

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1862

H.P. 1298

House of Representatives, April 12, 2007

An Act Regarding Fairness for Families Regarding Workers' Compensation Coverage

Reported by Representative TUTTLE of Sanford for the Workers' Compensation Board pursuant to the Maine Revised Statutes, Title 39-A, section 152, subsection 11.

Received by the Clerk of the House on April 11, 2007. Referred to the Committee on Labor pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 39-A MRSA §102, sub-§11, ¶A**, as amended by PL 2003, c. 344, Pt. D,
3 §27 and c. 423, §4 and affected by §5, is further amended to read:

4 A. "Employee" includes officials of the State and officials of counties, cities, towns,
5 water districts and all other quasi-public corporations of a similar character, every
6 duly elected or appointed executive officer of a private corporation other than a
7 charitable, religious, educational or other nonprofit corporation, and every person in
8 the service of another under any contract of hire, express or implied, oral or written,
9 except:

10 (1) Persons engaged in maritime employment or in interstate or foreign
11 commerce who are within the exclusive jurisdiction of admiralty law or the laws
12 of the United States, except that this section may not be construed to exempt
13 from the definition of "employee" a person who is employed by the State and is
14 thereby barred by the State's sovereign immunity from bringing a claim against
15 that person's employer under admiralty law or other laws of the United States for
16 claims that are otherwise cognizable under this Act;

17 (2) Firefighters, including volunteer firefighters who are active members of a
18 volunteer fire association as defined in Title 30-A, section 3151; volunteer
19 emergency medical services persons as defined in Title 32, section 83, subsection
20 12; and police officers are employees within the meaning of this Act. In
21 computing the average weekly wage of an injured volunteer firefighter or
22 volunteer emergency services person, the average weekly wage must be taken to
23 be the earning capacity of the injured employee in the occupation in which the
24 employee is regularly engaged. Employers who hire workers within this State to
25 work outside the State may agree with these workers that the remedies under this
26 Act are exclusive as regards injuries received outside this State arising out of and
27 in the course of that employment; and all contracts of hiring in this State, unless
28 otherwise specified, are presumed to include such an agreement. Any reference to
29 an employee who has been injured must, when the employee is dead, include the
30 employee's legal representatives, dependents and other persons to whom
31 compensation may be payable;

32 (3) Notwithstanding any other provisions of this Act, any charitable, religious,
33 educational or other nonprofit corporation that may be or may become an
34 assenting employer under this Act may cause any duly elected or appointed
35 executive officer to be an employee of the corporation by specifically including
36 the executive officer among those to whom the corporation secures payment of
37 compensation in conformity with chapter 5; and the executive officer must
38 remain an employee of the corporation under this Act while such payment is so
39 secured. With respect to any corporation that secures compensation by making a
40 contract of workers' compensation insurance, specific inclusion of the executive
41 officer in the contract causes the officer to be an employee of the corporation
42 under this Act;

43 (4) Except for persons engaged in harvesting of forest products, any person
44 who, in a written statement to the board, waives all the benefits and privileges

1 provided by the workers' compensation laws, provided that the board has found
2 that person to be a bona fide owner of at least 20% of the outstanding voting
3 stock of the corporation by which that person is employed or a shareholder of the
4 professional corporation by which that person is employed and that this waiver
5 was not a prerequisite condition to employment. For the purposes of this
6 subparagraph, the term "professional corporation" means a domestic or foreign
7 professional corporation as defined in Title 13, section 723.

8 Any person may revoke or rescind that person's waiver upon 30 days' written
9 notice to the board and that person's employer. The parent, spouse, registered
10 domestic partner as described in Title 22, section 2710 or child of a person who
11 has made a waiver under the previous sentence may state, in writing, that the
12 parent, spouse, registered domestic partner as described in Title 22, section 2710
13 or child waives all the benefits and privileges provided by the workers'
14 compensation laws if the board finds that the waiver is not a prerequisite
15 condition to employment and if the parent, spouse, registered domestic partner as
16 described in Title 22, section 2710 or child is employed by the same corporation
17 that employs the person who has made the first waiver;

18 (5) Except for persons engaged in harvesting of forest products, the parent,
19 spouse, registered domestic partner as described in Title 22, section 2710 or child
20 of a sole proprietor who is employed by that sole proprietor or the parent, spouse,
21 registered domestic partner as described in Title 22, section 2710 or child of a
22 partner who is employed by the partnership of that partner or the parent, spouse,
23 registered domestic partner as described in Title 22, section 2710 or child of a
24 member of a limited liability company who is employed by that limited liability
25 company may state, in writing, that the parent, spouse, registered domestic
26 partner as described in Title 22, section 2710 or child waives all the benefits and
27 privileges provided by the workers' compensation laws if the board finds that the
28 waiver is not a prerequisite condition to employment;

29 (6) Employees of an agricultural employer when harvesting 150 cords of wood
30 or less each year from farm wood lots, provided that the employer is covered
31 under an employer's liability insurance policy as required in subsection 17;

32 (7) An independent contractor;

33 (8) Except as otherwise provided in section 401, if a person employs an
34 independent contractor, any employee of the independent contractor is not
35 considered an employee of that person for the purposes of this Act. The person
36 who employs an independent contractor is not responsible for providing workers'
37 compensation insurance covering the payment of compensation and benefits to
38 the employees of the independent contractor. An insurance company may not
39 charge a premium to any person for any employee excluded by this
40 subparagraph; or

41 (9) A state or municipal employee while the employee is on assignment as a
42 certified disaster service volunteer for the American Red Cross pursuant to Title
43 5, section 19-B or Title 30-A, section 2705. Duties performed while on a
44 volunteer disaster relief assignment for the American Red Cross may not be
45 considered a work assignment by a state agency or municipality.

