

# 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)



# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

---

Legislative Document

No. 1008

H.P. 704

House of Representatives, March 11, 1991

Received by the Clerk of the House on March 7, 1991. Referred to the Committee on Business Legislation and 1400 ordered printed pursuant to Joint Rule 14.

A handwritten signature in black ink that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative GWADOSKY of Fairfield.

Cosponsored by Senator GILL of Cumberland, Representative CONSTANTINE of Bar Harbor and Representative MITCHELL of Vassalboro.

---

STATE OF MAINE

---

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

---

**An Act to Require that Staff Management Companies Register with the State.**

---

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

32 MRSA c. 125 is enacted to read:

CHAPTER 125

STAFF MANAGEMENT COMPANIES

§14051. Definitions

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

1. Client company. "Client company" means a person, association, partnership, corporation or other entity that contracts with a staff management company and is provided workers pursuant to that contract.

2. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

3. Controlling person. "Controlling person" means:

A. Any natural person who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of any staff management company through ownership of voting securities, by contract or otherwise and is actively involved in the day-to-day management of the company; or

B. Any natural person employed, appointed or authorized by a staff management company to enter into a contractual relationship with a client company on behalf of the staff management company.

4. Department. "Department" means the Department of Professional and Financial Regulation.

5. Registrant. "Registrant" means a staff management company that files a registration statement under this chapter.

6. Staff management company "Staff management company" means a sole proprietorship, partnership, corporation or other form of business entity, a substantial portion of the business of which consists of providing workers to one or more client companies under contractual arrangements that are characterized by the following:

A. Employment responsibilities are shared by the staff management company and the client company;

2           B. Direction and control of workers provided by the staff  
4           management company are shared by the staff management  
6           company and the client company. "Direction and control"  
            includes the right of the staff management company to hire  
            and fire workers; and

8           C. The staffing arrangement is to be long-term and does not  
10          include arrangements to provide temporary workers.  
12          "Temporary worker" means a worker who is furnished to an  
14          entity to substitute for a permanent employee on leave, to  
            meet seasonal or short-term workload conditions or to  
            replace workers involved in strikes, lockouts or other labor  
            activities.

16          §14052. Registration required

18          A staff management company or controlling person may not  
20          engage in business from offices in this State or enter into any  
22          contractual relationship with a client company for the purpose of  
24          providing workers for business conducted by the client company in  
            this State unless the staff management company is registered  
            under this chapter.

26          §14053. Registration process

28          1. Statement. Except as otherwise provided in this  
30          section, each staff management company required to be registered  
32          under section 14052 shall file with the department a written  
34          registration statement. The registration statement must be on  
            forms and contain such information as required by the  
            commissioner and must contain, at a minimum, the following  
            information:

36           A. The address of all offices of the registrant within the  
            State;

38           B. The name or names under which the registrant conducts  
40           business;

42           C. The names and addresses of all controlling persons of  
            the registrant;

44           D. The name and address of the registrant's registered  
46           agent for service of process in the State; and

48           E. The registrant's taxpayer identification number.

50          2. Renewal. Prior to January 31st of each year or any  
52          other time fixed by the commissioner, each registrant shall renew  
            its registration by notifying the department of any changes in  
            the information previously provided pursuant to this section.

2           3. List. The department shall maintain a list of those  
3           staff management companies that are registered with it.

4           4. Forms. The department may prescribe such forms as are  
5           necessary to promote the efficient administration of this section.

6           5. Existing companies. Any staff management company that  
7           was doing business in this State prior to enactment of this  
8           section shall register with the department within 30 days of the  
9           effective date of this section.

10           §14054. Fees

11           1. Amount. The following are the registration fees under  
12           this chapter.

13           A. Upon filing a registration statement under section  
14           14053, subsection 1, each staff management company shall pay  
15           an initial registration fee of \$500.

16           B. Upon renewing its registration statement under section  
17           14053, subsection 2, each staff management company shall pay  
18           an annual renewal fee of \$100.

19           2. Treatment of fees. All fees must be paid to the  
20           Treasurer of State to be used for carrying out the purposes of  
21           this chapter. Any balance of fees does not lapse, but is carried  
22           forward as a continuing account to be expended for purposes of  
23           this chapter in the following fiscal years.

24           §14055. Insurance; unemployment contributions; benefit plans

25           1. Insurance. Any employee welfare plan or benefit  
26           supplied by a staff management company to workers provided to any  
27           client company, whether the plan or benefit is supplied through  
28           insurance or self-funding, is a plan or benefit supplied by the  
29           staff management company as employer to these workers for  
30           purposes of state law, including group insurance coverage under  
31           Title 24-A, chapters 31, 35 and 38. The staff management company  
32           is the responsible employer for payment of unemployment  
33           contributions pursuant to Title 26, chapter 13 for workers  
34           provided to each client company. The staff management company  
35           also may be the policyholder for purposes of workers'  
36           compensation insurance as required by Title 39, chapter 1 for  
37           workers provided to each client company. If either the staff  
38           management company or the client company has secured the payment  
39           of compensation under Title 39, chapter 1, the immunity from  
40           liability described in that chapter extends to the client company  
41           as well as to the staff management company, all workers provided  
42           to any client company and any other employees of the staff  
43           management company or the client company.

2           2. Workers' compensation. Workers' compensation  
3 relationships are governed as follows.

4  
5           A. In those cases where workers' compensation coverage is  
6 provided by means of insurance maintained by the staff  
7 management company through the residual market established  
8 pursuant to Title 24-A, section 2366, workers' compensation  
9 insurance premiums for workers provided to a company that  
10 becomes a client company after the effective date of this  
11 section are calculated either by using the client company's  
12 experience modification factor throughout the term of the  
13 staff management arrangement or, alternatively, if the  
14 requirements of the regulations promulgated by the  
15 Superintendent of Insurance pursuant to paragraph C are  
16 satisfied, by using the client company's experience  
17 modification factor for no more than the first 3 years of  
18 the staff management arrangement.

19           B. Each staff management company that carries workers'  
20 compensation insurance for its provided workers shall  
21 maintain and make available to its workers' compensation  
22 carrier, if any, the following information:

23                   (1) The correct name and federal identification number  
24 of each client company for which it provides workers'  
25 compensation insurance;

26                   (2) A list of all covered workers provided to each  
27 client company, by classification code; and

28                   (3) The total eligible wages by classification code  
29 and the premiums due to the carrier for the covered  
30 workers provided to each client company.

31           A staff management company shall promptly notify its  
32 workers' compensation insurance carrier and the National  
33 Council on Compensation Insurance of the termination of the  
34 company's relationship with any client company for which it  
35 provides workers' compensation insurance.

36           C. The Superintendent of Insurance shall adopt rules  
37 required for the implementation of this section.

38           §14056. Exemption

39           Nothing in this chapter exempts any client company of a  
40 staff management company, nor any worker provided to the client  
41 company by the staff management company, from any other license  
42 or registration requirements of state, local or federal law. Any  
43 individual who must be licensed, registered or certified pursuant  
44 to this chapter shall be licensed, registered or certified pursuant  
45 to the applicable provisions of this chapter.

2 to applicable law and who is a provided worker, is deemed an  
3 employee of the client company for purposes of such a license,  
4 registration or certification, but remains an employee of the  
5 staff management company as specified in section 14055. A staff  
6 management company is not liable for the general debts or  
7 obligations of a client company as a result of entering into a  
8 staff management arrangement with a client company.

10 **§14057. Penalties**

12 **1. Injunction.** The State may seek to enjoin any person or  
13 staff management company from violating any provisions of this  
14 chapter.

16 **2. Penalty.** Any person or staff management company that  
17 violates this chapter shall pay a fine of \$100 a day for each day  
18 of violation of any provision of the chapter and any person or  
19 staff management company that knowingly violates this chapter is  
20 guilty of a Class E crime.

22 **3. Costs.** Any costs incurred by the department to  
23 investigate violations of or to enforce the provisions of this  
24 chapter must be paid by the person or entity found to have  
25 violated this chapter.

26 **STATEMENT OF FACT**

28  
29  
30 This bill provides for registration procedures for staff  
31 management companies doing business in Maine. Such companies are  
32 also known as employee leasing companies. Staff management  
33 companies take over the employment function and the fringe  
34 benefits, especially health insurance, for small businesses.

35  
36 This bill recognizes the dual employment relationship  
37 established by staff management arrangements and confirms that  
38 staff management companies may continue current practices  
39 relative to maintenance of benefit plans, payment of Maine  
40 unemployment contributions and satisfying workers' compensation  
41 insurance coverage requirements. The shared employment situation  
42 for such employees is also recognized for purposes of preserving  
43 immunity for both "employers" under the workers' compensation  
44 laws.

45  
46 This bill prevents use of captive leasing companies and  
47 other means that could result in avoidance of proper payment of  
48 workers' compensation premiums by businesses using employee  
49 leasing arrangements.

50  
51 This bill deals only with staffing arrangements that are  
52 intended to be long-term. It does not cover temporary  
53 replacement workers.