

# MAINE STATE LEGISLATURE

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Date: 5-23-11

(Filing No. S-150)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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STATE OF MAINE  
SENATE  
125TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 437, L.D. 1420, Bill, "An Act To Modify the Laws Regarding Status as an Independent Contractor"

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

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the meaning of "independent contractor" in unemployment law is confusing to employers and employees, who seek clarity and uniformity; and

**Whereas,** the issue of classification of workers transcends many decades of legislative discussion and needs to be addressed to encourage the spirit of entrepreneurship in the State; and

**Whereas,** it is in the best interests of the State, employees and employers to eliminate this confusion as soon as possible and, to that end, the stakeholder group authorized by this legislation needs to meet as soon as possible to formulate a test to determine independent contractor status; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 26 MRSA §1043, sub-§11, ¶E,** as amended by PL 1979, c. 651, §45, is further amended to read:

E. Services performed by an individual for remuneration ~~shall be deemed~~ are considered to be employment subject to this chapter unless ~~and until~~ it is shown to the satisfaction of the bureau that the individual has been and will continue to be free

**COMMITTEE AMENDMENT**

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1 from control or direction over the performance of such services, both under the  
2 individual's contract of service and in fact, and:

3 ~~(1) Such individual has been and will continue to be free from control or~~  
4 ~~direction over the performance of such services, both under his contract of~~  
5 ~~service and in fact;~~

6 (2) Such service is either outside the usual course of the business for which such  
7 service is performed; or ~~that~~ such service is performed outside of all the places of  
8 business of the enterprise for which such service is performed; ~~and~~ or

9 (3) ~~Such~~ That individual is customarily engaged in an independently established  
10 trade, occupation, profession or business.

11 This paragraph is repealed December 31, 2012.

12 **Sec. 2. Report.** The Commissioner of Labor or the commissioner's designee shall  
13 convene a stakeholder group with representatives from the Workers' Compensation Board  
14 and the Department of Administrative and Financial Services, Maine Revenue Services  
15 and shall invite the participation of representatives from the Maine Merchants  
16 Association, Maine State Chamber of Commerce, National Federation of Independent  
17 Business, Maine Employers' Mutual Insurance Company, American Federation of Labor -  
18 Congress of Industrial Organizations, Maine Women's Lobby, Maine Equal Justice  
19 Partners, Associated Builders and Contractors, Inc., Technology Association of Maine  
20 and Maine Immigrant Rights Coalition. The stakeholder group shall develop an  
21 employment test to be used in the administration of, without limitation, unemployment  
22 compensation law, workers' compensation law and programs of the Department of Labor,  
23 Bureau of Labor Standards to determine whether a person is an employee or independent  
24 contractor. The commissioner or the commissioner's designee shall submit a report with  
25 recommendations to the Joint Standing Committee on Labor, Commerce, Research and  
26 Economic Development by January 15, 2012. The joint standing committee is authorized  
27 to introduce a bill related to the report to the Second Regular Session of the 125th  
28 Legislature.

29 **Emergency clause.** In view of the emergency cited in the preamble, this  
30 legislation takes effect when approved.'

31

### SUMMARY

32 This amendment adds an emergency preamble and clause to the bill and creates a  
33 stakeholder group of interested parties to develop an employment test that can be used  
34 across all occupations and in the administration of unemployment compensation law,  
35 workers' compensation law and labor standards programs. This amendment also repeals,  
36 effective December 31, 2012, the presumption that services performed by an individual  
37 for remuneration are considered employment unless certain conditions are met.

**FISCAL NOTE REQUIRED**  
**(See attached)**

# COMMITTEE AMENDMENT



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# 125th MAINE LEGISLATURE

LD 1420

LR 1456(02)

**An Act To Modify the Laws Regarding Status as an Independent Contractor**

**Fiscal Note for Bill as Amended by Committee Amendment "A" S-150**  
**Committee: Labor, Commerce, Research and Economic Development**  
**Fiscal Note Required: Yes**

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## Fiscal Note

Current biennium savings - Federal Funds  
Current biennium revenue decrease - Federal Funds

### Fiscal Detail and Notes

Reducing the number of workers potentially covered by the employment security laws may reduce the amount of benefits paid from the Unemployment Compensation Trust Fund beginning in fiscal year 2011-12 as well as the amount of contributions paid in to the Trust Fund. The net impact to the Trust Fund as well as to the contribution rate schedule can not be determined at this time but is not expected to be significant.