

# MAINE STATE LEGISLATURE

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R. of S.

L.D. 1184

(Filing No. S-108 )

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STATE OF MAINE  
SENATE  
116TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 389, L.D. 1184, Bill, "An Act Concerning Independent Contractors under the Workers' Compensation Laws"

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

'An Act Concerning Independent Contractors and the Responsibilities of Landowners under the Workers' Compensation Laws'

Further amend the bill by striking out all of section 1 and inserting in its place the following:

'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:

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

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.

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.

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

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

**COMMITTEE AMENDMENT**

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2 subsequently due in order to put the parties in the same position  
 3 as if the final outcome under the contested claim were  
 4 predetermined correctly.

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

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

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

19 **6. Rulemaking.** The Commissioner--of--Labor board is  
 20 authorized to adopt reasonable rules pursuant to the Maine  
 21 Administrative Procedure Act to implement the intent of this  
 22 section, which is to afford speedy and equitable predetermination  
 23 of employee and independent contractor status.

24 **Sec. 2. 39-A MRSA §401, sub-§4,** as enacted by PL 1991, c. 885,  
 25 Pt. A, §8 and affected by §§9 to 11, is amended to read:

26 **4. Liability of landowner.** A landowner subject to this Act  
 27 who contracts to have wood harvested from the landowner's  
 28 property by a contractor who, as an employer, is subject to this  
 29 Act and who has not complied with the provisions of this section  
 30 and who does not comply with the provisions of this section prior  
 31 to the date of an injury or death for which a claim is made is  
 32 liable to pay to any person employed by the contractor in the  
 33 execution of the work any compensation under this Act that the  
 34 landowner would have been liable to pay if that person had been  
 35 immediately employed by the landowner.

36 A landowner is not liable for compensation if at the time the  
 37 landowner enters into the contract with the contractor, the  
 38 landowner applies for and receives a predetermination of the  
 39 independent status of the contractor as set forth in section 105,  
 40 or the landowner requests and receives a certificate of  
 41 insurance, issued by the contractor's insurance carrier,  
 42 certifying that the contractor has obtained the required coverage  
 43 and indicating the effective dates of the policy, and if the  
 44 landowner requests and receives at least annually similar

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2 certificates indicating continuing coverage during the  
performance of the work. A landowner who receives a  
4 predetermination of the contractor's status as independent  
6 contractor is only relieved of liability under this paragraph if  
8 the contract for wood harvesting expressly states that the  
independent contractor will not hire any employees to assist in  
the wood harvesting without first providing the required  
certificate of insurance to the landowner.

10 Notwithstanding section 105, subsection 1, paragraph A, a  
12 predetermination under section 105 related only to parties  
14 subject to this subsection is a conclusive presumption that the  
16 determination is correct and section 105, subsection 2 does not  
18 apply to that determination. Each party involved in or affected  
20 by the predetermination must be provided information on the  
workers' compensation laws and the effect of independent  
contractor status in relation to those laws. A predetermination  
under section 105 related to parties subject to this subsection  
is effective for one calendar year or the duration of the  
contract, whichever is shorter.

22 A landowner required to pay compensation under this section is  
24 entitled to be indemnified by the contractor and may recover the  
amount paid in an action against that contractor. A landowner  
26 may demand that the contractor enter into a written agreement to  
reimburse the landowner for any loss incurred under this section  
due to a claim filed for compensation and other benefits. The  
28 employee is not entitled to recover at common law against the  
landowner for any damages arising from such injury if the  
30 employee takes compensation from that landowner.

32 Landowners willfully acting to circumvent the provisions of this  
section by using coercion, intimidation, deceit or other means to  
34 encourage persons who would otherwise be considered employees  
within the meaning of this Act to pose as contractors for the  
36 purpose of evading this section are liable subject to the  
provisions of section 324, subsection 3. Nothing in this section  
38 may be construed to prohibit an employee from becoming a  
contractor subject to the provisions of section 102, subsection  
40 13.'

42 Further amend the bill by adding at the end of section 2 the  
following: 'This report must include the number of  
44 predeterminations made under this Act, the manner in which the  
predeterminations were made, the number of cases investigated or  
46 prosecuted for willfully acting to circumvent the liability  
imposed by Title 39-A, section 401, subsection 4 and the  
48 disposition of those cases under section 324, subsection 3.'

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Further amend the bill by adding after section 2 the following:

'Sec. 3. PL 1993, c. 65 is repealed.

Sec. 4. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1993-94	1994-95
<b>WORKERS' COMPENSATION BOARD</b>		
<b>Workers' Compensation Board</b>		
Positions	(1.0)	(1.0)
Personal Services	\$48,379	\$52,830
All Other	5,700	5,700
Provides authorization for one Staff Attorney position and allocations for general operating costs necessary to administer predetermination cases.		
<b>WORKERS' COMPENSATION BOARD</b>		
<b>TOTAL</b>	<u>\$54,079</u>	<u>\$58,530</u>

Sec. 5. Effective date. That section of the Act that amends the Maine Revised Statutes, Title 39-A, section 105 and that section of this Act that repeals PL 1993, chapter 65 take effect on July 1, 1993.'

Further amend the bill in the emergency clause in the 2nd line (page 2, line 32 in L.D.) by striking out the following: "approved." and inserting in its place the following: 'approved, except as otherwise indicated.'

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting at the end before the statement of fact the following:

## FISCAL NOTE

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1993-94

1994-95

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## APPROPRIATIONS/ALLOCATIONS

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Other Funds

\$54,079

\$58,530

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The Workers' Compensation Board will require additional Other Special Revenue allocations of \$54,079 and \$58,530 in fiscal years 1993-94 and 1994-95, respectively, for one staff attorney position to review and assess predetermination requests.

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The Department of Labor will experience some minor administrative costs savings as a result of no longer processing predetermination requests.

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The Workers' Compensation Board will incur some minor additional costs to submit a report to the Legislature. These costs can be absorbed within the board's existing budgeted resources.'

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## STATEMENT OF FACT

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This amendment ensures that the intent of the original bill is achieved and clarifies the application of the provision of the Workers' Compensation Act that imposes liability on the landowner in certain specific instances. Under current law, if a landowner hires a contractor to harvest wood and that contractor is violating the law by not carrying workers' compensation insurance for the contractor's employees, the landowner may be liable for injuries to the contractor's employees. The landowner is not liable if the contractor gives the landowner a certificate of insurance showing that proper insurance coverage is maintained. The problem with the current law that the bill and this amendment address is that a self-employed person is not required to carry workers' compensation insurance, so the self-employed logger is not likely to have a certificate to show the landowner.

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The amendment, like the original bill, provides that the landowner will not be liable if the landowner has received a predetermination of the contractor's status as an independent contractor from the Workers' Compensation Board. The amendment further provides that in order to be relieved of liability through this predetermination procedure, the landowner must also expressly state in the contract for wood harvesting that the

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2 contractor may not hire any employees to assist without first  
3 providing the certificate of insurance. This provision is  
4 intended to prevent a landowner from being held responsible for  
5 people hired by the contractor in violation of the agreement with  
6 the landowner. It also ensures that, in all cases, the landowner  
7 has a certain degree of responsibility to see that the contractor  
8 is complying with the workers' compensation laws.

9 The amendment provides that the predetermination of  
10 independent contractor status creates a conclusive presumption  
11 and only differs from the original bill by correcting an improper  
12 cross-reference and clarifying that the conclusive presumption  
13 does not apply to other cases. The amendment also removes the  
14 10-day notification requirement so that processing of  
15 predetermination requests will not be slowed. The amendment  
16 provides that the liability provision only applies if the  
17 contractor is subject to the Maine Workers' Compensation Act of  
18 1992 as an employer. This is intended to further clarify that  
19 the liability is related to whether the contractor's employees  
20 are provided with coverage, not whether the contractor carries  
21 coverage for himself or herself. The amendment also changes the  
22 title and adds a fiscal note to the bill.

23 The amendment requires that the Workers' Compensation  
24 Board's report on the effect of this Act include information on  
25 predeterminations made and whether any cases have been prosecuted  
26 for willful attempts to circumvent the provisions imposing  
27 liability. The amendment also repeals Public Law 1993, chapter  
28 65, a law enacted without an emergency preamble that transferred  
29 responsibility for making predeterminations from the Department  
30 of Labor to the Workers' Compensation Board, and reenacts it with  
31 an effective date of July 1, 1993.  
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Reported by Senator Handy for the Committee on Labor.  
Reproduced and Distributed Pursuant to Senate Rule 12.  
(5/4/93) (Filing No. S-108)