

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Standardize the Definition of "Independent Contractor"**

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

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

**9. Self-employed.** "Self-employed" means that the person qualifies as an independent contractor under Title 39-A, section 102, subsection †313-A.

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

J. "Self-employed" means that the person qualifies as an independent contractor under Title 39-A, section 102, subsection †313-A.

**Sec. 3. 26 MRSA §1043, sub-§11, ¶E**, as amended by PL 1979, c. 651, §45, is repealed and the following enacted in its place:

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

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

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

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

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

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

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

**Sec. 4. 39-A MRS §102, sub-§13**, as amended by PL 2009, c. 452, §4, is repealed.

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

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

- A. Performs services free from direction and control over the means and manner of providing the services, subject only to the right of the person or entity for whom services are provided to specify the desired result;
- B. Furnishes the tools and equipment necessary to provide the services under paragraph A;
- C. Operates a business that is considered inseparable from the individual for purposes of taxes, profits and liabilities;
- D. Exercises complete control over the management and operations of the business; and
- E. Exercises the right and opportunity on a continuing basis to perform the services of the business for multiple entities at the individual's sole choice and discretion.

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

**Sec. 6. 39-A MRS §401, sub-§4**, as amended by PL 1999, c. 364, §6, 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 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 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 ~~1~~313-A.

## **SUMMARY**

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