

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ping

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "**A**" to S.P. 332, L.D. 1099, Bill, "An Act Concerning Independent Contractors in the Trucking and Messenger Courier Industries"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 39-A MRSA §114 is enacted to read:

§114. Independent contractor status for truckers and couriers

1. Presumption of employee status. Notwithstanding section 102, subsection 13, the operator of a motor vehicle engaged in the business of freight transportation or courier and messenger services is considered an employee unless all of subsection 2 applies or the operator is able to provide proof of coverage by a valid workers' compensation insurance policy; in either of which case, the operator is considered an independent contractor. For purposes of this section, "motor vehicle" means a van, truck or truck tractor used for freight transportation or courier and messenger services.

2. Factors to determine independent contractor status. An operator of a motor vehicle is considered an independent contractor in the business of freight transportation or courier and messenger services if the operator:

- A. Owns the motor vehicle or holds it under a bona fide lease agreement;
- B. Is responsible for the maintenance of the motor vehicle;
- C. Is responsible for substantially all of the principal operating expenses of the motor vehicle, including without limitation fuel, repairs, supplies and insurance. The operator may be reimbursed, including prospectively, for the operator's fuel surcharge fees and incidental costs, including tolls, permits and freight handling fees, by the entity contracting with the operator;
- D. Is responsible for paying the operator's personal expenses;
- E. Is responsible for supplying the necessary services to operate the motor vehicle;

COMMITTEE AMENDMENT

- 1 F. Is compensated based on factors directly related to the work performed, such as
2 mileage-based rates, and not solely on the amount of time expended by the operator;
- 3 G. Substantially controls the means and manner of performing the services related to
4 the business of freight transportation or courier and messenger services in
5 conformance with the specifications of a shipper and the law; and
- 6 H. Possesses a certification statement affirming that the operator whose services are
7 being acquired meets each of the factors in paragraphs A to G and that the operator is
8 understood to be an independent contractor and not an employee. The statement
9 must be signed and dated by the operator supplying the service and the hiring entity.
10 The statement must be supplied on demand to an insurance premium auditor or the
11 board.
- 12 **3. Repeal.** This section is repealed October 1, 2013.'

13

SUMMARY

14 This amendment strikes the bill and allows a person engaged in freight transportation
15 or courier and messenger services to be considered an independent contractor either by
16 meeting all of the factors for determining independent contractor status described in the
17 bill or by being able to provide proof of coverage under a workers' compensation policy.
18 This amendment changes one of the factors to require that there be a statement signed by
19 both the person providing the services and the hiring entity that the person meets all of
20 the requirements for being an independent contractor and is considered an independent
21 contractor. Finally, this amendment provides for the repeal of these provisions on
22 October 1, 2013.