

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

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training with respect to policies regarding death investigations under subsection 1, paragraph I must be made to the board no later than January 1, 2005; certification for orientation and training with respect to policies regarding public notification under subsection 1, paragraph J must be made to the board no later than January 1, 2007; ~~and~~ certification for orientation and training with respect to policies regarding the recording and preservation of ~~interview~~ interviews of suspects in serious crimes under subsection 1, paragraph K must be made to the board no later than January 1, 2006; and certification for orientation and training with respect to policies regarding mental illness and the process for involuntary commitment under subsection 1, paragraph L must be made to the board no later than January 1, 2011.

Sec. 6. 25 MRSA §2804-C, sub-§2-D is enacted to read:

2-D. Training regarding people who have mental illness and the involuntary commitment process. The board shall include in the basic law enforcement training program a block of instruction aimed specifically at the clinical, safety and procedural components of the involuntary commitment process, including the provision of a uniform checklist that includes reference to Title 34-B, section 1207, subsection 7 for law enforcement officers to use in order to effectively describe the seriousness of a case to a mental health professional.

Sec. 7. 34-B MRSA §1207, sub-§6-A, as enacted by PL 2007, c. 310, §6, is amended to read:

6-A. Disclosure of danger. A licensed mental health professional ~~may~~ shall disclose protected health information that the professional believes is necessary to avert a serious and imminent threat to health or safety when the disclosure is made in good faith to any person, including a target of the threat, who is reasonably able to prevent or minimize the threat.

Sec. 8. 34-B MRSA §1207, sub-§7 is enacted to read:

7. Disclosure to law enforcement. A licensed mental health professional shall disclose protected health information when the disclosure is made in good faith for a law enforcement purpose to a law enforcement officer if the conditions, as applicable, are met as described in 45 Code of Federal Regulations, Section 164.512(f) (2008).

Sec. 9. 34-B MRSA §1207, sub-§8 is enacted to read:

8. Disclosure of knowledge of firearms. A licensed mental health professional shall notify law enforcement when the notification is made in good faith that the licensed mental health professional has reason to believe that a person committed to a state mental health institute has access to firearms.

Sec. 10. 34-B MRSA §3863, sub-§6-A is enacted to read:

6-A. Notification to law enforcement of release after examination. When a person is taken by a law enforcement officer to a hospital for examination under this section and not admitted but released, the chief administrative officer of the hospital shall notify the law enforcement officer or the law enforcement officer's agency of that release.

Sec. 11. 34-B MRSA §3871, sub-§7 is enacted to read:

7. Firearms and discharge planning. Discharge planning must include inquiries and documentation of those inquiries into access by the patient to firearms and notification to the patient, the patient's family and any other caregivers that possession, ownership or control of a firearm by the person to be discharged is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

Sec. 12. Mental illness training in the tactical team certification. The Board of Trustees of the Maine Criminal Justice Academy shall incorporate specific training on mental illness as a component of the police tactical team certification process. The board is not required to provide an electronic version of the training.

Sec. 13. Development of uniform checklist for law enforcement. The Commissioner of Health and Human Services shall develop, in cooperation with representatives of state, local and county law enforcement, a uniform checklist to be used by all law enforcement officers in order to effectively describe the seriousness of a case to a mental health professional.

Sec. 14. Education regarding prohibition of firearms. The Commissioner of Health and Human Services shall develop a method to provide education to all mental health professionals regarding the prohibition of possessing firearms by certain persons as described in the Maine Revised Statutes, Title 15, section 393.

See title page for effective date.

CHAPTER 452

H.P. 1008 - L.D. 1456

An Act To Ensure That Construction Workers Are Protected by Workers' Compensation Insurance

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

Sec. 1. 26 MRSA §1302-A is enacted to read:

§1302-A. Insurance coverage posted on public construction projects

1. List of contractors. At the onset of work on any construction project undertaken by the State, the University of Maine System or the Maine Community College System, the general contractor or designated project construction manager, if any, shall provide to the contracting agency a list of all subcontractors and independent contractors on the job site and a record of the entity to whom that subcontractor or independent contractor is directly contracted and by whom that subcontractor or independent contractor is insured for workers' compensation purposes. The list must be posted on the contracting agency's publicly accessible website and updated as needed.

2. Minimum standards. This section provides minimum disclosure standards regarding subcontractors and does not preclude the contracting agency from setting more rigorous standards for construction work under its jurisdiction.

3. Noncompliance. If the general contractor or designated project construction manager has failed to provide the contracting agency with the information required by subsection 1, that person is subject to forfeiture in accordance with section 1312.

Sec. 2. 26 MRSA §1312, sub-§1, as amended by PL 1999, c. 181, §3, is further amended to read:

1. Violation by contractor or subcontractor. Except as provided in section 1308, subsection 1-A, any contractor or subcontractor who willfully and knowingly violates section 1302-A or sections 1304 to 1313 is subject to a forfeiture of not less than \$250.

Sec. 3. 39-A MRSA §102, sub-§11, ¶A, as amended by PL 2007, c. 350, §1, is further amended to read:

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

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

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

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

(4) 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" means a domestic or foreign professional corporation as defined in Title 13, section 723.

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, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a person who has made a waiver under the previous sentence may state, in writing, that the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 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, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child is employed by the same corporation that employs the person who has made the first waiver;

(5) Except for persons engaged in harvesting of forest products, the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a partner who is employed by the partnership of that partner or the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a member of a limited liability company who is employed by that limited liability company may state, in writing, that the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 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;

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

(7) An independent contractor;

(8) Except as otherwise provided in ~~section~~ sections 105-A and 401, if a person employs an independent contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an in-

dependent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. An insurance company may not charge a premium to any person for any employee excluded by this subparagraph; or

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

Sec. 4. 39-A MRSA §102, sub-§13, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

13. Independent contractor. ~~"Independent~~ Except as otherwise provided by section 105-A, "independent contractor" means a person who performs services for another under contract, but who is not under the essential control or superintendence of the other person while performing those services. In determining whether such a relationship exists, the board shall consider the following factors:

- A. Whether or not a contract exists for the person to perform a certain piece or kind of work at a fixed price;
- B. Whether or not the person employs assistants with the right to supervise their activities;
- C. Whether or not the person has an obligation to furnish any necessary tools, supplies and materials;
- D. Whether or not the person has the right to control the progress of the work, except as to final results;
- E. Whether or not the work is part of the regular business of the employer;
- F. Whether or not the person's business or occupation is typically of an independent nature;
- G. The amount of time for which the person is employed; and
- H. The method of payment, whether by time or by job.

In applying these factors, the board may not give any particular factor a greater weight than any other factor, nor may the existence or absence of any one factor be decisive. The board shall consider the totality of the relationship in determining whether an employer exercises essential control or superintendence of the person.

Sec. 5. 39-A MRSA §105-A is enacted to read:

§105-A. Construction contractors

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Construction site" means a location where a structure that is attached or will be attached to real property is constructed, altered or remodeled.

B. "Construction subcontractor" means a person who performs construction work on a construction site for a hiring agent if the person satisfies all of the following criteria:

(1) The person possesses or has applied for a federal employer identification number or social security number or has agreed in writing to carry out the responsibilities imposed on employers under this chapter;

(2) The person has control and discretion over the means and manner of performance of the construction work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the hiring agent;

(3) The person has control over the time when the work is performed and the time of performance is not dictated by the hiring agent. Nothing in this paragraph prohibits the hiring agent from reaching an agreement with the person as to a completion schedule, range of work hours and maximum number of work hours to be provided by the person;

(4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work;

(5) The person purports to be in business for that person's self;

(6) The person has continuing or recurring construction business liabilities or obligations;

(7) The success or failure of the person's construction business depends on the relationship of business receipts to expenditures;

(8) The person receives compensation for construction work or services performed and remuneration is not determined unilaterally by the hiring agent;

(9) The person is responsible in the first instance for the main expenses related to the service or construction work performed; however, nothing in this paragraph prohibits

the hiring agent from providing the supplies or materials necessary to perform the work;

(10) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;

(11) The person supplies the principal tools and instruments used in the work, except that the hiring agent may furnish tools or instruments that are unique to the hiring agent's special requirements or are located on the hiring agent's premises; and

(12) The person is not required to work exclusively for the hiring agent.

C. "Construction work" means any part of the construction, alteration or remodeling of a structure, including related landscaping and other site work performed in connection with the performance of such work, but not including surveying, engineering, examination or inspection of a construction site or the delivery of materials to a construction site.

D. "Hiring agent" means a person that hires or contracts with a person to perform construction work, but excludes an owner or occupant of real property who hires a person or persons to perform construction work on that real property.

E. "Person" means:

(1) An individual;

(2) A sole proprietor;

(3) A working member of a partnership;

(4) A working member of a limited liability company;

(5) A parent, spouse or child of a sole proprietor, partner or working member of a limited liability company under section 102, subsection 11, paragraph A;

(6) A working owner or part owner of a corporation; and

(7) A working shareholder of a professional corporation.

2. Status of persons performing construction work. Beginning January 1, 2010, a person performing construction work on a construction site for a hiring agent is presumed to be the employee of the hiring agent for purposes of this Act, unless:

A. The person is a construction subcontractor; or

B. The person owns and operates an item of equipment weighing more than 7,000 pounds and is hired by the hiring agent to operate the equipment on the construction site or to use the equip-

ment to transport materials to or from the site. A person who leases such an item of equipment from a person in the leasing business, other than the hiring agent or an affiliate of the hiring agent, is regarded as the owner for the purposes of this paragraph. A truck with a gross vehicle weight rating greater than 7,000 pounds qualifies as an item of equipment under this paragraph.

3. Penalties. A person who is required to but fails to secure the payment of compensation with respect to persons deemed to be that person's employees under this section is subject to the penalties under section 324, subsection 3.

4. Insurer referral obligation. An insurer that believes in good faith that an insured employer withheld from it or from the State Tax Assessor records of payments to a person deemed to be the person's employee under this section may, but is not required to, refer the insured employer and person to the State Tax Assessor in order that the assessor may take appropriate action, and the insurer enjoys immunity for such actions.

Sec. 6. Report. By December 15, 2009, the Workers' Compensation Board and the Department of Labor shall report to the Joint Standing Committee on Labor any recommended changes to the provisions established by this Act and the resources required by the board and the department, if any, for implementation of this Act. After receipt and review of the report, the joint standing committee may report out a bill to the Second Regular Session of the 124th Legislature.

See title page for effective date.

CHAPTER 453

H.P. 584 - L.D. 849

An Act To Clarify the Application of the Public Works Minimum Wage Laws

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

Sec. 1. 26 MRSA §1304, sub-§8, as amended by PL 2003, c. 197, §1, is further amended to read:

8. Public works. "Public works" includes public schools and all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports and all other structures upon which construction may be let to contract by the State and which contract amounts to \$50,000 or more.

See title page for effective date.

CHAPTER 454

S.P. 294 - L.D. 767

An Act To Promote Fairness and Protect Economic Development in Transportation Projects Undertaken by the State

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

Sec. 1. 23 MRSA §153-C is enacted to read:

§153-C. Acquisition of property identified in transportation planning; new bypass highway project

1. Acquisition of property. If the Department of Transportation prepares an environmental impact statement as required by the federal National Environmental Protection Act of 1969 for permitting for the location of a new bypass highway project and property will be affected by the limits of the final bypass right-of-way and the property owner submits a request in writing to the department that the department acquire that portion of the owner's property determined necessary for the new bypass highway project, the department shall acquire the property determined necessary if:

A. The department has received a least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers that will be incorporated into the environmental impact statement for corridor alignment indicating that certain property will be necessary for the purposes set forth in section 153-B, subsection 1; and

B. The fair market value is determined in accordance with this subchapter.

The request submitted by the property owner under this subsection must be submitted to the department within 9 months of the date that the department receives the least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers under paragraph A.

2. Deadline for acquisition; extension. The following provisions govern the deadline for acquisition of property by the Department of Transportation pursuant to subsection 1.

A. The department shall acquire affected properties pursuant to this subchapter within 2 years from the date of issuance of the least environmentally damaging practicable alternative determination from the United States Army Corps of Engineers under subsection 1, paragraph A.