

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 71

H.P. 79

House of Representatives, January 16, 2003

### An Act to Ban Strikebreakers

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Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PINEAU of Jay.  
Cosponsored by Senator CATHCART of Penobscot and  
Representatives: BLANCHETTE of Bangor, GERZOFSKY of Brunswick, JENNINGS of  
Leeds, NORTON of Bangor, O'BRIEN of Lewiston, PATRICK of Rumford, WATSON of  
Bath.

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

2           **Sec. 1. 26 MRSA §595**, as enacted by PL 1987, c. 558, §1, is  
4 amended to read:

6           **§595. Deterrence of violence during a labor dispute**

8           **1. Legislative findings.** The Legislature finds that:

10           ~~A. The practice of receiving applicants for employment,~~  
12           ~~conducting interviews of job applicants or performing~~  
14           ~~medical examinations of job applicants at the worksite of an~~  
16           ~~employer who is currently engaged in a labor dispute with~~  
18           ~~his employees tends to incite violence by bringing~~  
              ~~individuals who may be considered as replacements for~~  
              ~~workers to the physical focus of the labor dispute and by~~  
              ~~encouraging a direct confrontation between these individuals~~  
              ~~and the prior employees; and~~

20           B. The presence of persons carrying dangerous weapons near  
22           sites where applications for positions with an employer  
24           involved in a labor dispute are being accepted or where  
              interviews of those job applicants are being conducted or  
              medical examinations of those applicants are being performed  
              creates an unacceptable risk of violence; and

26           C. The public safety requires the regulation of these  
28           practices to reduce the likelihood of violence.

30           **2. Purpose.** The purpose of this section is to reduce the  
32           potential for violence during labor disputes by prohibiting  
34           certain provocative acts and imposing penalties for failure to  
              obey this section.

36           ~~**3. Receiving job applicants at worksite prohibited.** No~~  
38           ~~employer may perform any of the following acts at any of that~~  
40           ~~employer's plants, facilities, places of business or worksites~~  
42           ~~where a labor dispute, strike or lockout involving the employees~~  
44           ~~of that employer is in progress:~~

46           ~~A. Receiving persons for the purpose of soliciting or~~  
48           ~~receiving applications for employment with the employer;~~

~~B. Conducting or having conducted interviews of applicants~~  
              ~~for employment with the employer; or~~

~~C. Performing or having performed medical examinations of~~  
              ~~applicants for employment with the employer.~~

2 Any employer who violates this subsection is subject to a civil  
penalty not to exceed \$10,000 for each day the violation  
4 continues, payable to the State, to be recovered in a civil  
action. Upon request, any court of competent jurisdiction shall  
6 also enjoin the violation under section 5.

8 The Attorney General, the Commissioner of Labor or any employee,  
employees or bargaining agent of employees involved in the labor  
10 dispute may file a civil action to enforce this subsection.

12 **4. Hiring off site permitted.** An employer involved in a  
labor dispute, strike or lockout may perform hiring activities  
14 prohibited under subsection 3 at any site other than his  
customary plants, facilities, places of business or worksites  
16 where a labor dispute, strike or lockout involving the employees  
of that employer is in progress.

18 A. The employer must notify the law enforcement agencies of  
the county and municipality in which these activities will  
20 be conducted at least 10 days before commencing hiring  
activities.

22 B. No employee of the employer conducting hiring activities  
24 under this subsection and who is involved in the labor  
dispute, strike or lockout may picket, congregate or in any  
26 way protest the hiring activity of the employer within 200  
feet of the building or structure at which such activities  
28 are taking place. Violation of this paragraph is a Class B  
crime.

30 **5. Dangerous weapons prohibited.** It is a Class D crime for  
32 any person, including, but not limited to, security guards and  
persons involved in a labor dispute, strike or lockout, to be  
34 armed with a dangerous weapon, as defined in Title 17-A, section  
2, subsection 9, at a site where applications for employment with  
36 an employer involved in a labor dispute, strike or lockout are  
being received or where interviews of those job applicants are  
38 being conducted or where medical examinations of those job  
applicants are being performed.

40 A. A person holding a valid permit to carry a concealed  
42 firearm is not exempt from this subsection.

44 B. A security guard is exempt from this subsection to the  
extent that federal laws or rules required the security  
46 guard to be armed with a dangerous weapon at such a site.

48 C. A public law enforcement officer is exempt from this  
subsection while on active duty in the public service.  
50

2 D. A security guard employed by an employer involved in a  
4 labor dispute, strike or lockout may be present at the  
6 location where applications for employment with the employer  
8 will be accepted, interviews of those applicants conducted  
10 or medical examinations of those applicants performed to the  
12 extent permitted under Title 32, chapter 93. Nothing in  
14 this section may be construed to extend or limit in any way  
16 the restrictions placed upon the location of private  
18 security guards under Title 32, chapter 93.

20 Sec. 2. 26 MRSA §595-A is enacted to read:

22 **§595-A. Contracts between employers and replacement workers**

24 If any business operating in this State enters into an  
26 agreement with individuals or groups of employees by which they  
28 are to replace lawfully striking employees who regularly perform  
30 the majority of their work in this State, the agreement must  
32 provide that when the strike is settled or if the striking  
34 employees offer unconditionally to return to work, those  
36 replacement workers will not be retained by the business in  
38 preference to the strikers. The replacement workers may be given  
40 only post-strike rights that do not detract from the claims of  
42 the striking employees to return to their previous positions.  
44 Any agreement, written or oral, express or implied, inconsistent  
with this section is not binding to the extent that it differs  
from this section.

**SUMMARY**

This bill repeals the provisions in current law that attempt to restrict an employer's right to hire replacement workers during a labor dispute. Superior Court Chief Justice Morton A. Brody declared those provisions were preempted by the National Labor Relations Act in 1989. The bill retains only those provisions that relate directly to deterrence of violence during a labor dispute.

The bill also requires that a contract between an employer and replacement workers must provide that when the strike is settled or if the employees offer unconditionally to return to work the replacement workers will not be retained in preference to the strikers.