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No. 1314

H.P. 960

House of Representatives, March 28, 2011

An Act To Standardize the Definition of "Independent Contractor"

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative TILTON of Harrington.
Cosponsored by Senator THOMAS of Somerset, Senator PLOWMAN of Penobscot and
Representatives: CRAY of Palmyra, FITTS of Pittsfield, GIFFORD of Lincoln, McFADDEN
of Dennysville, PARRY of Arundel.

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

2 **Sec. 1. 1 MRSA §1012, sub-§9**, as amended by PL 1991, c. 885, Pt. E, §1 and
3 affected by §47, is further amended to read:

4 **9. Self-employed.** "Self-employed" means that the person qualifies as an
5 independent contractor under Title 39-A, section 102, subsection ~~43~~ 13-A.

6 **Sec. 2. 5 MRSA §19, sub-§1, ¶J**, as amended by PL 1991, c. 885, Pt. E, §6 and
7 affected by §47, is further amended to read:

8 J. "Self-employed" means that the person qualifies as an independent contractor
9 under Title 39-A, section 102, subsection ~~43~~ 13-A.

10 **Sec. 3. 26 MRSA §1043, sub-§11, ¶E**, as amended by PL 1979, c. 651, §45, is
11 repealed and the following enacted in its place:

12 E. Services performed by an individual for remuneration are considered to be
13 employment subject to this chapter unless and until it is shown to the satisfaction of
14 the bureau that the individual is an independent contractor who:

15 (1) Performs services free from direction and control over the means and manner
16 of providing the services, subject only to the right of the person or entity for
17 whom services are provided to specify the desired result;

18 (2) Furnishes the tools and equipment necessary to provide the services;

19 (3) Operates a business that is considered inseparable from the individual for
20 purposes of taxes, profits and liabilities;

21 (4) Exercises complete control over the management and operations of the
22 business; and

23 (5) Exercises the right and opportunity on a continuing basis to perform the
24 services of the business for multiple entities at the individual's sole choice and
25 discretion.

26 An individual who is an independent contractor under this paragraph is an
27 independent contractor until that individual is determined otherwise by the bureau.

28 **Sec. 4. 39-A MRSA §102, sub-§13**, as amended by PL 2009, c. 452, §4, is
29 repealed.

30 **Sec. 5. 39-A MRSA §102, sub-§13-A** is enacted to read:

31 **13-A. Independent contractor.** Except as otherwise provided by section 105-A,
32 "independent contractor" means a person who:

33 A. Performs services free from direction and control over the means and manner of
34 providing the services, subject only to the right of the person or entity for whom
35 services are provided to specify the desired result;

1 B. Furnishes the tools and equipment necessary to provide the services under
2 paragraph A;

3 C. Operates a business that is considered inseparable from the individual for
4 purposes of taxes, profits and liabilities;

5 D. Exercises complete control over the management and operations of the business;
6 and

7 E. Exercises the right and opportunity on a continuing basis to perform the services
8 of the business for multiple entities at the individual's sole choice and discretion.

9 An individual who is an independent contractor under this subsection is an independent
10 contractor until that individual is determined otherwise by the board.

11 **Sec. 6. 39-A MRSA §401, sub-§4**, as amended by PL 1999, c. 364, §6, is further
12 amended to read:

13 **4. Liability of landowner.** A landowner subject to this Act who contracts to have
14 wood harvested from the landowner's property by a contractor who, as an employer, is
15 subject to this Act and who has not complied with the provisions of this section and who
16 does not comply with the provisions of this section prior to the date of an injury or death
17 for which a claim is made is liable to pay to any person employed by the contractor in the
18 execution of the work any compensation under this Act that the landowner would have
19 been liable to pay if that person had been immediately employed by the landowner.

20 A landowner is not liable for compensation if at the time the landowner enters into the
21 contract with the contractor, the landowner applies for and receives a predetermination of
22 the independent status of the contractor as set forth in section 105, the landowner requests
23 and receives a certificate of independent status, issued by the board on an annual basis to
24 a contractor, certifying that the contractor harvests forest products in a manner that would
25 not make the contractor an employee of the landowner or the landowner requests and
26 receives a certificate of insurance, issued by the contractor's insurance carrier, certifying
27 that the contractor has obtained the required coverage and indicating the effective dates of
28 the policy, and if the landowner requests and receives at least annually similar certificates
29 indicating continuing coverage during the performance of the work. A landowner who
30 receives a predetermination of the contractor's status as independent contractor or a
31 certificate of independent status is only relieved of liability under this paragraph if the
32 contract for wood harvesting expressly states that the independent contractor will not hire
33 any employees to assist in the wood harvesting without first providing the required
34 certificate of insurance to the landowner.

35 Notwithstanding section 105, subsection 1, paragraph A, a predetermination under
36 section 105 related only to a person engaged in harvesting forest products is a conclusive
37 presumption that the determination is correct and section 105, subsection 2 does not apply
38 to that determination. Each party involved in or affected by the predetermination must be
39 provided information on the workers' compensation laws and the effect of independent
40 contractor status in relation to those laws. A predetermination under section 105 related
41 to a person engaged in harvesting forest products is effective for one calendar year or the
42 duration of the contract, whichever is shorter.

1 A landowner required to pay compensation under this section is entitled to be
2 indemnified by the contractor and may recover the amount paid in an action against that
3 contractor. A landowner may demand that the contractor enter into a written agreement
4 to reimburse the landowner for any loss incurred under this section due to a claim filed
5 for compensation and other benefits. The employee is not entitled to recover at common
6 law against the landowner for any damages arising from such injury if the employee takes
7 compensation from that landowner.

8 Landowners willfully acting to circumvent the provisions of this section by using
9 coercion, intimidation, deceit or other means to encourage persons who would otherwise
10 be considered employees within the meaning of this Act to pose as contractors for the
11 purpose of evading this section are liable subject to the provisions of section 324,
12 subsection 3. Nothing in this section may be construed to prohibit an employee from
13 becoming a contractor subject to the provisions of section 102, subsection ~~43~~ 13-A.

14 **SUMMARY**

15 This bill standardizes the definition of "independent contractor" for employment
16 security law and workers' compensation law. It considers who directs or controls the
17 means and manner of providing the contracted services; who furnishes the tools and
18 equipment necessary to provide the services; whether the business is considered
19 inseparable from the individual for purposes of taxes, profits and liabilities; who
20 exercises control over the management and operations of the business; and who exercises
21 the right and opportunity to perform the services of the business for multiple entities.