

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1477

S.P. 475

In Senate, March 11, 1997

An Act to Require That Workers' Compensation Coverage Be Equitably Applied to the Timber Industry.

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 Senator NUTTING of Androscoggin.
Cosponsored by Representative BERRY of Livermore and
Senator KILKELLY of Lincoln, Representatives: HATCH of Skowhegan, SHIAH of
Bowdoinham.

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

2
3 **Sec. 1. 39-A MRSA §102, sub-§11, ¶A**, as enacted by PL 1991, c.
4 885, Pt. A, §8 and affected by §§9 to 11, is amended by amending
5 subparagraph (7) to read:

6 (7) An Except as provided in section 401, an
7 independent contractor; or

8
9 **Sec. 2. 39-A MRSA §401, sub-§4**, as amended by PL 1993, c. 120,
10 §2, is further amended to read:

11
12 **4. Liability of landowner.** A landowner subject to this Act
13 who contracts to have wood harvested from the landowner's
14 property by a contractor who, as an employer, is subject to this
15 Act and who has not complied with the provisions of this section
16 and who does not comply with the provisions of this section prior
17 to the date of an injury or death for which a claim is made is
18 liable to pay to any person employed by the contractor in the
19 execution of the work any compensation under this Act that the
20 landowner would have been liable to pay if that person had been
21 immediately employed by the landowner.

22
23 A landowner is not liable for compensation if at the time the
24 landowner enters into the contract with the contractor, the
25 landowner applies for and receives a predetermination of the
26 independent status of the contractor as set forth in section 105,
27 or the landowner requests and receives a certificate of
28 insurance, issued by the contractor's insurance carrier,
29 certifying that the contractor has obtained the required coverage
30 and indicating the effective dates of the policy, and if the
31 landowner requests and receives at least annually similar
32 certificates indicating continuing coverage during the
33 performance of the work. A landowner who receives a
34 predetermination of the contractor's status as independent
35 contractor is only relieved of liability under this paragraph if
36 the contract for wood harvesting expressly states that the
37 independent contractor will not hire any employees to assist in
38 the wood harvesting without first providing the required
39 certificate of insurance to the landowner.

40
41 Notwithstanding section 105, subsection 1, paragraph A, a
42 predetermination under section 105 related only to parties
43 subject to this subsection is a conclusive presumption that the
44 determination is correct and section 105, subsection 2 does not
45 apply to that determination. Each party involved in or affected
46 by the predetermination must be provided information on the
47 workers' compensation laws and the effect of independent
48 contractor status in relation to those laws. A predetermination
49 under section 105 related to parties subject to this subsection
50

2 is effective for one calendar year or the duration of the
contract, whichever is shorter.

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

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

24 Notwithstanding section 102 or any other provision of this Title,
a subcontractor hired by a contractor to harvest wood is deemed
26 an "employee" for purposes of this Title.

28
30 **SUMMARY**

32 Under current law, an independent contractor is not
considered an employee for purposes of workers' compensation
34 laws. This bill specifically provides that a subcontractor hired
by a contractor to harvest wood is considered an employee for
36 purposes of workers' compensation laws.