

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 704, L.D. 1008, Bill, "An Act to Require that Staff Management Companies Register with the State"

Amend the bill by striking out the title and substituting the following:

'An Act to Require that Employee Leasing Companies Register with the State and to Amend the Employment Security Law'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 24-A MRSA §2375 is enacted to read:

§2375. Workers' compensation insurance; registration of employee leasing companies

A corporation, partnership, sole proprietorship or other business entity that provides staff, personnel or employees to be employed in this State to other businesses pursuant to a lease arrangement or agreement must, before becoming eligible to be issued a policy of workers' compensation insurance, register with the superintendent pursuant to Title 32, chapter 125. Employee leasing companies are subject to rules applicable to workers' compensation insurance as adopted by the superintendent and to penalties as defined in Title 32, section 14058.

Sec. 2. 26 MRSA §1043, sub-§§6-A and 8-A are enacted to read:

6-A. Client company. "Client company" means a person, association, partnership, corporation or other entity that leases

employees from an employee leasing company pursuant to contract.

2
3 8-A. Employee leasing company. "Employee leasing company"
4 means a business entity that engages in the business of leasing
5 employees to client companies without the client company severing
6 an employer-employee relationship with the employees for services
7 performed for the client company.

8
9 Sec. 3. 26 MRSA §1221-A is enacted to read:

10 §1221-A. Employee leasing companies

11
12 1. Joint and several liability. Unless an employee leasing
13 company complies with subsection 5 in a timely manner, a client
14 company is jointly and severally liable for any unpaid
15 contributions, interest and penalties due under this chapter from
16 the employee leasing company for wages paid to employees leased
17 to the client company.

18
19 2. Liability for contributions. Notwithstanding any other
20 provisions of this chapter, during the term of the employee
21 leasing arrangement, an employee leasing company is liable for
22 the payment of contributions, penalties and interest on wages
23 paid to employees leased to a client company, except compensation
24 paid to sole proprietors of or partners in the client company.

25
26 3. Reporting requirements. The employee leasing company
27 shall report and pay all contributions under its state employer
28 identification number, using its contribution rate. The employee
29 leasing company shall keep separate records and submit separate
30 quarterly wage reports for each of its client companies to the
31 bureau.

32
33 4. Administration of benefits. The employee leasing
34 company is responsible for administration of claims for
35 unemployment insurance benefits for the employees leased to each
36 client company.

37
38 5. Surety bond securities. The following apply to the
39 posting of a surety bond or depositing of securities.

40
41 A. To relieve client companies from the joint and several
42 liability imposed under subsection 1 and except as provided
43 in paragraph B, an employee leasing company shall post and
44 maintain a surety bond issued by a corporate surety
45 authorized to do business in the State in the amount of
46 \$100,000 to ensure prompt payment of the contributions,
47 interest and penalties for which the employee leasing
48 company is liable under this section. After 3 consecutive
49 years throughout which the employee leasing company has paid
50 in a timely manner all contributions due, the bond must be
51 reduced to \$35,000 and remain at this amount as long as the
52

2 employee leasing company continues to report and pay in a
3 timely manner all contributions due. If an employee leasing
4 company has paid in a timely manner all contributions due
5 for 3 consecutive years upon the effective date of this
6 subsection, its initial bond must be \$35,000 and remain at
7 this amount as long as the employee leasing company
8 continues to report and pay in a timely manner all
9 contributions due.

10 B. In lieu of a surety bond, the employee leasing company
11 may deposit securities with marketable value equivalent to
12 the amount required for a surety bond in a depository
13 designated by the commissioner. The commissioner may sell
14 these securities for an amount sufficient to pay any
15 contributions that the employee leasing company fails to
16 promptly pay when due.

17 6. Limitation on application. This section does not apply
18 to private employment agencies that provide their employees to
19 employers on a temporary help basis, if the private employment
20 agencies are liable as employers for the payment of contributions
21 on wages paid to those temporary employees.

22 7. Client company ceasing to pay wages. Whenever a client
23 company does not pay wages for a period of 12 consecutive
24 calendar quarters following the latest calendar quarter in which
25 it paid wages, the commissioner shall terminate the client
26 company's account and experience rating record. If the client
27 company subsequently becomes subject to this section after its
28 account and experience rating record have been terminated, the
29 client company is deemed a new employer for the purposes of this
30 chapter and shall pay contributions at the average contribution
31 rate as defined in section 1221, subsection 4, paragraph A.

32 8. Penalties. An employee leasing company that violates
33 this section is subject to the penalties in and other provisions
34 of Title 32, section 14058, subsections 1 to 3.

35 **Sec. 4. 32 MRSA c. 125 is enacted to read:**

36 **CHAPTER 125**
37 **EMPLOYEE LEASING COMPANIES**

38 **§14051. Definitions**

39 As used in this chapter, unless the context otherwise
40 indicates, the following terms have the following meanings.

41 1. Client company. "Client company" means a person,
42 association, partnership, corporation or other entity that leases
43 employees from an employee leasing company pursuant to contract.

2 2. Controlling person. "Controlling person" means:

4 A. A person or entity that owns a 5% or greater interest in
6 an employee leasing company or possesses, directly or
8 indirectly, the power to direct or cause the direction of
10 the management or policies of an employee leasing company
 through ownership of voting securities, by contract or
 otherwise, and is actively involved in the day-to-day
 management of the company; or

12 B. A natural person employed, appointed or authorized by an
14 employee leasing company to enter into a contractual
 relationship with a client company on behalf of the employee
 leasing company.

16 3. Employee leasing company. "Employee leasing company"
18 means a sole proprietorship, partnership, corporation or other
20 form of business entity, a substantial portion of the business of
22 which consists of leasing employees to one or more client
 companies under contractual arrangements that are characterized
 by the following.

24 A. Employment responsibilities are carried out by the
26 employee leasing company or are shared by the employee
 leasing company and the client company.

28 B. Direction and control of employees provided by the
30 employee leasing company are handled by the employee leasing
32 company or are shared by the employee leasing company and
 the client company. "Direction and control" includes the
 right of the employee leasing company to hire and fire
 employees.

34 C. The leasing arrangement is long term and does not
36 include arrangements to provide temporary help services.
38 "Temporary help services" means a service whereby an
40 organization hires its own employees and assigns them to a
42 3rd party to support or supplement the 3rd party's work
 force in work situations such as employee absences,
 temporary skill shortages, seasonal work load conditions and
 special assignments and projects.

44 D. The leasing arrangement does not include providing labor
46 dispute workers. "Labor dispute worker" means a worker who
48 is furnished to an entity to replace workers involved in
 strikes, lockouts or other labor activities.

50 4. Registrant. "Registrant" means an employee leasing
 company that registers under this chapter.

52 5. Superintendent. "Superintendent" means the

Superintendent of Insurance.

2
4 **§14052. Registration required**

6 An employee leasing company may not engage in business from
8 offices in this State or enter into any contractual relationship
10 with a client company for the purpose of providing employees for
12 business conducted by the client company in this State unless the
14 employee leasing company is registered under this chapter.

16 **§14053. Registration process**

18 I. Statement. Except as otherwise provided in this
20 section, each employee leasing company required to be registered
22 under section 14052 shall provide the superintendent with
24 information required by the superintendent on forms that the
26 superintendent specifies. At a minimum, employee leasing
28 companies shall provide the following information:

30 A. The name or names under which the registrant conducts
32 business;

34 B. The address of the principal place of business of the
36 employee leasing company and the address of each office it
38 maintains in this State;

40 C. The employee leasing company's taxpayer or employer
42 identification number;

44 D. A list by jurisdiction of each name under which the
46 employee leasing company has operated in the preceding 5
48 years, including any alternative names, names of
50 predecessors and, if known, successor business entities;

52 E. A list of all persons or entities that own a 5% or
greater interest in the employee leasing company at the time
of application and a list of persons who formerly owned a 5%
or greater interest in the employee leasing company, or its
predecessors in the preceding 5 years; and

F. A list of the cancellations or nonrenewals of workers'
compensation insurance issued to the employee leasing
company or its predecessors in the preceding 5 years. The
list must include the policy or certificate numbers, names
of insurers or other providers of coverage, dates of
cancellation and reasons for cancellation. If coverage has
not been canceled or has been renewed, the registration must
include a sworn affidavit signed by the chief executive
officer of the employee leasing company attesting to that
fact.

2. Renewal. Prior to January 31st of each year or any

2 other time fixed by the superintendent, each registrant shall
3 renew its registration by notifying the superintendent of any
4 changes in the information previously provided pursuant to this
5 section.

6 3. List. The superintendent shall maintain a list of
7 employee leasing companies registered under this chapter.

8
9 4. Forms. The superintendent may prescribe forms necessary
10 to promote the efficient administration of this section.

11 5. Existing companies. Any employee leasing company doing
12 business in this State prior to the effective date of this
13 section shall register with the superintendent within 30 days of
14 the effective date of this section.

15 **§14054. Fees**

16
17 1. Amount. The following are the registration fees under
18 this chapter.

19 A. Upon filing a registration statement under section
20 14053, subsection 1, each employee leasing company shall pay
21 an initial registration fee of \$500.

22 B. Upon renewing its registration statement under section
23 14053, subsection 2, each employee leasing company shall pay
24 an annual renewal fee of \$100.

25 2. Treatment of fees. All fees must be paid to the
26 Treasurer of State and credited to the Insurance Regulatory Fund
27 pursuant to Title 24-A, section 604.

28 **§14055. Insurance; unemployment insurance; benefit plans**

29 1. Benefits. The following provisions govern the provision
30 of benefits by employee leasing companies to their employees.

31 A. Any employee welfare plan or benefit, other than
32 workers' compensation insurance, provided by an employee
33 leasing company to employees leased to a client company,
34 whether the plan or benefit is supplied through insurance or
35 self-funding, is a plan or benefit provided by the employee
36 leasing company as employer to those employees for purposes
37 of state laws applicable to employee benefits, including
38 group insurance coverage under Title 24-A, chapters 31, 35
39 and 38.

40 B. The superintendent shall adopt rules governing the
41 provision of workers' compensation insurance as required by
42 Title 39, chapter 1 for workers provided by an employee
43 leasing company to any client company. These rules must be
44

2 consistent with subsection 2 and reflect consideration of
3 the needs and operational efficiencies of employee leasing
4 companies and the costs to the workers' compensation
5 system. If either the employee leasing company or the
6 client company has secured the payment of compensation in
7 conformity with Title 39, chapter 1, the immunity from
8 liability described in that chapter extends to and is
9 binding on the client company, the employee leasing company,
10 all employees leased to any client company and any other
11 employees of the employee leasing company or the client
12 company. An employee leasing company is not responsible for
13 securing the payment of compensation in conformity with
14 Title 39 nor deprived of the defenses listed in Title 39,
15 section 3 with respect to those persons for whom the
16 provision of benefits is not required under Title 39 in the
17 absence of an employee leasing arrangement.

18 2. Workers' compensation. Workers' compensation insurance
19 for employees leased to client companies is subject to the
20 following.

21 A. Under rules adopted pursuant to subsection 1, paragraph
22 B, the superintendent may provide a determination of the
23 circumstances and conditions, if any, under which an
24 employee leasing company may be the policyholder of a
25 workers' compensation insurance policy providing coverage to
26 employees leased to client companies. Additionally or
27 alternatively, the superintendent may require by rule that:

28 (1) The employee leasing company purchase separate
29 policies through the residual market mechanism,
30 established pursuant to Title 24-A, section 2366, for
31 client companies subject to Title 39; and

32 (2) The policies be assigned to one servicing carrier
33 and, to the extent practical, administered on a unified
34 basis. The superintendent also may provide by rule
35 that the employee leasing company or the residual
36 market manager request from the superintendent a waiver
37 of a rule adopted pursuant to this subparagraph if it
38 is impractical for one servicing carrier to service all
39 the client companies of an employee leasing company.

40 B. When workers' compensation coverage is provided by means
41 of insurance maintained by the employee leasing company
42 through the residual market mechanism, the rules may further
43 provide for the application of experience modification
44 factors, premium surcharges and deductibles consistent with
45 Title 24-A, section 2366. To the extent that a workers'
46 compensation insurance policy is issued to an employee
47 leasing company, experience modification factors applicable
48 to a company that becomes a client company of the employee
49 leasing company shall apply.

2 leasing company after the effective date of this section are
3 calculated by using the client company's experience
4 modification factor:

5 (1) Throughout the term of the employee leasing
6 arrangement; or

7 (2) For no more than the first 3 years of the employee
8 leasing arrangement if the requirements of the rules
9 adopted by the superintendent are met.

10 C. Each employee leasing company that carries workers'
11 compensation insurance for its leased employees shall
12 maintain and make available to its workers' compensation
13 carrier information required by rules adopted by the
14 superintendent pursuant to this chapter. An employee
15 leasing company shall promptly notify its workers'
16 compensation insurance carrier and the residual market
17 manager of the termination of the employee leasing company's
18 relationship with any client company for which it provides
19 workers' compensation insurance.

20 3. Unemployment insurance. An employee leasing company's
21 responsibility for unemployment insurance is governed by Title
22 26, section 1221-A and as follows.

23 A. During the term of the leasing arrangement, the employee
24 leasing company is responsible for payment of unemployment
25 contributions, penalties and interest due pursuant to Title
26 26, chapter 13 on wages paid to employees leased to client
27 companies, except for compensation paid to sole proprietors
28 of or partners in the client company.

29 B. The employee leasing company shall report all
30 unemployment contributions due under its state employer
31 identification number, using its contribution rate. The
32 employee leasing company shall keep separate records and
33 submit separate quarterly wage reports to the Bureau of
34 Employment Security for each of its client companies.

35 4. Other insurance. Employees leased to a client company
36 by an employee leasing company remain the employees of the client
37 company for purposes of general liability insurance, automobile
38 insurance, fidelity bonds, surety bonds and employer's liability
39 insurance carried by the client company. Employees leased to a
40 client company by an employee leasing company are not deemed
41 employees of the employee leasing company for purposes of general
42 liability insurance, automobile insurance, fidelity bonds, surety
43 bonds or employer's liability insurance carried by the employee
44 leasing company unless the employees are included by specific
45 reference in the applicable insurance contract or bond.

2 5. Disclosure. The employee leasing company shall disclose
4 to client companies services to be rendered, including costs, and
6 the respective rights and obligations of the parties prior to
8 entering into or receiving a leasing arrangement. This
10 disclosure must include a statement that the client company may
12 take complaints to the Bureau of Insurance.

8 **§14056. Exemption**

10 Nothing in this chapter exempts a client company of an
12 employee leasing company nor an employee leased to the client
14 company by the employee leasing company from any other state,
16 local or federal license or registration requirements. Any
18 individual who must be licensed, registered or certified
20 according to law and who is a leased employee is deemed an
22 employee of the client company for purposes of the license,
24 registration or certification. An employee leasing company is
26 not liable for the general debts or obligations of a client
28 company with which it has entered into an employee leasing
30 arrangement, except for the payment of unemployment contributions
32 as required in section 14055.

24 **§14057. Advertising prohibition**

26 An organization registered under this chapter may not
28 directly or indirectly refer to that registration in any
30 advertisements, marketing materials or publications.

30 **§14058. Penalties**

32 1. Injunction. The State may seek to enjoin any person or
34 employee leasing company from violating this chapter.

34 2. Penalty. Any person or employee leasing company that
36 violates this chapter is subject to a fine of \$100 per day for
38 each violation. Any corporation, partnership, sole
40 proprietorship or other form of business entity and any officer,
42 director, general partner, agent, representative or employee of
44 any of those types of business entities that knowingly uses or
46 participates in any employee leasing agreement, arrangement or
48 mechanism for the purpose of depriving one or more insurers of
50 premiums or avoiding the calculation of the proper contribution
52 rate for purposes of unemployment contributions commits a Class E
crime.

46 3. Rebuttable presumption. When an employee leasing
48 company leases employees to only one client company and its
50 affiliates, there is a rebuttable presumption that the client
52 company entered into an employee leasing arrangement to avoid the
calculation of the proper contribution rate for payment of
unemployment contributions.

2 4. Costs. Any costs incurred by the superintendent in
3 investigating violations of or enforcing this chapter must be
4 paid by the person or entity found to have violated this chapter.

5 **Sec. 5. Allocation.** The following funds are allocated from
6 Other Special Revenue to carry out the purposes of this Act.

	1991-92	1992-93
10 PROFESSIONAL AND FINANCIAL		
11 REGULATION, DEPARTMENT OF		
12 Bureau of Insurance		
13		
14 All Other	\$10,000	\$10,000
15		
16 Provides funds to cover the		
17 costs associated with		
18 rulemaking, forms development		
19 and printing and postage.		

20
21 **Sec. 6. Retroactivity.** Those parts of section 3 of this Act
22 that enact the Maine Revised Statutes, Title 26, section 1221-A,
23 subsections 1 to 3 and that part of section 4 of this Act that
24 enacts Title 32, section 14055, subsection 3 apply retroactively
25 to January 1, 1990.

28 **FISCAL NOTE**

	1991-92	1992-93
30		
31		
32 APPROPRIATIONS/ALLOCATIONS		
33		
34 Other Funds	\$10,000	\$10,000
35		
36 REVENUES		
37		
38 Other Funds	\$10,000	\$10,000
39		

40 This bill requires that employee leasing companies register
41 with the Department of Professional and Financial Regulation.
42 New registration fees will increase dedicated revenue to the
43 Bureau of Insurance by \$10,000 annually beginning in fiscal year
44 1991-92. These revenues should be allocated to the bureau to
45 cover the cost of rulemaking, forms development and printing and
46 mailings. The costs associated with additional staff time will
47 be absorbed within current budgeted resources.

48
49 The bill establishes a Class E crime. The additional work
50 load and administrative costs associated with a minimal number of
51 new cases filed in District Court as a result of the violations
52

2 will be absorbed within the budgeted resources of the Judicial
Department. There will also be a minor increase in General Fund
revenue from the collection of additional fines.

4
6 Sentences imposed for a Class E offense must be served in a
county jail facility. The projected cost to a county for each
person sentenced under the new Class E crime is approximately
8 \$3,820 and is based upon an average length of stay of 67 days.'

10
12 **STATEMENT OF FACT**

14 This amendment replaces the bill and uses the nationally
16 accepted term "employee leasing company" rather than "staff
management company." This amendment requires submittal of
18 additional registration information by employee leasing
companies. It provides additional flexibility to the
20 Superintendent of Insurance to promulgate rules applicable to the
provision of workers' compensation insurance to workers involved
22 in an employee leasing arrangement and places additional
restrictions on employee leasing companies that offer workers'
24 compensation insurance to their workers. The amendment also
establishes that registration is with the superintendent,
26 provides for additional criminal penalties for violation of the
requirements of the Maine Revised Statutes, Title 32, chapter
125, precludes employee leasing companies from making
28 unemployment contributions on behalf of workers who are sole
proprietors or partners of client companies, imposes certain
30 reporting requirements on employee leasing companies for purposes
of unemployment contributions, establishes a surety bond
32 procedure for employee leasing companies, provides a retroactive
effective date for certain provisions and ensures that the
34 provisions dealing with unemployment compensation do not affect
the temporary help industry.

Reported by the Committee on Business Legislation
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