

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1099

S.P. 332

In Senate, March 15, 2011

An Act Concerning Independent Contractors in the Trucking and Messenger Courier Industries

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator THOMAS of Somerset.
Cosponsored by Representative ROSEN of Bucksport and
Senators: COLLINS of York, PLOWMAN of Penobscot, SNOWE-MELLO of Androscoggin,
THIBODEAU of Waldo, Representatives: CEBRA of Naples, CURTIS of Madison,
CUSHING of Hampden, PARRY of Arundel.

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

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

3 **§114. Independent contractor status for truckers and couriers**

4 **1. Presumption of employee status.** Notwithstanding section 102, subsection 13,
5 the operator of a motor vehicle engaged in the business of freight transportation or courier
6 and messenger services is considered an employee unless all of subsection 2 applies, in
7 which case the operator is considered an independent contractor. For purposes of this
8 section, "motor vehicle" includes an automobile, van, truck and truck-tractor.

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

12 A. Owns the motor vehicle or holds it under a bona fide lease agreement;

13 B. Is responsible for the maintenance of the motor vehicle;

14 C. Is responsible for substantially all of the principal operating expenses of the motor
15 vehicle, including without limitation fuel, repairs, supplies and insurance. The
16 operator may be reimbursed, including prospectively, for the operator's fuel surcharge
17 fees and incidental costs, including tolls, permits and freight handling fees, by the
18 entity contracting with the operator;

19 D. Is responsible for paying the operator's personal expenses;

20 E. Is responsible for supplying the necessary services to operate the motor vehicle;

21 F. Is compensated based on factors directly related to the work performed, such as
22 mileage-based rates, and not solely on the amount of time expended by the operator;

23 G. Substantially controls the means and manner of performing the services related to
24 the business of freight transportation or courier and messenger services in
25 conformance with the specifications of a shipper and the law; and

26 H. Enters into a written contract with a shipper specifying that the operator is an
27 independent contractor and not an employee of the shipper.

28 **SUMMARY**

29 This bill establishes a set of factors to determine whether an individual engaged in the
30 business of freight transportation or courier and messenger services is an employee or an
31 independent contractor for purposes of the workers' compensation laws.