

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1184

S.P. 389

In Senate, April 5, 1993

**An Act Concerning Independent Contractors under the Workers'
Compensation Laws.**

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President DUTREMBLE of York.

Cosponsored by Senator CIANCHETTE of Somerset, Representative GOULD of Greenville and Senators: BALDACCI of Penobscot, CARPENTER of York, LUTHER of Oxford, O'DEA of Penobscot, PARADIS of Aroostook, PEARSON of Penobscot, Representatives: AIKMAN of Poland, ANDERSON of Woodland, CLARK of Millinocket, COLES of Harpswell, DEXTER of Kingfield, ERWIN of Rumford, HEESCHEN of Wilton, HUSSEY of Milo, MORRISON of Bangor, PINEAU of Jay, RUHLIN of Brewer, TARDY of Palmyra, THOMPSON of Lincoln, WALKER of Blue Hill, WHITCOMB of Waldo.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, the wood harvesting season is about to recommence;
6 and

8 Whereas, unless this legislation is enacted as an emergency
measure, numerous small logging contractors will be denied access
10 to private lands and therefore will be unable to pursue their
livelihoods; and

12 Whereas, in the judgment of the Legislature, these facts
14 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
16 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

20 **Sec. 1. 39-A MRSA §401, sub-§4,** as enacted by PL 1991, c. 885,
22 Pt. A, §8 and affected by §§9 to 11, is amended to read:

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

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

44 Notwithstanding section 105, subsection 1, paragraph B, a
46 predetermination under section 105 related to parties subject to
this subsection is a conclusive presumption that the
48 determination is correct and section 105, subsection 2 does not
apply to that determination. Each party involved in or affected
50 by the predetermination must be notified at least 10 days before
the predetermination is made and must be provided information on
52 the workers' compensation laws and the effect of independent

2 contractor status in relation to those laws. A predetermination
4 under section 105 related to parties subject to this subsection
6 is effective for one calendar year or the duration of the
8 contract, whichever is shorter.

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

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

26 **Sec. 2. Review by Workers' Compensation Board.** The Workers'
28 Compensation Board shall review the effects of this Act and
submit a report, including any recommended changes, to the Joint
Standing Committee on Labor by November 1, 1993.

30 **Emergency clause.** In view of the emergency cited in the
32 preamble, this Act takes effect when approved.

34
36 **STATEMENT OF FACT**

38 This bill makes an independent contractor predetermination
40 in the context of wood harvesting activities binding for the
purpose of subsequent workers' compensation claims and clarifies
landowners' liability for independent contractors.

42 The bill requires that the predetermination is valid for
44 only one year or the duration of the contract, whichever is
shorter. The bill requires that notice be given to all parties
before a predetermination is made. Finally, the bill requires
46 the Workers' Compensation Board to review the effects of this
bill and report back in November 1993.