

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1835

H. P. 1379

House of Representatives, April 3, 1973

Referred to the Committee on Labor. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Connolly of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Regulate Industrial Homework.

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

Sec. 1. R. S., T. 26, c. 7, sub-c. I-A, additional. Chapter 7 of Title 26 of the Revised Statutes is amended by adding a new subchapter I-A, to read as follows:

SUBCHAPTER I-A

INDUSTRIAL HOMEWORK

§ 601. Declaration of policy

In the interest of the public welfare, and for the protection of workers in industrial homework, the Legislature establishes standards for the control of industrial homeworkers.

§ 602. Definitions

As used in sections 601 to 619, unless the context clearly indicates otherwise, the following words shall have the following meanings:

1. Director. "Director" means the Director of the Bureau of Labor and Industry.

2. Employer. "Employer" means any person who directly or indirectly distributes or delivers or causes to be distributed or delivered to another any materials or articles to be manufactured in a home, and thereafter to be returned to him for other than the personal use of himself or a member of his family, or to be disposed of otherwise as directed or arranged by him, or sells

or causes to be sold to another person any materials or articles to be manufactured in a home, and, after such manufacture, to be repurchased by him or purchased or otherwise disposed of by any other person as directed or arranged by him.

3. Home. "Home" means any room, house, apartment or other premises, including a trailer, whichever is most extensively used in whole or in part as a place of dwelling, and includes outbuildings upon premises that are primarily used as a place of dwelling, where such outbuildings are under the control of any person dwelling on such premises, or where any such person engages in or supervises any manufacturing in such outbuildings for an employer.

4. Industrial homework. "Industrial homework" means any manufacture in a home for an employer.

5. Industry. "Industry" means any trade, business, industry or any portion or branch thereof, or groups of industries.

6. Manufacture. "Manufacture" means preparing, altering, repairing, producing, wrapping, packaging, addressing, copying, typing, folding, finishing, processing in whole or in part, handling in any way or working in any way with respect to articles, goods, materials, wares, products or merchandise of any character.

7. Person. "Person" means an individual, partnership, firm, association, domestic or foreign corporation, the legal representatives of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or domestic or foreign corporation.

§ 603. Prohibited homework

The manufacture of any of the following by industrial homework shall be unlawful and no permit or certificate issued under sections 601 to 619, shall be deemed to authorize such manufacture: Tobacco; drugs and poisons; bandages and other sanitary goods; explosives, fireworks and articles of like character; or articles the processing of which requires exposure to substances determined by the director to be hazardous to the health of persons so exposed.

§ 604. Power to prohibit

The director shall have the power upon his own initiative, and it shall be his duty upon receipt of a petition of 50 or more residents of this State, to make an investigation of homework in any industry in order to determine the conditions of employment.

If, on the basis of information in his possession, with or without an investigation, and after a public hearing as provided for by section 605, the director shall find that industrial homework cannot be continued within an industry without injuring the health and well-being of the homeworkers within that industry or rendering unduly difficult the maintenance of existing labor standards of employees who are not homeworkers in that industry or the observance and enforcement of labor standards established by law or regulations

for employees who are not homeworkers in that industry, the director shall by order prohibit industrial homework in such industry, except as may be otherwise provided in such order pursuant to section 606, and no permit issued under sections 601 to 619, shall be deemed thereafter to authorize the furnishing of articles or materials for industrial homework prohibited by such order.

§ 605. Hearing

Before making such order, the director shall hold a public hearing or hearings, after due public notice thereof, at which an opportunity to be heard shall be afforded to any employer or representative of employers, and any homeworker or representative of homeworkers, and any other person or persons having an interest in the subject matter of the hearing.

§ 606. Orders

Orders issued pursuant to section 604 shall contain such terms and conditions as the director may deem necessary to carry out the purpose and policy of sections 601 to 619, and to safeguard their provisions. The director may in such order permit limited distribution of industrial homework, under such terms or conditions as are prescribed by the director, to any person if he finds that such person is unable to adjust to employment in a factory or wholesale, retail or service establishment because of old age or physical or mental deficiency or disability, or is unable to leave the home because his services are essential to care for an invalid in the home, and that such limited distribution is not inconsistent with the purpose and policy of sections 601 to 619.

§ 607. Employer's permit

Every employer shall procure from the director a written employer's permit in such form and containing such terms and conditions as the director may deem necessary for the distribution of industrial homework in accordance with sections 601 to 619. Such permit shall be issued upon the payment of the fee required by section 608. No permit shall be deemed to allow distribution of industrial homework by the employer through an independent contractor or for or in behalf of another employer or as part of or in connection with an industrial homework enterprise of another employer.

If, after due notice and opportunity to be heard, the director finds as a fact that a person having an employer's permit has failed to comply with any provision of sections 601 to 619, with any condition of the permit, or with a regulation or order issued by the director under authority of sections 601 to 619, the director may revoke the permit of such person.

No permit shall be issued to any employer, or to any person affiliated with or directly or indirectly controlled by such employer, when such employer has had his permit revoked by the director within 2 years prior to such application for a permit.

§ 608. Fees

A fee of \$25 shall be paid to the director for original issuance of an employer's permit. For each annual renewal of such permit, the employer shall pay

to the director a fee of \$25 where at no time during the preceding calendar year did the employer have business relations with more than 100 homeworkers; \$50 where at any time during the preceding calendar year the employer had business relations with more than 100 but less than 300 homeworkers; and \$100 where at any time during the preceding calendar year the employer had business relations with 300 or more homeworkers.

§ 609. Homeworker's certificates

Every person desiring to engage in industrial homework within this State shall procure from the director a homeworker's certificate which shall be issued without cost, which shall be valid for a period of one year from the date of its issuance unless sooner revoked or suspended, and which shall permit the homeworker to be employed by one employer only, who shall be named therein. Application for such certificate shall be made in such form as the director may by regulation prescribe. No homeworker's certificate shall be issued to any person under the age of 16 years or to any person suffering from an infectious, contagious or communicable disease or living in a home that is not clean, sanitary and free from infectious, contagious or communicable disease.

The director may, upon reasonable notice and opportunity to be heard, revoke or suspend any homeworker's certificate if he finds that the holder is performing industrial homework contrary to the conditions under which the certificate was issued or to any provision of sections 601 to 619, or has permitted any person not holding a valid homeworker's certificate to assist him in performing his industrial homework.

§ 610. Employment status

All industrial homeworkers shall be presumed to be employees of their employers and not independent contractors or self-employed persons.

§ 611. Records to be kept

Each employer shall keep such records relating to wages and hours and conditions of industrial homework within this State as the director may prescribe.

§ 612. Conditions of manufacture

In addition to other conditions prescribed by sections 601 to 619, industrial homework shall be performed only:

1. Certificate. By a person possessing a valid homeworker's certificate and resident in the home in which the work is done;
2. Conditions. In accordance with the wages, hours and working conditions established by state law or regulation for the same or similar operations by persons of the same age and sex as the homeworkers.
3. Other laws. In accordance with the provisions of any other applicable state law or regulation; and

4. Samples. When the employer has furnished to each homeworker a sample of the work to be performed to which is affixed a notation of the applicable piecework rate and only when such sample is present in the place where homework is performed.

Each of such conditions of manufacture shall be deemed to be a condition of the employer's permit to the same extent as though it were expressly set forth therein.

§ 613. Labels required

No employer shall deliver or cause to be delivered any materials or articles to be manufactured by any homeworker unless there has been conspicuously affixed to each article or material a label or other mark of identification bearing the employer's name and address, printed or written legibly in English. If the goods are of such a nature that they cannot be individually so labeled or identified, the employer shall conspicuously label the goods in such manner as the director may by rule or regulation prescribe.

§ 614. Unlawfully manufactured or processed articles

Any article which is being manufactured in a home in violation of any provision of sections 601 to 619, may be removed by the director and may be retained by him until claimed by the employer. The director shall by registered mail give notice of such removal to the person whose name and address are affixed to the article as provided by section 613. Unless the article so removed is claimed within 30 days after receipt of such notice, it may be destroyed or otherwise disposed of.

§ 615. Enforcement; administration; inspection; appeal

Th director shall enforce and administer sections 601 to 619 and the director or his authorized representative is directed to investigate and gather data regarding wages, hours and working conditions in the homework industry in this State and is empowered to enter and inspect such places and records and investigate such matters as he may deem appropriate to aid in the enforcement of sections 601 to 619. Any person aggrieved with any decision of the director may appeal within 30 days to the Superior Court, in term or vacation, in the County of Kennebec or in the county where such person resides.

§ 616. Rules and regulations

The director shall have the power to make, issue, amend and rescind such rules, regulations and orders as are necessary or appropriate to carry out sections 601 to 619. Without limiting the generality of the foregoing, such rules, regulations or orders may define the terms used in sections 601 and 619.

§ 617. Injunction against violations

The director shall have the power to apply to the Supreme Judicial or the Superior Court for an injunction, and such court shall upon such application have the power to issue an injunction restraining any employer from violating any of the provisions of sections 601 to 619.

§ 618. Penalties

Any employer who fails to comply with any provision of sections 601 to 619, or with any regulation or order of the director issued under the authority thereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than \$100, nor more than \$300, or by imprisonment for not more than 6 months, or by both for each such offense. Each day any such violation occurs or continues shall constitute a separate offense.

§ 619. Exemptions

This subchapter shall not apply to cooperatives or nonprofit organizations, or to blind or physically handicapped persons.

Sec. 2. R. S., T. 26, § 703, amended. Section 703 of Title 26 of the Revised Statutes is amended to read as follows:

§ 703. Exemptions for perishable goods

Nothing in sections 601 to 619, 701, 702, 731 to 734, 736, 737 and 778 shall apply to any manufacturing establishment or business, the materials and products of which are perishable and require immediate labor thereon to prevent decay thereof or damage thereto.

STATEMENT OF FACT

The purpose of this bill is stated in section 601, declaration of policy.