

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

S.P. 332 - L.D. 1099

An Act Concerning Independent Contractors in the Trucking and Messenger
Courier Industries

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

Sec. 1. 39-A MRSA §114 is enacted to read:

§114. Independent contractor status for truckers and couriers

1. Presumption of employee status. Notwithstanding section 102, subsection 13, the operator of a motor vehicle engaged in the business of freight transportation or courier and messenger services is considered an employee unless all of subsection 2 applies or the operator is able to provide proof of coverage by a valid workers' compensation insurance policy; in either of which case, the operator is considered an independent contractor. For purposes of this section, "motor vehicle" means a van, truck or truck tractor used for freight transportation or courier and messenger services.

2. Factors to determine independent contractor status. An operator of a motor vehicle is considered an independent contractor in the business of freight transportation or courier and messenger services if the operator:

- A. Owns the motor vehicle or holds it under a bona fide lease agreement;
- B. Is responsible for the maintenance of the motor vehicle;
- C. Is responsible for substantially all of the principal operating expenses of the motor vehicle, including without limitation fuel, repairs, supplies and insurance. The operator may be reimbursed, including prospectively, for the operator's fuel surcharge fees and incidental costs, including tolls, permits and freight handling fees, by the entity contracting with the operator;
- D. Is responsible for paying the operator's personal expenses;
- E. Is responsible for supplying the necessary services to operate the motor vehicle;
- F. Is compensated based on factors directly related to the work performed, such as mileage-based rates, and not solely on the amount of time expended by the operator;

G. Substantially controls the means and manner of performing the services related to the business of freight transportation or courier and messenger services in conformance with the specifications of a shipper and the law; and

H. Possesses a certification statement affirming that the operator whose services are being acquired meets each of the factors in paragraphs A to G and that the operator is understood to be an independent contractor and not an employee. The statement must be signed and dated by the operator supplying the service and the hiring entity. The statement must be supplied on demand to an insurance premium auditor or the board.

3. Repeal. This section is repealed October 1, 2013.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor