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## **An Act To Facilitate Rapid Response by Out-of-state Businesses to State Disasters**

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

**Whereas,** this legislation allows businesses from outside of Maine to come to Maine's assistance during times of disaster, natural or man-made, without those businesses being subject to certain regulations and taxes; and

**Whereas,** since it is impossible to predict when the next disaster may occur that requires Maine to seek assistance from outside its borders, this legislation needs to take 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. 10 MRSA Pt. 15** is enacted to read:

### **PART 15**

### **STATE OF EMERGENCY PROCEDURES**

### **CHAPTER 1201**

### **WAIVERS FOR OUT-OF-STATE BUSINESSES AND EMPLOYEES**

#### **§ 9901. Findings**

The Legislature finds that in times of emergency in this State, such as during or after a storm, flood, fire, earthquake, hurricane or other disaster, businesses from other states provide assistance by bringing in resources and personnel to assist the State with the often enormous and overwhelming task of cleaning up, restoring and repairing damaged buildings, equipment and property. This provision of assistance may require out-of-state businesses, including out-of-state affiliates of businesses based in the State, to bring in resources, property or personnel that previously have had no connection to the State to perform activities in the State, including, but not limited to, repairing, renovating, installing, building, rendering services and engaging in other business activities, some of which may require that personnel from the businesses be located in the State for extended periods of time.

The Legislature further finds that, while these businesses are operating in the State providing assistance on a temporary basis solely for the purpose of helping the State recover from the disaster or emergency, these businesses and their employees should not be burdened by any requirements for business and employee taxes as a result of such temporary activities. The State's nexus and residency

thresholds are intended for businesses and individuals that are located in the State as part of the conduct of regular business operations or that intend to reside in the State; those thresholds should not apply to businesses and individuals coming into the State on a temporary basis to provide assistance in response to a declared state disaster or emergency.

To ensure that these businesses focus on responding quickly to the needs of the State and its citizens during a declared state disaster or emergency, the Legislature finds that it is appropriate to consider that such activity for a reasonable period of time during and after the disaster or emergency undertaken to repair and restore property and infrastructure in the State does not establish presence or residency in this State, constitute doing business in the State or meet any other criteria for purposes of subjecting the businesses to state and local taxes or licensing and regulatory requirements.

## **§ 9902. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Declared state disaster or emergency.** "Declared state disaster or emergency" means a disaster or emergency event for which a Governor's state of emergency proclamation has been issued pursuant to Title 37-B, section 742 or that the President of the United States has declared to be a major disaster or emergency.

**2. Disaster period.** "Disaster period" means the period of time that begins no later than 10 days following the Governor's proclamation of a state of emergency or the declaration by the President of the United States of a major disaster or emergency, whichever occurs first, and that extends for a period of 60 calendar days following the end of the declared disaster or emergency as proclaimed by the Governor pursuant to Title 37-B, section 743 or the President of the United States or pursuant to law, whichever occurs first.

**3. Infrastructure.** "Infrastructure" means:

A. Property and equipment, including related support facilities that provide service to more than one customer or person, owned or used by a public utility as defined in Title 35-A, section 102, subsection 13 or by a communications service provider as defined in Title 35-A, section 9202, subsection 4. "Infrastructure" includes, without limitation, real and personal property such as buildings, offices, power lines, poles, pipes, structures and equipment; and

B. Public roads and bridges.

**4. Out-of-state business.** "Out-of-state business" means a business entity:

A. That does not have a presence in the State;

B. That does not conduct business in the State; and

C. Whose assistance in performing work in this State, such as repairing, renovating, installing or building infrastructure, rendering services or engaging in other business activities, related to a declared state disaster or emergency is requested by the State, a county, city, town or other political subdivision of the State or a registered business.

"Out-of-state business" includes a business entity that is affiliated with a registered business solely through common ownership as long as that business entity does not have any registrations, tax filings or nexus in the State prior to the declared state disaster or emergency.

**5. Out-of-state employee.** "Out-of-state employee" means an individual who performs services for an out-of-state business in return for compensation and who, prior to the declared state disaster or emergency, was neither a resident of this State nor had a nexus in the State.

**6. Registered business.** "Registered business" means a business entity that is registered or licensed to do business in the State prior to the declared state disaster or emergency.

### **§ 9903. Status of out-of-state businesses and employees during disaster period**

**1. Out-of-state businesses.** Notwithstanding Title 36, section 5211 or any other provision of law to the contrary, and except as provided in subsection 3, during a disaster period an out-of-state business that conducts operations within the State for the purpose of performing work or providing services related to a declared state disaster or emergency is deemed to have not established a level of presence that would require that business to register, file or remit state or local taxes or that would require that business or its out-of-state employees to be subject to any state or local employment, licensing or registration requirements, including, but not limited to:

- A. Business licensing or registration requirements;
- B. State or local taxes or fees such as unemployment insurance or workers' compensation insurance;
- C. Occupational licensing fees;
- D. Sales and use tax on equipment used or consumed by that out-of-state business or its out-of-state employees during the disaster period; and
- E. Income tax withholding or remittance.

**2. Out-of-state employees.** Notwithstanding Title 36, section 5142 or any provision of law to the contrary, and except as provided in subsection 3, during a disaster period an out-of-state employee performing work or providing services in this State related to a declared state disaster or emergency is deemed to have not established residency or a presence in the State that would require that out-of-state employee or that out-of-state employee's employer to file and pay income taxes or to be subject to state income tax withholdings or to file and pay any other state or local tax or fee during the disaster period.

**3. Sales and use taxes and fees.** An out-of-state business and an out-of-state employee are required to pay sales and use taxes and fees, including, but not limited to, fuel taxes, sales and use taxes on materials and services subject to sales and use tax, lodging taxes and vehicle rental taxes or fees, on purchases or leases of tangible personal property and taxable services sold at retail for use or consumption in the State during a disaster period, unless those taxes or fees are otherwise waived during a disaster period.

**4. Status after disaster period.** After the termination of a disaster period, an out-of-state business or out-of-state employee that remains in the State is subject to the State's standards for establishing presence or residency or for doing business in the State and shall meet all business and employee tax requirements.

### **§ 9904. Notification**

**1. Notification by out-of-state businesses during disaster period.** An out-of-state business shall provide notification to the Secretary of State as soon as practicable after entry to the State during a disaster period that the out-of-state business is in the State for purposes of responding to the declared state disaster or emergency. The out-of-state business shall provide to the Secretary of State information related to the out-of-state business including but not limited to the following:

- A. Name;
- B. State of domicile;
- C. Principal business address;
- D. Federal employer identification number;
- E. The date when the out-of-state business entered the State; and
- F. Contact information while the out-of-state business is in this State.

**2. Registered businesses.** A registered business shall provide the notification required in subsection 1 for an affiliate of the registered business that enters the State as an out-of-state business. The notification under this subsection also must include contact information for the registered business in the State.

**3. Notification of intent to remain in the State.** An out-of-state business that remains in the State after a disaster period shall notify the Secretary of State and shall meet all registration, licensing and filing requirements resulting from establishing a business presence in the State.

### **§ 9905. Rulemaking**

The Secretary of State, in consultation with the Department of Administrative and Financial Services, Bureau of Revenue Services, the Department of Professional and Financial Regulation, the Department of Economic and Community Development and the Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency, shall adopt routine technical rules, as

defined in Title 5, chapter 375, subchapter 2-A, to implement the provisions of this chapter. Notification and registration procedures adopted by rule must allow a person to obtain and complete any required forms using a publicly accessible website on the Internet.

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

## SUMMARY

This bill allows an out-of-state business to enter the State when a Governor's state of emergency proclamation or a declaration by the President of the United States of a major disaster or emergency has been issued without subjecting that out-of-state business or its employees to the licensing, registration and taxation requirements imposed on businesses and individuals that reside in the State. Following the disaster period, which ends 60 days after the disaster or emergency is over, any exemption ends. A business or employee that continues to reside in the State after the disaster period ends is subject to all registration, licensing and taxation requirements normally imposed.