

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 6, 2010 to April 12, 2010**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 12, 2010**

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

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**Augusta, Maine**  
**2010**

**CHAPTER 569**  
**H.P. 1299 - L.D. 1815**

**An Act To Clarify the  
Construction Subcontractor  
Status of the Maine Workers'  
Compensation Act of 1992**

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

**Whereas,** in order to ensure a smooth transition for the predetermination of the employment status of construction subcontractors certain changes in the law must be put into effect as soon as possible; 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. 39-A MRSA §105,** as amended by PL 1993, c. 65, §1 and c. 120, §1 and affected by §6, is further amended to read:

**§105. Predetermination of independent contractor and construction subcontractor status**

**1. Predetermination permitted.** A worker, an employer or a workers' compensation insurance carrier, or any together, may apply to the board for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor.

A. The predetermination by the board creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act.

B. Nothing in this ~~section~~ subsection requires a worker, an employer or a workers' compensation insurance carrier to request predetermination.

**1-A. Predetermination permitted for construction subcontractors.** A person, as defined in section 105-A, subsection 1, paragraph E, may apply to the board for a predetermination that the person performs construction work in a manner that would not make the person an employee of a hiring agent, as defined in section 105-A, subsection 1, paragraph D.

A. The predetermination issued by the board pursuant to this subsection is valid for one year and creates a rebuttable presumption that the determi-

nation is correct in any later claim for benefits under this Act.

B. Nothing in this subsection requires a person, as defined in section 105-A, subsection 1, paragraph E, a worker, an employer or a workers' compensation insurance carrier to request predetermination.

**2. Premium adjustment.** If it is determined that a predetermination does not withstand board or judicial scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit premium subsequently due in order to put the parties in the same position as if the final outcome under the contested claim were predetermined correctly.

**3. Predetermination submission.** A party may submit, on forms approved by the board, a request for predetermination regarding the status of a person or job description as an employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, or independent contractor. The status requested by a party is deemed to have been approved if the board does not deny or take other appropriate action on the submission within 14 days.

**4. Hearing.** A hearing, if requested by a party within 10 days of the board's decision on a petition, must be conducted under the Maine Administrative Procedure Act.

**5. Certificate.** The board shall provide the petitioning party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.

**6. Rulemaking.** The board is authorized to adopt reasonable rules pursuant to the Maine Administrative Procedure Act to implement the intent of this section, which is to afford speedy and equitable predetermination of employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, and independent contractor status.

**Sec. 2. Implementation.** The Workers' Compensation Board shall implement the provisions of this Act by updating the predetermination application using existing departmental personnel and resources. The Workers' Compensation Board shall submit the predetermination application for review by the Joint Standing Committee on Labor by March 10, 2010.

**Sec. 3. Appropriations and allocations.** The following appropriations and allocations are made.

**WORKERS' COMPENSATION BOARD**

**Administration - Workers' Compensation Board  
0183**

Initiative: Allocates funds to enhance enforcement of laws prohibiting the misclassification of workers by the Workers' Compensation Board Abuse Investigation Unit by providing a range change from 24 to 27 for 2 Workers' Compensation Specialist positions and reclassifying one Secretary Legal range 13 position to a Paralegal range 20 position.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
Personal Services	\$5,443	\$21,769
OTHER SPECIAL	\$5,443	\$21,769
REVENUE FUNDS TOTAL		

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

Effective March 30, 2010.

## CHAPTER 570

### H.P. 1305 - L.D. 1822

#### An Act To Further Amend the Sex Offender Registration and Notification Act of 1999

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

**Whereas,** in order for the Legislature to respond to the Law Court's concerns raised regarding the constitutionality of certain provisions of the Sex Offender Registration and Notification Act of 1999 prior to the March 31, 2010 expiration of the stay of the Law Court's decision in State v. Letalien, this legislation must take effect as expeditiously as possible; 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. 34-A MRSA §11202-A**, as enacted by PL 2009, c. 365, Pt. B, §3 and affected by §22, is amended to read:

#### §11202-A. Exception

**1. Exception.** Notwithstanding section 11202, a person ~~sentenced on or after January 1, 1982 and prior to June 30, 1992~~ is not required to register under this

chapter if that person submits to the bureau, in a form to be determined by the bureau, documentation to establish the following:

A. The person was sentenced in the State on or after January 1, 1982 and prior to June 30, 1992 and was finally discharged from the correctional system prior to September 1, 1998 at least 10 years prior to submitting documentation to the bureau under this section; the person was sentenced in the State on or after June 30, 1992 and prior to September 18, 1999 and was finally discharged from the correctional system at least 10 years prior to submitting documentation to the bureau under this section; the person was sentenced in another jurisdiction, was finally discharged from the correctional system at least 10 years prior to submitting documentation to the bureau under this section and has been in compliance with the registration duties as a resident required under subchapter 2 since September 12, 2009; or the person was sentenced in the State on or after September 18, 1999 and prior to July 30, 2004 for a violation of former Title 17-A, section 252 and was finally discharged from the correctional system at least 10 years prior to submitting documentation to the bureau under this section. For purposes of this paragraph, "finally discharged from the correctional system" includes completion of probation;

B. The person's convictions do not include more than one Class A sex offense or sexually violent offense or more than one conviction in another jurisdiction for an offense that contains the essential elements of a Class A sex offense or sexually violent offense, whether or not the convictions occurred on the same date;

C. At the time of the offense, the person had not been previously sentenced in this State as an adult or as a juvenile sentenced as an adult for a sex offense or a sexually violent offense;

D. At the time of the offense, the person had not been previously sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult for an offense that contains the essential elements of a sex offense or a sexually violent offense;

E. Subsequent to the ~~commission of conviction~~ for the sex offense or sexually violent offense, the person has not been convicted of a crime under Title 17 or Title 17-A in this State that is punishable by imprisonment for a term of one year or more; and

F. Subsequent to the ~~commission of conviction~~ for the sex offense or sexually violent offense, the person has not been convicted under the laws of any other jurisdiction of a crime that is punishable by a term of imprisonment exceeding one year. This paragraph does not include a crime under the