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Legislative Document

No. 1413

H.P. 1026

House of Representatives, March 26, 2019

An Act To Reduce Administrative Burdens of Forest Products Harvesters

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative ARATA of New Gloucester.
Cosponsored by Representatives: BRADSTREET of Vassalboro, MILLETT of Waterford,
O'NEIL of Saco.

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

2 **Sec. 1. 39-A MRSA §401, sub-§4**, as amended by PL 2011, c. 643, §12 and
3 affected by §14, is further amended to read:

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

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

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

40 A landowner required to pay compensation under this section is entitled to be
41 indemnified by the contractor and may recover the amount paid in an action against that
42 contractor. A landowner may demand that the contractor enter into a written agreement
43 to reimburse the landowner for any loss incurred under this section due to a claim filed
44 for compensation and other benefits. The employee is not entitled to recover at common

1 law against the landowner for any damages arising from such injury if the employee takes
2 compensation from that landowner.

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

9 **SUMMARY**

10 This bill provides that, when the Workers' Compensation Board issues a certificate of
11 independent status certifying that a contractor that harvests forest products does so in a
12 manner that would not make the contractor an employee of a landowner, that certificate
13 of independent status remains valid unless the manner in which the contractor harvests
14 changes.