

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

No. 498

H.P. 385

House of Representatives, February 16, 1993

**An Act to Transfer the Predetermination of Independent Contractor  
Status Responsibility in the Workers' Compensation Laws.**

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Submitted by the Department of Labor pursuant to Joint Rule 24.  
Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative PINEAU of Jay.  
Cosponsored by Senator: HANDY of Androscoggin.

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

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4       **Sec. 1. 39-A MRSA §105**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

6       **§105. Predetermination of independent contractor status**

8       **1. Predetermination permitted.** A worker, an employer or a workers' compensation insurance carrier, or any together, may apply to the ~~Department of Labor~~ board 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.

14           A. The predetermination by the ~~Department of Labor~~ board creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act.

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

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

32       **3. Predetermination submission.** A party may submit, on forms approved by the ~~Department of Labor~~ board, a request for predetermination regarding the status of a person or job description as an employee or independent contractor. The status requested by a party is deemed to have been approved if the ~~Department of Labor~~ board does not deny or take other appropriate action on the submission within 14 days.

40       **4. Hearing.** A hearing, if requested by a party within 10 days of the ~~Department of Labor's~~ board's decision on a petition, must be conducted under the Maine Administrative Procedure Act.

44       **5. Certificate.** The ~~Department of Labor~~ board shall provide the petitioning party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.

2           6. ~~Rulesmaking.~~ ~~The Commissioner--of--Labor~~ chair of the  
3 board, or the chair's designee, is authorized to adopt reasonable  
4 rules pursuant to the Maine Administrative Procedure Act to  
5 implement the intent of this section, which is to afford speedy  
6 and equitable predetermination of employee and independent  
7 contractor status.

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**STATEMENT OF FACT**

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11           This bill transfers the authority to make predeterminations  
12 of independent contractor status under the workers' compensation  
13 laws from the Department of Labor to the Workers' Compensation  
14 Board.