

# MAINE STATE LEGISLATURE

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*Handwritten initials*  
R.S.

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Minority

L.D. 670

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DATE: May 12, 1999

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**LABOR**

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

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

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

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

**4. Liability of landowner.** A landowner subject to this Act who contracts to have wood harvested from the landowner's property by a contractor who, as an employer, is subject to this Act and who has not complied with the provisions of this section and who does not 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 any person employed by the contractor in the execution of the work any compensation under this Act that the landowner would have been liable to pay if that person had been immediately employed by the landowner.

A landowner is not liable for compensation if at the time the landowner enters into the contract with the contractor, the landowner applies for and receives a predetermination of the independent status of the contractor as set forth in section 105, the landowner requests and receives a copy of the contractor's predetermination of independent contractor status, issued by the

**COMMITTEE AMENDMENT**

2 board on an annual basis to a contractor, certifying that the  
 4 contractor harvests forest products in a manner that would not  
 6 make the contractor an employee of the landowner or the landowner  
 8 requests and receives a certificate of insurance, issued by the  
 10 contractor's insurance carrier, certifying that the contractor  
 12 has obtained the required coverage and indicating the effective  
 14 dates of the policy, and if the landowner requests and receives  
 16 at least annually similar certificates indicating continuing  
coverage during the performance of the work. A landowner who  
receives a predetermination of the contractor's status as  
independent contractor is only relieved of liability under this  
paragraph if 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.

18 Notwithstanding section 105, subsection 1, paragraph A, a  
 20 predetermination under section 105 related only to parties  
 22 subject to this subsection a person engaged in harvesting forest  
 24 products is a conclusive presumption that the determination is  
 26 correct and section 105, subsection 2 does not apply to that  
 28 determination. Each party involved in or affected by the  
 30 predetermination must be provided information on the workers'  
 32 compensation laws and the effect of independent contractor status  
 34 in relation to those laws. A predetermination under section 105  
 related to ~~parties subject to this subsection~~ a person engaged in  
harvesting forest products is effective for ~~one calendar year or~~  
~~the duration of the contract, whichever is shorter~~ 12 months,  
except that the predetermination becomes invalid if the  
contractor engages in fraud in obtaining the predetermination or  
fraudulently changes working conditions in a manner that would  
disqualify the person as an independent contractor. The  
invalidation of the predetermination does not affect the  
landowner's immunity from liability.

36 A landowner required to pay compensation under this section is  
 38 entitled to be indemnified by the contractor and may recover the  
 40 amount paid in an action against that contractor. A landowner  
 42 may demand that the contractor enter into a written agreement to  
 44 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.

46 Landowners willfully acting to circumvent the provisions of this  
 48 section by using coercion, intimidation, deceit or other means to  
 50 encourage persons who would otherwise be considered employees  
 within the meaning of this Act to pose as contractors for the  
 purpose of evading this section are liable subject to the

COMMITTEE AMENDMENT **B** " to S.P. 248, L.D. 670

2 provisions of section 324, subsection 3. Nothing in this section  
may be construed to prohibit an employee from becoming a  
4 contractor subject to the provisions of section 102, subsection  
13.'

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

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**FISCAL NOTE**

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

18

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

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**SUMMARY**

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This amendment is the minority report. It replaces the  
28 bill. It provides for an annual predetermination for persons who  
harvest forest products. The predetermination becomes invalid if  
30 the person obtained it by fraud or fraudulently changes work  
practices so that the person would not qualify for independent  
32 contractor status. The invalidity of a predetermination does not  
alter the landowner's immunity from liability. This amendment  
34 also adds a fiscal note to the bill.