

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND ELEVEN

—  
S.P. 437 - L.D. 1420

**An Act To Modify the Laws Regarding Status as an Independent Contractor**

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

**Whereas,** the meaning of "independent contractor" in unemployment law is confusing to employers and employees, who seek clarity and uniformity; and

**Whereas,** the issue of classification of workers transcends many decades of legislative discussion and needs to be addressed to encourage the spirit of entrepreneurship in the State; and

**Whereas,** it is in the best interests of the State, employees and employers to eliminate this confusion as soon as possible and, to that end, the stakeholder group authorized by this legislation needs to meet as soon as possible to formulate a test to determine independent contractor status; 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. 26 MRSA §1043, sub-§11, ¶E,** as amended by PL 1979, c. 651, §45, is further amended to read:

E. Services performed by an individual for remuneration ~~shall be deemed~~ are considered to be employment subject to this chapter unless ~~and until~~ it is shown to the satisfaction of the bureau that the individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of service and in fact, and:

~~(1) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact;~~

(2) Such service is either outside the usual course of the business for which such service is performed; or ~~that~~ such service is performed outside of all the places of business of the enterprise for which such service is performed; ~~and~~ or

(3) ~~Such~~ That individual is customarily engaged in an independently established trade, occupation, profession or business.

This paragraph is repealed December 31, 2012.

**Sec. 2. Report.** The Commissioner of Labor or the commissioner's designee shall convene a stakeholder group with representatives from the Workers' Compensation Board and the Department of Administrative and Financial Services, Maine Revenue Services and shall invite the participation of representatives from the Maine Merchants Association, Maine State Chamber of Commerce, National Federation of Independent Business, Maine Employers' Mutual Insurance Company, American Federation of Labor - Congress of Industrial Organizations, Maine Women's Lobby, Maine Equal Justice Partners, Associated Builders and Contractors, Inc., Associated General Contractors of Maine, Technology Association of Maine and Maine Immigrant Rights Coalition. The stakeholder group shall develop an employment test to be used in the administration of, without limitation, unemployment compensation law, workers' compensation law and programs of the Department of Labor, Bureau of Labor Standards to determine whether a person is an employee or independent contractor. The commissioner or the commissioner's designee shall submit a report with recommendations to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2012. The joint standing committee is authorized to introduce a bill related to the report to the Second Regular Session of the 125th Legislature.

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

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In House of Representatives, ..... 2011

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2011

Read twice and passed to be enacted.

..... President

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Approved ..... 2011

..... Governor