

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION-2003

Legislative Document

No. 1380

H.P. 1015

House of Representatives, March 18, 2003

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

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FAIRCLOTH of Bangor.
Cosponsored by Senator EDMONDS of Cumberland and
Representatives: HATCH of Skowhegan, HUTTON of Bowdoinham, JACKSON of Fort Kent,
PATRICK of Rumford, SMITH of Van Buren, Senator: STANLEY of Penobscot.

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

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

6 SUBCHAPTER 2-A

8 EMPLOYMENT STANDARDS IN THE FORESTRY INDUSTRY

10 §641. Rule of construction

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

22 §642. Definitions

24 As used in this subchapter, unless the context otherwise
26 indicates, the following terms have the following meanings:

28 1. Code of Federal Regulations. "Code of Federal
30 Regulations" means the Code of Federal Regulations as of January
32 1, 2003.

34 2. Forestry worker. "Forestry worker" or "worker" means a
36 person employed on a temporary or seasonal basis to perform
38 reforestation activities, including, but not limited to,
40 precommercial thinning, tree planting, brush clearing, herbaceous
42 weed control and all related activities.

44 3. Employer. "Employer" includes:

46 A. A person or entity that directly or indirectly recruits,
48 solicits, hires, employs, furnishes or transports any
forestry worker;

B. A person or entity that directly or indirectly employs
any forestry worker or that directly or indirectly suffers
or permits any forestry worker to work;

C. A person or entity that owns, leases or manages land on
which any forestry worker is employed by any employer; and

44 D. A person or entity that enters into a contractual or
46 other business relationship with any other person or entity
48 regarding or resulting in the employment of any forestry
worker.

2 "Employer" does not include a retailer, restaurant provider of
3 personal services or any other similar person or entity that
4 indirectly benefits from the employment of forestry workers.

5 The terms contained in paragraph A must be given the same meaning
6 as under the Migrant and Seasonal Agricultural Worker Protection
7 Act, 29 United States Code, Section 1801, et seq. Decisions under
8 that Act interpreting such terms are entitled to substantial
9 deference.

10 The terms contained in paragraph B must be given the same meaning
11 as under the Fair Labor Standards Act of 1938, 29 United States
12 Code, Section 201, et seq. and the child labor laws from which
13 the term "suffer or permit" is drawn. Decisions under the
14 federal Fair Labor Standards Act and under appropriate child
15 labor laws interpreting such terms are entitled to substantial
16 deference.

17 4. Permanent residence. "Permanent residence" has the same
18 meaning as provided in 29 Code of Federal Regulations, Section
19 500.20(p)(2).

20 **§643. Transportation of workers**

21 1. Requirement. The employer must provide safe
22 transportation for forestry workers between the worker's home and
23 the work site each day at no cost to the worker.

24 A. The vehicle used to transport workers must meet the
25 standards set forth in 29 Code of Federal Regulations,
26 Section 500.105, regardless of the number of miles traveled
27 or the type of vehicle used, and must include a working seat
28 belt for each worker being transported. Any vehicle used to
29 transport forestry workers may not have any apparatus
30 attached to the rear of the vehicle that interferes with the
31 operation of the rear door. Equipment or any other
32 materials may not be attached to or stored in the vehicle
33 that interferes with the operation of any doors or windows.
34 No vehicle other than a bus used to transport forestry
35 workers shall have more than 10 passengers, including the
36 driver.

37 B. Any person driving the vehicle must meet the driver
38 qualifications and must follow the standards for driving set
39 forth in 29 Code of Federal Regulations, Section 500.105.

40 C. Each vehicle must be equipped with first aid equipment,
41 a radio and a satellite telephone that enables the workers
42 to contact the employer and emergency services if needed. A
43 vehicle equipped with such equipment and a driver must be
44

2 available at or near the worksite at all times during the
3 workday.

4 D. A driver may not drive for more than 60 minutes on a
5 work day, unless driving and tasks other than precommercial
6 thinning, tree planting, brush clearing or herbaceous weed
7 control are the only work performed by that driver on that
8 work day. Hours of operation must also comply with the
9 limitations set forth in 29 Code of Federal Regulations,
10 Section 500.105.

11 E. The vehicle used to transport workers must be insured
12 for at least the amounts required by 29 Code of Federal
13 Regulations, Section 500.121(b), except that no such
14 insurance is required if the employer carries workers'
15 compensation insurance pursuant to Title 39-A, the vehicle
16 is used to transport workers only in circumstances to which
17 Title 39-A applies and the vehicle is also insured against
18 property damage in at least the amount required by 29 Code
19 of Federal Regulations, Section 500.123(a). If the employer
20 carries workers' compensation insurance pursuant to Title
21 39-A but the vehicle is used to transport workers in some
22 circumstances to which Title 39-A does not apply, the
23 vehicle must be insured for at least the amounts required by
24 29 Code of Federal Regulations, Section 500.121(b) for all
25 circumstances in which Title 39-A does not apply.

26 2. Rules. The bureau shall adopt rules relating to safe
27 transportation of forestry workers. The rules must incorporate
28 the provisions set forth in this section, provide for
29 establishment of appropriate speed limits applicable to any
30 private road on which forestry workers travel and require posting
31 of the speed limit on such private roads. In adopting rules
32 regarding speed limits the bureau may consult as appropriate with
33 the Department of Transportation. Rules adopted pursuant to this
34 section are major substantive rules as defined in Title 5,
35 chapter 375, subchapter 2-A and must be provisionally adopted and
36 submitted to the Legislature for review not later than January 5,
37 2004.

40 §644. Housing for workers

41 1. Employer shall offer housing. The employer of a
42 forestry worker shall offer to provide housing within 25 miles of
43 the work site to any forestry worker whose permanent residence is
44 more than 50 miles from the work site. The housing must be
45 provided at no cost to the worker.

46 2. Housing standards. The housing offered under subsection
47 1 must meet the standards set forth in regulations adopted by the
48 Occupational Safety and Health Administration for temporary labor
49 ers.

2 camps, 29 Code of Federal Regulations, Section 1910.142. In
3 addition to such standards, each separate structure offered under
4 subsection 1 must have at least one clothes washing machine and
5 one clothes drying machine.

6 3. Worker not required to reside in housing. The employer
7 may not require a forestry worker to reside in housing provided
8 by the employer pursuant to this section. If the worker refuses
9 an offer to reside in employer-provided housing that meets the
10 standards set forth in subsections 1 and 2, the employer may
11 require the worker to provide the worker's own transportation to
12 the work site or the employer-provided housing, whichever is
13 closer to the location of the nonemployer-provided housing in
14 which the worker lives.

16 4. Transportation to town. For a forestry worker residing
17 in housing provided by the employer pursuant to this section, the
18 employer shall make available transportation on at least a weekly
19 basis to a town sufficient in size to allow the worker the
20 opportunity to purchase food, clothing, toiletries and other
21 items, to do laundry and banking and to send money by wire
22 service. The transportation is subject to the protections set
23 forth in section 643, must be provided at no cost to the worker
24 and must be offered at reasonable times and with reasonable
25 notice to the worker. The employer must not have a financial
26 interest in any retail establishment to which the worker is
27 taken, and the employer must not derive financial benefit from
28 any transaction between the worker and the retail establishment.

30 5. Prohibition against unfair prices. A person may not
31 sell to any forestry worker who resides in employer-provided
32 housing pursuant to this section any article, item, good or
33 service at a price that results in an unjust or unreasonable
34 profit.

36 A. This subsection may be enforced by the Attorney General,
37 who in the event of an alleged or seeming violation of this
38 subsection is authorized to exercise all the investigative
39 powers provided in Title 10, section 1107 for violations of
40 Title 10, sections 1105 and 1106.

42 B. The Attorney General is also authorized to seek, for
43 violations of this subsection, all of the remedies provided
44 in Title 10, section 1107 for violations of Title 10,
45 sections 1105 and 1106.

46 C. This subsection may also be enforced by means of an
47 action pursuant to section 648, subsection 4.

2 6. Access for visitors. The employer shall ensure that any
3 forestry worker residing in employer-provided housing pursuant to
4 this section has the right to receive visitors as guaranteed by
5 the Maine Supreme Judicial Court in State v. DeCoster, 653 A. 2d
6 891 (Me. 1995) by ensuring that visitors have access to any
7 roadway that is reasonably used to reach such housing.

8 7. Telephone access. The employer shall ensure that
9 forestry workers residing in employer-provided housing have
10 access to a telephone for personal calls. The employer is not
11 responsible for the costs of personal calls made by the workers.
12

13 **§645. Expenses not responsibility of workers**
14

15 1. Equipment and supplies provided at employer expense. An
16 employer may not require a forestry worker to provide or pay for
17 equipment or supplies necessary to the worker's duties,
18 including, but not limited to, protective gear and clothing,
19 sharpening tools, brush saws and other tools or machinery used to
20 perform reforestation activities and the gasoline, oil and other
21 items necessary to operate such machinery.
22

23 2. Recoupment from worker prohibited. An employer may not
24 take any action, including, but not limited to, lowering any wage
25 or piece rate paid to a forestry worker, to directly or
26 indirectly secure, procure, obtain, recover or recoup from any
27 forestry worker any of the costs or expenses that must be paid by
28 employers pursuant to this subchapter, including, but not limited
29 to, the costs of housing, transportation and equipment and
30 supplies.

31 3. Worker may negotiate certain equipment use. This
32 section does not prevent a forestry worker who owns a brush saw
33 from voluntarily negotiating, at the worker's option, an
34 arrangement with the employer whereby the employer reimburses the
35 worker at a reasonable rate for the use of the worker's saw.
36

37 **§646. Prohibition against discrimination and retaliation**
38

39 An employer or other person may not intimidate, threaten,
40 restrain, coerce, blacklist, discharge, fail to recruit, fail to
41 rehire or in any manner discriminate or retaliate against a
42 forestry worker because the worker has:
43

44 1. Proceedings. Made, filed, instituted, caused to be
45 instituted or participated in any way in any proceeding under or
46 related to this subchapter;
47
48

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

6 3. Discussions. Discussed any matter that is a subject of
7 or is related in any way to this subchapter, or any other lawful
8 matter, with any other person, including, but not limited to,
9 that forestry worker's employer or the employer's agent or
10 employee; or

12 4. Complaints. Has made, filed, instituted, caused to be
13 instituted or participated in any way in any lawful complaint,
14 lawsuit or other proceeding of any kind.

16 **§647. Waiver of rights prohibited**

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

22 **§648. Violations; enforcement**

24 Actions to enforce this subchapter may be brought in
25 accordance with this section.

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

30 2. Department inspection and enforcement. The Department
31 of Labor is authorized to inspect the vehicles used to transport
32 forestry workers pursuant to section 643 and the housing provided
33 to forestry workers pursuant to section 644, to monitor
34 compliance with other provisions of this subchapter and any
35 regulations under this subchapter, to report any suspected
36 violation of federal safety or health standards to the agency
37 responsible for enforcing those standards, to undertake
38 enforcement action pursuant to subsection 3 with regard to
39 violations of this subchapter or any rules adopted pursuant to
40 this subchapter and to report to the Attorney General violations
41 of this subchapter or any rules adopted pursuant to this
42 subchapter.

44 3. Civil violation. An employer or other person who
45 violates this subchapter or any of the rules adopted under this
46 subchapter commits a civil violation for which a fine of not less
47 than \$200 nor more than \$2,500 for each violation may be
48 adjudged. If it is determined that the circumstances described

in subsection 4, paragraph B are present, a fine of not less than \$1,000 nor more than \$50,000 for each violation may be adjudged.

A. Each day that a violation of section 643, 644, 645 or 646 or rules adopted pursuant to those sections remains uncorrected following notice to the employer or other person may be counted as a separate violation.

B. The bureau may direct an employer or other person to correct any violations in a manner and within a time frame that the bureau determines appropriate to ensure compliance with this subchapter, with the rules adopted under this subchapter or to protect the public health. Failure to correct violations within a time frame established by the bureau constitutes a separate violation subject to fine.

C. The Attorney General may bring an action seeking forfeitures under this subsection, to enjoin violations of this subchapter and for any other available remedy.

4. Private right of action. A person aggrieved by a violation of this subchapter or any regulation under this subchapter by an employer or other person or entity may file suit in any court of this State having jurisdiction over the parties, without regard to exhaustion of administrative remedies that may exist.

A. If the court finds that an employer or other person has violated a provision of this subchapter or any rule adopted pursuant to this subchapter, the court shall award damages up to and including an amount equal to the actual damages or statutory damages of up to \$2,500 per plaintiff per violation, equitable relief as appropriate, costs and reasonable attorney's fees to the aggrieved person or persons.

B. Notwithstanding paragraph A or C, the court shall award statutory damages of up to \$50,000 per plaintiff per violation if the court finds that:

(1) The defendant knowingly required or permitted a driver to drive a vehicle used to transport any forestry worker while under the influence of alcohol or any substance listed in Title 17-A, section 1102, the defendant had actual knowledge of the driver's condition and, as a result of the driver's driving while under the influence, the forestry worker represented in the action under this subsection suffered bodily injury or death;

2 (2) The defendant violated any of the safety standards
4 referenced in section 643, the defendant had been
6 determined in a previous judicial or administrative
8 proceeding to have violated any of those safety
 standards and, as a result of such a violation, the
 forestry worker represented in the action under this
 subsection suffered bodily injury or death; or

10 (3) The defendant intentionally or knowingly disabled
12 or removed a safety device required by any of the
14 safety standards referenced in section 643 or in
16 conscious disregard of the requirements of that section
18 failed to provide a safety device required by any of
 the safety standards, and, as a result of the
 disablement, removal or failure to provide a safety
 device, the forestry worker represented in the action
 under this subsection suffered bodily injury or death.

20 C. Notwithstanding paragraph A, if a worker is entitled to
22 receive benefits under Title 39-A for lost wages, medical
24 expenses or death benefits, Title 39-A is the exclusive
26 remedy for those losses and those losses may not be
28 recovered under this subchapter. This paragraph does not
 preclude recovery of statutory damages or equitable relief
 under paragraph A or B as long as the recovery or relief
 does not directly or indirectly expand, alter or affect
 rights or recovery under Title 39-A.

30 (1) If it is determined in any proceeding brought
32 under Title 39-A, or in any judicial review of that
34 proceeding, that Title 39-A does not apply to a claim
36 for lost wages, bodily injury or death brought under
38 Title 39-A by a forestry worker, the statute of
 limitations for bringing an action under this
 subchapter for actual damages for the lost wages,
 bodily injury or death is tolled for the period during
 which the claim under Title 39-A and any judicial
 review of that claim were pending.

40 (2) The statute of limitations for an action under this
42 subchapter for other actual damages, statutory damages
44 or equitable relief arising out of the same transaction
46 or occurrence as the injury or death that was the
 subject of the claim under Title 39-A is also tolled
 for the period during which the claim under Title 39-A
 and any judicial review of that claim were pending.

SUMMARY

2 This bill enacts provisions to protect forestry workers from
unsafe, unhealthy or unfair working conditions. The bill applies
4 to workers engaged on a temporary or seasonal basis to perform
reforestation activities, such as clearing brush and thinning and
planting trees.

6 The bill defines "employer" to ensure that all persons and
8 entities that directly benefit from the labor performed by
forestry workers are simultaneously and jointly responsible for
10 the decent treatment of workers. The current practice of using
contracting and subcontracting mechanisms can have the effect of
12 causing some business owners and managers to avoid responsibility
for the treatment of the workers in their business operations.
14 That lack of responsibility can lead to substandard conditions
that harm workers and also result in unfair competition for the
16 businesses that do pay the costs associated with accepting
responsibility for complying with labor laws. The definition of
18 "employer" in this bill prevents the shifting of responsibility
for fair treatment.

20 The bill requires the employer to provide and pay for
22 protective clothing and gear and the equipment necessary to
perform the work.

24 The bill also requires employers to provide safe
26 transportation to the work site, at no cost to the worker, and
requires that the transportation meet the standards provided in
28 the federal Migrant and Seasonal Agricultural Worker Protection
Act. It provides additional standards, including a requirement
30 for seat belts, first aid kits and emergency communication
equipment. It limits the amount of time a worker can drive and
32 prohibits use of vehicles, other than buses, that carry more than
10 persons. It requires a certain level of insurance coverage.

34 The bill also requires employers to offer housing near the
36 work site to any forestry worker whose permanent residence is
more than 50 miles from the work site. It prohibits the employer
38 or any other person from selling goods or services to workers in
employer-provided housing for an amount that constitutes an
40 unjust or unreasonable profit. The bill requires the employer to
ensure that workers residing in employer-provided housing have
42 the right to receive visitors and that visitors have access to
roadways used to reach the housing. The decision in State v.
44 DeCoster, 653 A.2d 891 (Me. 1995), makes it clear that farm
workers who live in employer-provided housing are considered
46 tenants under Maine law and have the same rights as all other
tenants to invite and receive visitors. This bill is not
48 intended to modify or affect the court's decision in State v.
DeCoster in any way, but is rather intended to ensure that access
50 is guaranteed even though visitors must utilize private roadways,

2 which may be owned by entities other than the entities that own
the housing provided to forestry workers under this bill, in
order to travel to such housing.

4
6 The bill prohibits any person from discriminating or
retaliating against any person who exercises the rights or
protections provided by the new law or who files a complaint or
8 participates in a proceeding under the law.

10 Persons who violate the law are subject to civil penalties
of up to \$2,500 per violation, enforceable by the Attorney
12 General. That amount increases to \$50,000 for certain egregious
violations that result in a worker's bodily injury or death. The
14 bill also provides a private right of action for aggrieved
persons and declares void any attempt to waive or modify the
16 workers' rights under the law. All persons who are considered
employers of a worker are jointly and severally liable for
18 violations of the law.