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An Act To Clarify the Construction Subcontractor Status of the Maine Workers' Compensation Act of 1992

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

Whereas, in order to ensure a smooth transition for the predetermination of the employment status of construction subcontractors certain changes in the law must be put into 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. 39-A MRSA §105, as amended by PL 1993, c. 65, §1 and c. 120, §1 and affected by §6, is further amended to read:

§ 105. Predetermination of independent contractor and construction subcontractor status

1. Predetermination permitted. A worker, an employer or a workers' compensation insurance carrier, or any together, may apply to the board for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor.

A. The predetermination by the board creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act.

B. Nothing in this section ~~subsection~~ requires a worker, an employer or a workers' compensation insurance carrier to request predetermination.

1-A. Predetermination permitted for construction subcontractors. A person, as defined in section 105-A, subsection 1, paragraph E, may apply to the board for a predetermination that the person performs construction work in a manner that would not make the person an employee of a hiring agent, as defined in section 105-A, subsection 1, paragraph D.

A. The predetermination issued by the board pursuant to this subsection is valid for one year and creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act.

B. Nothing in this subsection requires a person, as defined in section 105-A, subsection 1, paragraph E, a worker, an employer or a workers' compensation insurance carrier to request predetermination.

2. Premium adjustment. If it is determined that a predetermination does not withstand board or judicial scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit premium subsequently due in order to put the parties in the same position as if the final outcome under the contested claim were predetermined correctly.

3. Predetermination submission. A party may submit, on forms approved by the board, a request for predetermination regarding the status of a person or job description as an employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, or independent contractor. The status requested by a party is deemed to have been approved if the board does not deny or take other appropriate action on the submission within 14 days.

4. Hearing. A hearing, if requested by a party within 10 days of the board's decision on a petition, must be conducted under the Maine Administrative Procedure Act.

5. Certificate. The board shall provide the petitioning party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.

6. Rulemaking. The board is authorized to adopt reasonable rules pursuant to the Maine Administrative Procedure Act to implement the intent of this section, which is to afford speedy and equitable predetermination of employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, and independent contractor status.

Sec. 2. Implementation. The Workers' Compensation Board shall implement the provisions of this Act by updating the predetermination application using existing departmental personnel and resources. The Workers' Compensation Board shall submit the predetermination application for review by the Joint Standing Committee on Labor by March 10, 2010.

Sec. 3. Appropriations and allocations. The following appropriations and allocations are made.

WORKERS' COMPENSATION BOARD

Administration - Workers' Compensation Board 0183

Initiative: Allocates funds to enhance enforcement of laws prohibiting the misclassification of workers by the Workers' Compensation Board Abuse Investigation Unit by providing a range change from 24 to 27 for 2 Workers' Compensation Specialist positions and reclassifying one Secretary Legal range 13 position to a Paralegal range 20 position.

| OTHER SPECIAL REVENUE FUNDS | 2009-10 | 2010-11 |
|-----------------------------------|---------|----------|
| Personal Services | \$5,443 | \$21,769 |
| OTHER SPECIAL REVENUE FUNDS TOTAL | \$5,443 | \$21,769 |

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

Effective 90 days following adjournment of the 124th
Legislature, Second Regular Session, unless otherwise indicated.