

MAINE STATE LEGISLATURE

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L.D. 1380

DATE: 3-25-04

(Filing No. H-810)

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1015, L.D. 1380, Bill, "An Act To Promote Safety and Fair Labor Practices for Forestry Workers"

Amend the bill by striking out all of section 1 and inserting in its place the following:

Sec. 1. 26 MRSA c. 7, sub-c. 2-A is enacted to read:

SUBCHAPTER 2-A

EMPLOYMENT STANDARDS IN THE FORESTRY INDUSTRY

§641. Rule of construction

This subchapter must be liberally construed in light of the purposes of the law to ensure a safe working environment and safe transportation for forestry workers and to prevent unfair competition in the marketplace by businesses whose practices would undermine safety and other employment standards.

§642. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Bureau. "Bureau" means the Department of Labor, Bureau of Labor Standards.

2. Code of Federal Regulations. "Code of Federal Regulations" means the Code of Federal Regulations as of January 1, 2003.

2 3. Employer. "Employer" means a person or entity that
suffers or permits any forestry worker to work.

4 4. Forestry worker. "Forestry worker" or "worker" means a
person employed on a temporary or seasonal basis to perform
6 reforestation activities, including, but not limited to,
precommercial thinning, tree planting and brush clearing.

8
10 **§643. Transportation of workers**

12 1. Requirement. An employer shall provide safe
transportation for forestry workers between the workers' lodgings
and work sites each day at no cost to the workers.

14 A. A vehicle used to transport workers must meet the
16 standards set forth in 29 Code of Federal Regulations,
Section 500.105, regardless of the number of miles traveled
18 or the type of vehicle used, and must include a working seat
belt for each worker being transported. Any vehicle used to
20 transport forestry workers may not have any apparatus
attached to the rear of the vehicle that interferes with the
22 operation of the rear door. Equipment or any other
materials that interfere with the operation of any doors or
24 windows may not be attached to or stored in the vehicle.
The number of occupants in any vehicle, other than a bus,
26 may not exceed 11 at any time. In the case of a
15-passenger van, compliance with this standard must be
28 achieved by removal of the seating immediately behind the
rear axle. Attachments are not allowed on the roofs of vans
30 for the purpose of carrying gear.

32 B. Any person driving a vehicle used to transport workers
must meet the driver qualifications and must follow the
34 standards for driving set forth in 29 Code of Federal
Regulations, Section 500.105.

36 C. Each vehicle used to transport workers must be equipped
38 with a first aid kit consistent with 29 Code of Federal
Regulations, section 1910.266, Appendix A and communications
40 equipment capable of providing the most immediate access to
emergency medical services. A vehicle equipped with such
42 equipment and a driver must be available at or near the work
site at all times during the work day. Emergency action
44 plans, written in easily understandable English and in the
language of the forestry worker crews, must be developed and
46 maintained for each job site. Plans must include information
on how to transport injured workers to the nearest emergency
48 facility and how to direct emergency workers to the location
of an injured worker who can not be moved.

50

2 D. An employer must make reasonable efforts to limit the
3 driving hours of any one driver in a day and to reduce
4 driver fatigue generally. Hours of operation must also
5 comply with the limitations set forth in 29 Code of Federal
6 Regulations, Section 500.105. Except in an emergency, a
7 worker who engages in reforestation activities may not
8 operate a vehicle more than 2 hours per day.

9 E. A vehicle used to transport workers must be insured for
10 at least the same minimum liability insurance as is required
11 by the State.

12 F. Each employer shall provide to each worker and to the
13 Department of Labor a copy of off-road driving safety
14 standards consistent with those promoted in relevant safe
15 driver training courses.

16 G. Each contract regarding or resulting in the employment
17 of any forestry worker must include a provision requiring
18 the contractor who employs forestry workers to abide by this
19 subchapter.

20 **§644. Prohibition against discrimination and retaliation**

21 An employer or other person may not intimidate, threaten,
22 restrain, coerce, blacklist, discharge, fail to recruit, fail to
23 rehire or in any manner discriminate or retaliate against a
24 forestry worker because the worker has:

25 1. Proceedings. Made, filed, instituted, caused to be
26 instituted or participated in any way in any proceeding under or
27 related to this subchapter;

28 2. Exercise of rights or protections. Exercised in any
29 way, on the worker's own behalf or on behalf of others, any right
30 or protection afforded by this subchapter;

31 3. Discussions. Discussed any matter that is a subject of
32 or is related in any way to this subchapter, or any other lawful
33 matter, with any other person, including, but not limited to,
34 that forestry worker's employer or the employer's agent or
35 employee; or

36 4. Complaints. Made, filed, instituted, caused to be
37 instituted or participated in any way in any lawful complaint,
38 lawsuit or other proceeding of any kind.

39 **§645. Waiver of rights prohibited**

2 Any agreement by a forestry worker purporting to waive or
3 modify any of the worker's rights under this subchapter is void
4 as contrary to public policy.

6 **§646. Violations; enforcement**

8 1. Joint and several liability. If more than one person or
9 entity is an employer of the same forestry worker or group of
10 workers, each such person or entity is jointly and severally
11 liable for all violations of this subchapter.

12 2. Enforcement by bureau. The bureau may inspect vehicles
13 subject to this subchapter and used to transport forestry workers
14 and may enforce compliance with this subchapter in accordance
15 with this section.

16 A. A duly designated officer of the bureau may enter into
17 any structure or upon any real property in or on which a
18 vehicle subject to this subchapter and used to transport
19 forestry workers is found in accordance with the process
20 established in section 587 in order to determine compliance
21 with this subchapter and any rules adopted to implement this
22 subchapter.

24 B. Upon the written request of the bureau, the Department
25 of Transportation and the Department of Public Safety shall
26 provide any technical services that may be required by the
27 bureau to assist with inspections and enforcement of this
28 subchapter.

30 3. Civil violation. An employer who violates this
31 subchapter or any of the rules adopted to implement this
32 subchapter commits a civil violation for which a fine of not less
33 than \$100 nor more than \$1,000 for each violation, payable to the
34 State, may be adjudged.

36 A. Each day that a violation remains uncorrected following
37 notice to the employer may be counted as a separate
38 violation.

40 B. The bureau may direct an employer to correct any
41 violations in a manner and within a time frame that the
42 bureau determines appropriate to ensure compliance with this
43 subchapter and with the rules adopted to implement this
44 subchapter or to protect the public health. Failure to
45 correct violations within a time frame established by the
46 bureau constitutes a separate violation subject to fine.

2 C. The Attorney General may bring an action to seek fines
3 under this subsection, to enjoin violations of this
4 subchapter and for any other available remedy.

6 **Sec. 2. Report on safety efforts.** By January 15, 2005 and by
7 January 15th of each year thereafter, representatives of a trade
8 association designated by forest landowners and forest management
9 companies engaged in the practice of reforestation work shall
10 report to the joint standing committee of the Legislature having
11 jurisdiction over labor matters on a safety program designed to
12 provide training, including driver training, first aid training
13 and other appropriate safety training, and to improve safety
14 standards, safety equipment and vehicles in reforestation
15 activities. The report must include, but not be limited to, the
16 number of contractors participating in the safety program in
17 relation to the number operating in the State and a thorough
18 summary of the substance of the training.

20 **Sec. 3. Working group.** The Commissioner of Labor shall
21 convene a working group of interested persons, including, but not
22 limited to, forestry industry representatives, representatives of
23 forestry workers and representatives of the workers' compensation
24 insurance industry to determine what data are available that
25 reflect the safety conditions of forestry workers and related
26 matters and what additional data should reasonably be collected
27 to assess and improve safety conditions. By February 15, 2005,
28 the commissioner shall report on the results of the working
29 group's work and shall recommend to the joint standing committee
30 of the Legislature having jurisdiction over labor matters a
31 system of regularly collecting and reporting such information to
32 policy makers to help inform their efforts to improve safety in
33 the forestry industry.'

SUMMARY

36 This amendment removes provisions of the bill that imposed
37 requirements regarding housing and equipment and retains
38 provisions relating to transportation. It modifies the
39 definition of "employer" and modifies the safety provisions of
40 the bill.

42 The amendment adds a requirement that the forestry industry
43 report on a safety program to the joint standing committee of the
44 Legislature having jurisdiction over labor matters. Finally, it
45 requires the Commissioner of Labor to convene a working group of
46 interested persons to develop a system of collecting and
47 reporting data for the purpose of improving the safety of
48 forestry workers.

50 **FISCAL NOTE REQUIRED**
(See attached)



**121st Maine Legislature
Office of Fiscal and Program Review**

LD 1380

**An Act To Promote Safety and Fair Labor Practices for Forestry
Workers**

LR 0266(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Labor

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new civil violations

Fiscal Detail and Notes

Additional costs to the Regulation and Enforcement program within the Department of Labor can be absorbed utilizing existing budgeted resources. However, the time associated with conducting the additional inspections required in this legislation may reduce the amount of time available to conduct other occupational safety and health inspections. The impact can not be determined at this time.

Additional costs associated with enforcing this legislation can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

Additional costs to the Department of Transportation and the Department of Public Safety to provide technical services if requested by the Department of Labor can be absorbed utilizing existing budgeted resources.