

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

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NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

a home day care provider or a summer camp established solely for recreational and educational purposes or a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with Title 20-A.

Sec. 5. 22 MRSA §8301-A, sub-§§5, 6, 7 and 8 are enacted to read:

5. Administrative suspension. Whenever conditions exist that immediately jeopardize the health and safety of children, the commissioner may issue an order of closure, which suspends the certification of the home day care provider or the day care center license for up to 10 days, pending further investigation or prior to obtaining an order of emergency suspension from the court. The department shall require that an order of closure be posted at the facility and made public as it determines to be most appropriate for parents and other potential customers.

6. Temporary license. Whenever a certified home day care provider or licensed day care center moves to a new location the department may issue a temporary license, valid pending final action on the application for the new location by the department, when:

A. All applicable standards have been met except a requirement that is dependent on the action of an agency of state government or a contractor of that agency; and

B. Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full license has been delayed by the agency or contractor.

7. Injunctive relief. The department may seek an injunction to require compliance with the provisions of this section or rules adopted pursuant to this section.

8. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 364

S.P. 248 - L.D. 670

An Act to Require That Workers' Compensation Coverage Be Equitably Applied to the Timber Industry

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

Sec. 1. 39-A MRSA §102, sub-§11, ¶A, as amended by PL 1997, c. 600, §§3 and 4, is further amended by amending subparagraphs (4) and (5) to read:

(4) Any Except for persons engaged in harvesting of forest products, any person who, in a written statement to the board, waives all the benefits and privileges provided by the workers' compensation laws, provided that the board has found that person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which that person is employed or a shareholder of the professional corporation by which that person is employed and that this waiver was not a prerequisite condition to employment. For the purposes of this subparagraph, the term "professional corporation" has the same meaning as found in Title 13, section 703, subsection 1.

Any person may revoke or rescind that person's waiver upon 30 days' written notice to the board and that person's employer. The parent, spouse or child of a person who has made a waiver under the previous sentence may state, in writing, that the parent, spouse or child waives all the benefits and privileges provided by the workers' compensation laws if the board finds that the waiver is not a prerequisite condition to employment and if the parent, spouse or child is employed by the same corporation that employs the person who has made the first waiver;

(5) The Except for persons engaged in harvesting of forest products, the parent, spouse or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse or child of a partner who is employed by the partnership of that partner may state, in writing, that the parent, spouse or child waives all the benefits and privileges provided by the workers' compensation laws if the board finds that the waiver is not a prerequisite condition to employment;

Sec. 2. 39-A MRSA §102, sub-§11, ¶B-1 is enacted to read:

B-1. "Employee" includes any person engaged in harvesting forest products, except the following persons, as long as they meet the criteria for obtaining a certificate of independent status or a

predetermination of independent contractor status:

(1) A person who contracts directly with the landowner if the person:

(a) Performs all of the wood harvesting alone;

(b) Performs all of the wood harvesting alone or with the assistance of one or more of the following persons whose relationship with the person is that of spouse, parent, sibling, child, niece or nephew;

(c) Performs all of the wood harvesting alone or with the assistance of one or more other persons all covered by workers' compensation insurance; or

(d) Performs all of the wood harvesting alone or with the assistance of a partner when a legal partnership exists and neither partner acts as a supervisor of the other;

(2) A spouse, parent, sibling, child, niece or nephew of a person who contracts directly with the landowner to perform all of the wood harvesting alone or with the assistance of one or more of the following: the person's spouse, parent, sibling, child, niece or nephew; or

(3) A partner of a person who contracts directly with the landowner to perform all of the wood harvesting alone or with the assistance of a partner when a legal partnership exists and neither partner acts as a supervisor of the other.

Unless employed by a private employer, a person considered an employee under this paragraph shall obtain personal coverage in the same manner and under the same provisions as a person described in paragraph B who elects to be covered by this Title.

Sec. 3. 39-A MRSA §102, sub-§12-A is enacted to read:

12-A. Harvesting forest products. "Harvesting forest products" means to sever and remove standing trees from a forest as a raw material for commercial purposes. "Forest products" has the same meaning as in Title 12, section 8881, subsection 3.

Sec. 4. 39-A MRSA §401, sub-§1, as amended by PL 1997, c. 359, §1, is further amended by amending the first paragraph to read:

1. Private employers. Every private employer is subject to this Act and shall secure the payment of compensation in conformity with this section and sections 402 to 407 with respect to all employees, subject to the provisions of this section. Unless employed by a private employer, a person engaged in harvesting forest products is subject to this Act and shall secure the payment of compensation in conformity with this section and sections 402 to 407 with respect to that person individually if that person is an employee as defined in section 102, subsection 11, paragraph B-1.

Sec. 5. 39-A MRSA §401, sub-§3, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

3. Failure to conform. The failure of any private employer or of any person engaged in harvesting forest products not exempt under subsection 1 or of any governmental body, as defined in subsection 2, to procure insurance coverage for the payment of compensation pursuant to sections 402 to 407 constitutes failure to secure payment of compensation provided for by this Act within the meaning of section 324, subsection 3, and subjects the employer or a person engaged in harvesting forest products to the penalties prescribed by that section. For purposes of this subsection, the term "insurance coverage" includes authorization by the Superintendent of Insurance to self-insure.

Sec. 6. 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 certificate of independent status, issued by the board on an annual basis to a contractor, certifying that the contractor harvests forest products in a manner that would not make the contractor an employee of the landowner or the landowner requests and receives a certificate of

insurance, issued by the contractor's insurance carrier, certifying that the contractor has obtained the required coverage and indicating the effective dates of the policy, and if the landowner requests and receives 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 or a certificate of independent status 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.

Notwithstanding section 105, subsection 1, paragraph A, a predetermination under section 105 related only to ~~parties subject to this subsection~~ a person engaged in harvesting forest products is a conclusive presumption that the determination is correct and section 105, subsection 2 does not apply to that determination. Each party involved in or affected by the predetermination must be provided information on the workers' compensation laws and the effect of independent contractor status 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.

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

Landowners willfully acting to circumvent the provisions of this section by using coercion, intimidation, deceit or other means to 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 provisions of section 324, subsection 3. Nothing in this section may be construed to prohibit an employee from becoming a contractor subject to the provisions of section 102, subsection 13.

See title page for effective date.

CHAPTER 365

S.P. 350 - L.D. 1054

An Act Requiring Doctors Giving 2nd Opinions in Workers' Compensation Cases to be Certified

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

Sec. 1. 39-A MRSA §207, first ¶, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

An employee being treated by a health care provider of the employee's own choice shall, after an injury and at all reasonable times during the continuance of disability if so requested by the employer, submit to an examination by a physician ~~or~~, surgeon ~~or~~ chiropractor authorized to practice as such under the laws of this State, to be selected and paid by the employer. The physician, surgeon or chiropractor must have an active practice of treating patients or have discontinued an active practice not more than 2 years before the date of the examination. For purposes of this section, "active practice" may be demonstrated by having treating privileges at a hospital. A physician or surgeon must be certified in the field of practice that treats the type of injury complained of by the employee. Certification must be by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or their successor organizations. A chiropractor licensed by the Board of Chiropractic Licensure, who has an active practice of treating patients or who discontinued an active practice not more than 2 years before the examination, may provide a 2nd opinion when the initial opinion was given by a chiropractor. Once an employer selects a health care provider to examine an employee, the employer may not request that the employee be examined by more than one other health care provider, other than an independent medical examiner appointed pursuant to section 312, without prior approval from the employee or a hearing officer. This provision does not limit an employer's right to request that the employee be examined by a specialist upon referral by the health care provider. Once the employee is examined by the specialist, the employer may not request that the employee be examined by a different specialist in the same specialty, other than an independent medical examiner appointed pursuant to section 312, without prior approval from the employee or the board. The employee has the right to have a physician ~~or~~, surgeon ~~or~~ chiropractor of the employee's own selection present at such an examination, whose costs are paid by the employer. The employer