance carrier to request predetermination.

22 2. Premium adjustment. If it is determined that a predetermination does not withstand commission or judicial 24 scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent 26 proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit 28 premium subsequently due so as to put the parties in the same position as if the final outcome under the contested claim was 30 predetermined correctly.

32 **3.** Predetermination submission. A party may submit, on forms approved by the commission, a request for predetermination 34 regarding the status of a person or job description as an employee or independent contractor.

A. The status requested by a party is deemed to have been approved if the commission does not deny or take other appropriate action on the submission within 14 days.

B. The chair of the commission is authorized to delegate the authority to make a predetermination to one other than a commissioner, such as the commission's legal counsel, so long as that person or persons act as the primary decision maker.

 C. The commission is deemed to have made a predetermination
48 in accordance with a request, for purposes of subsection 1, paragraph A, if no action is taken within 14 days of
50 submission. **4. Hearing.** A hearing, if requested by a party within 10 days of the commission's decision on a petition, must be conducted under the Maine Administrative Procedure Act, Title 5, chapter 375.

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 6 5. Certificate. The commission shall provide the petitioning party a certified copy of the decision regarding
8 predetermination that is to be used as evidence at a later hearing on benefits of the commission's decision regarding
10 predetermination.

 6. Rulemaking. The commission is authorized to promulgate reasonable rules pursuant to the Maine Administrative Procedure
Act, Title 5, chapter 375, to implement the intent of this section, which is to afford speedy and equitable predetermination
of employee and independent contractor status.

STATEMENT OF FACT

This bill establishes an administrative process before the 22 Workers' Compensation Commission to predetermine, before a claim arises, whether the status of an individual worker or job classification is that of an employee or independent contractor. 24 This is patterned after a similar procedure utilized for tax 26 purposes by the Internal Revenue Service. This process clarifies the responsibility of the employer and workers' compensation 28 insurance carrier in providing workers' compensation coverage. In addition, it simplifies the underwriting and premium 30 determinations critical in an efficient and cost-effective marketplace.

It is the intent of this bill that the predetermination 34 process is a simple and quick process. If not resolved through a simple form process authorized in the bill, then a hearing is 36 requested and conducted under the Maine Revised Statutes, Title 5, chapter 375. The determination is a rebuttable presumption 38 that may be overcome at a subsequent claims hearing. This permits the equitable resolution of the issue at a subsequent 40 hearing if the facts have changed since the time the predetermination was made.

In addition, the bill provides that either the workers' 44 compensation insurance carrier return excess premium or that the employer pay sufficient premium owed if the predetermination 46 issue is subsequently overturned by the workers' compensation claimant. 48

Finally, the bill permits the Workers' Compensation 50 Commission to promulgate rules under the Maine Administrative Procedure Act to implement the predetermination hearing process.