

MAINE STATE LEGISLATURE

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Majority

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L.D. 670

DATE: May 12, 1999

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LABOR

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 248, L.D. 670, Bill, "An Act to Require That Workers' Compensation Coverage Be Equitably Applied to the Timber Industry"

Amend the bill by striking out all of section 2 and inserting in its place the following:

Sec. 2. 39-A MRSA §102, sub-§11, ¶B-1 is enacted to read:

B-1. "Employee" includes any person engaged in harvesting forest products, except the following persons, as long as they meet the criteria for obtaining a certificate of independent status or a predetermination of independent contractor status:

(1) A person who contracts directly with the landowner if the person:

(a) Performs all of the wood harvesting alone;

(b) Performs all of the wood harvesting alone or with the assistance of one or more of the following persons whose relationship with the person is that of spouse, parent, sibling, child, niece or nephew;

(c) Performs all of the wood harvesting alone or with the assistance of one or more other persons all covered by workers' compensation insurance; or

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2 (d) Performs all of the wood harvesting alone or
4 with the assistance of a partner when a legal
 partnership exists and neither partner acts as a
 supervisor of the other;

6
8 (2) A spouse, parent, sibling, child, niece or nephew
 of a person who contracts directly with the landowner
10 to perform all of the wood harvesting alone or with the
 assistance of one or more of the following: the
12 person's spouse, parent, sibling, child, niece or
 nephew; or

14 (3) A partner of a person who contracts directly with
 the landowner to perform all of the wood harvesting
16 alone or with the assistance of a partner when a legal
 partnership exists and neither partner acts as a
18 supervisor of the other.

20 Unless employed by a private employer, a person considered
 an employee under this paragraph shall obtain personal
22 coverage in the same manner and under the same provisions as
 a person described in paragraph B who elects to be covered
24 by this Title.'

26 Further amend the bill by striking out all of section 4 and
 inserting in its place the following:

28 '**Sec. 4. 39-A MRSA §401, sub-§1**, as amended by PL 1997, c.
30 359, §1, is further amended by amending the first paragraph to
 read:

32 1. **Private employers.** Every private employer is subject to
34 this Act and shall secure the payment of compensation in
 conformity with this section and sections 402 to 407 with respect
36 to all employees, subject to the provisions of this section.
 Unless employed by a private employer, a person engaged in
38 harvesting forest products is subject to this Act and shall
 secure the payment of compensation in conformity with this
40 section and sections 402 to 407 with respect to that person
 individually if that person is an employee as defined in section
42 102, subsection 11, paragraph B-1.'

44 Further amend the bill by inserting after section 5 the
 following:

46 '**Sec. 6. 39-A MRSA §401, sub-§4**, as amended by PL 1993, c.
48 120, §2, is further amended to read:

50 4. **Liability of landowner.** A landowner subject to this Act
 who contracts to have wood harvested from the landowner's

COMMITTEE AMENDMENT

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2 property by a contractor who, as an employer, is subject to this
3 Act and who has not complied with the provisions of this section
4 and who does not comply with the provisions of this section prior
5 to the date of an injury or death for which a claim is made is
6 liable to pay to any person employed by the contractor in the
7 execution of the work any compensation under this Act that the
8 landowner would have been liable to pay if that person had been
immediately employed by the landowner.

10 A landowner is not liable for compensation if at the time the
11 landowner enters into the contract with the contractor, the
12 landowner applies for and receives a predetermination of the
13 independent status of the contractor as set forth in section 105,
14 the landowner requests and receives a certificate of independent
15 status, issued by the board on an annual basis to a contractor,
16 certifying that the contractor harvests forest products in a
17 manner that would not make the contractor an employee of the
18 landowner or the landowner requests and receives a certificate of
19 insurance, issued by the contractor's insurance carrier,
20 certifying that the contractor has obtained the required coverage
21 and indicating the effective dates of the policy, and if the
22 landowner requests and receives at least annually similar
23 certificates indicating continuing coverage during the
24 performance of the work. A landowner who receives a
25 predetermination of the contractor's status as independent
26 contractor or a certificate of independent status is only
27 relieved of liability under this paragraph if the contract for
28 wood harvesting expressly states that the independent contractor
29 will not hire any employees to assist in the wood harvesting
30 without first providing the required certificate of insurance to
the landowner.

32 Notwithstanding section 105, subsection 1, paragraph A, a
33 predetermination under section 105 related only to ~~parties~~
34 ~~subject to this subsection~~ a person engaged in harvesting forest
35 products is a conclusive presumption that the determination is
36 correct and section 105, subsection 2 does not apply to that
37 determination. Each party involved in or affected by the
38 predetermination must be provided information on the workers'
39 compensation laws and the effect of independent contractor status
40 in relation to those laws. A predetermination under section 105
41 related to ~~parties subject to this subsection~~ a person engaged in
42 harvesting forest products is effective for one calendar year or
43 the duration of the contract, whichever is shorter.

46 A landowner required to pay compensation under this section is
47 entitled to be indemnified by the contractor and may recover the
48 amount paid in an action against that contractor. A landowner
49 may demand that the contractor enter into a written agreement to
50 reimburse the landowner for any loss incurred under this section

Ads

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2 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
4 employee takes compensation from that landowner.

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

16 Further amend the bill by inserting at the end before the
summary the following:

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FISCAL NOTE

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The Workers' Compensation Board will incur some minor
24 additional costs to handle a minor increase in accepted or
controverted cases and to issue annual certificates of
independent status to certain contractors. These costs can be
26 absorbed within the board's existing budgeted resources.

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The bill may result in the assessment of additional civil
penalties payable to the Employment Rehabilitation Fund. The
30 amount of additional dedicated revenue to this fund is not
expected to be significant.'

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SUMMARY

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This amendment is the majority report and it provides that
all persons engaged in harvesting forest products are considered
38 employees under the workers' compensation law, except a person
who obtains a certificate of independent status or a
40 predetermination of independent contractor status and who
contracts directly with the landowner and performs all the work
42 alone, with family members, with others who are covered by a
workers' compensation policy or with a partner who does not
44 control that person. The family members, partner and persons
covered by policies working with the person who contracts
46 directly with the landowner are also not employees.

48

Persons who are considered employees must be covered by
their employer's policy or obtain personal coverage.

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2 A landowner who contracts with a person to harvest forest
3 products is protected from liability if the landowner obtains
4 from the contractor a certificate of independent status, a
5 predetermination of the contractor's independent contractor
6 status or a certificate showing that the contractor is insured
7 under a workers' compensation policy. In addition to issuing
8 predeterminations of independent contractor status on a
9 contract-specific basis, the Workers' Compensation Board may
10 issue an annual certificate of independent status to a contractor
11 based on similar factors to those examined in issuing the
12 predetermination. This amendment also adds a fiscal note to the
13 bill.
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