

MAINE STATE LEGISLATURE

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MAJORITY

L.D. 1545

Date: 3-30-10

(Filing No. S-495)

LABOR

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STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 593, L.D. 1545, Bill, "An Act To Protect Maine Workers"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 26 MRSA §871, sub-§1-A is enacted to read:

1-A. Violation. Upon conviction of a violation of subsection 1, an employer may not employ aliens granted permission to work temporarily under 8 United States Code, Section 1101(a)(15)(H)(ii)(a) in this State for 2 years.

Sec. 2. 26 MRSA §871, sub-§2, as enacted by PL 1977, c. 116, is amended to read:

2. Penalty. Violation of subsection 1 shall be or 1-A is a Class E crime. It is an affirmative defense to prosecution under subsection 1 that the employer, before employing or referring a person for employment, made a good faith inquiry as to whether that person was a United States citizen or an alien, and if the inquiry reasonably indicated that the person was an alien, the employer made a further good faith inquiry which that reasonably indicated that the alien was lawfully admitted to the United States for permanent residence or that the United States Immigration and Naturalization Service had authorized the alien to accept employment in the United States.

A. A good faith inquiry under this subsection shall must be in writing. An employment application form which that requests citizenship data, or an alien registration number if the applicant is an alien, meets the requirement of a good faith inquiry in writing.

B. A social security account number card shall not be deemed is not considered evidence of the United States Immigration and Naturalization Service's authorization for an alien to accept employment in the United States.

Sec. 3. 26 MRSA §872, sub-§1, as amended by PL 2009, c. 201, §11, is repealed and the following enacted in its place:

COMMITTEE AMENDMENT

1 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
2 following terms have the following meanings.

3 A. "Bond worker" means a person who has been described under 8 United States
4 Code, Section 1101(a)(15)(H)(ii) and granted permission to work temporarily in the
5 United States.

6 B. "Logging equipment" means equipment used directly in the cutting and
7 transporting of logs to the roadside, the production of wood chips in the field, the
8 construction of logging roads and the transporting of logs or other wood products off-
9 site or on roadways.

10 **Sec. 4. 26 MRSA §872, sub-§2,** as amended by PL 2009, c. 381, §1, is further
11 amended to read:

12 **2. Proof of ownership required.** An employer in this State who employs applies
13 for a bond worker in a logging occupation shall provide proof of the employer's
14 ownership of any logging equipment used by that worker in the course of employment,
15 including proof of ownership of at least one piece of logging equipment for every 2 bond
16 workers employed by the employer in a logging occupation. The employer shall provide
17 proof of ownership as required by this subsection on a form provided by the
18 Commissioner of Labor. The proof required by this subsection must include, but not be
19 limited to, a receipt for payment for the equipment purchased in a bona fide transaction
20 and documentation of payment of any tax assessed on the equipment pursuant to Title 36,
21 chapter 105 for the year in which the bond worker is employed by the employer. Proof of
22 ownership must be carried in the equipment and, upon request by the department, the
23 operator of equipment subject to this section shall provide proof of ownership. A lease is
24 not sufficient to show ownership. Notwithstanding section 3, information regarding
25 proof of ownership is not confidential and may be disclosed to the public.

26 **Sec. 5. 26 MRSA §872, sub-§2-A** is enacted to read:

27 **2-A. Notification.** An employer filing for certification from the United States
28 Department of Labor to hire a bond worker to operate logging equipment shall at the time
29 of filing notify the Maine Department of Labor and provide, for the year in which the
30 bond worker is employed, the number of bond workers requested; a list of each piece of
31 logging equipment, including serial number, a bond worker will operate; receipts for
32 payment for the logging equipment purchased in bona fide transactions; and
33 documentation of payment of any tax assessed on the logging equipment pursuant to Title
34 36, chapter 105.

35 **Sec. 6. 26 MRSA §872, sub-§2-B** is enacted to read:

36 **2-B. Violation.** Upon conviction of a violation of subsection 2, an employer may
37 not employ bond workers in this State for 2 years.

38 **Sec. 7. 26 MRSA §872, sub-§4,** as enacted by PL 2005, c. 461, §1, is repealed
39 and the following enacted in its place:

40 **4. Enforcement; rules.** The Commissioner of Labor shall adopt rules to implement
41 and enforce the provisions of this section, including rules regarding the receipt of
42 documentation and the investigation and prosecution of employer proof of ownership of

1 logging equipment. Rules adopted pursuant to this subsection are major substantive rules
2 as defined in Title 5, chapter 375, subchapter 2-A.

3 **Sec. 8. 26 MRSA §872, sub-§5**, as amended by PL 2009, c. 381, §2, is repealed
4 and the following enacted in its place:

5 **5. Penalty; enforcement.** An employer who violates subsection 2, 2-A or 2-B or the
6 rules adopted pursuant to this section commits a civil violation for which a fine of not less
7 than \$10,000 and not more than \$25,000 per violation may be adjudged.

8 In the event of a violation of the provisions of this section, the Attorney General may
9 institute injunction proceedings in the Superior Court to enjoin further violation of this
10 section.

11 **Sec. 9. 26 MRSA §872, sub-§6**, as enacted by PL 2009, c. 381, §3, is amended to
12 read:

13 **6. Assistance.** The Department of Conservation and the Department of
14 Administrative and Financial Services, Bureau of Revenue Services shall provide
15 interagency support and field information to assist the Department of Labor in enforcing
16 this section.

17 **Sec. 10. 26 MRSA §1043, sub-§11, ¶F**, as amended by PL 2009, c. 211, Pt. B,
18 §24, is further amended to read:

19 F. The term "employment" does not include:

20 (1) Service performed in the employ of this State, or of any political subdivision
21 thereof, or of any instrumentality of this State or its political subdivisions, except
22 as provided by this subsection;

23 (2) Service performed in the employ of the United States Government or an
24 instrumentality of the United States immune under the Constitution of the United
25 States from the contributions imposed by this chapter, except that on and after
26 January 1, 1940 to the extent that the Congress of the United States has permitted
27 states to require any instrumentalities of the United States to make payments into
28 an unemployment compensation fund under a state unemployment compensation
29 or employment security law, all of the provisions of this chapter are applicable to
30 such instrumentalities and to services performed for such instrumentalities in the
31 same manner, to the same extent and on the same terms as to all other employers,
32 employing units, individuals and services. If this State is not certified for any
33 year by the Secretary of Labor under section 3304 of the Federal Internal
34 Revenue Code, the payments required of such instrumentalities with respect to
35 that year must be refunded by the commissioner from the fund in the same
36 manner and within the same period as is provided in section 1225, subsection 5,
37 with respect to contributions erroneously collected;

38 (3) Service with respect to which unemployment compensation is payable under
39 an unemployment compensation system or employment security system
40 established by an Act of Congress. The commissioner is authorized and directed
41 to enter into agreements with the proper agencies under such an Act of Congress,
42 which agreements become effective 10 days after publication thereof in the

- 1 manner provided in section 1082, subsection 2, for regulations, to provide
2 reciprocal treatment to individuals who have, after acquiring potential rights to
3 benefits under this chapter, acquired rights to unemployment compensation under
4 such an Act of Congress, or who have, after acquiring potential rights to
5 unemployment compensation under such an Act of Congress, acquired rights to
6 benefits under this chapter;
- 7 (4) Agricultural labor as defined in subsection 1, except as provided in paragraph
8 A-2;
- 9 (4-1) ~~Agricultural labor, if Services performed by an individual who is an alien;~~
10 ~~other than a citizen of a contiguous country with which the United States has an~~
11 ~~agreement with respect to unemployment compensation,~~ admitted to the United
12 States to perform agricultural labor pursuant to the United States Immigration
13 and Nationality Act, Sections 214(c) and 101(a) (15) (H);
- 14 (5) Domestic service in a private home, except as provided in paragraph A-3;
- 15 (6) Service performed by an individual in the employ of that individual's son,
16 daughter or spouse and service performed by a child under the age of 18 in the
17 employ of that child's father or mother, except for periods of such service for
18 which unemployment insurance contributions are paid;
- 19 (6-1) Services performed by a student attending an elementary, secondary or
20 postsecondary school while participating in a cooperative program of education
21 and occupational training or on-the-job training that is part of the school
22 curriculum;
- 23 (9) Service performed with respect to which unemployment compensation is
24 payable under the Railroad Unemployment Insurance Act (52 Stat. 1094);
- 25 (10) Services performed in the employ of any other state, or any political
26 subdivision thereof, or any instrumentality of any one or more of the foregoing
27 that is wholly owned by one or more states or political subdivisions and any
28 services performed in the employ of any instrumentality of one or more other
29 states or their political subdivisions to the extent that the instrumentality is, with
30 respect to such a service, immune under the Constitution of the United States
31 from the tax imposed by section 3301 of the Federal Internal Revenue Code,
32 except as provided in paragraph A-1, subparagraph (1);
- 33 (11) Service performed in any calendar quarter in the employ of any
34 organization exempt from income tax under section 501(a) of the Federal Internal
35 Revenue Code other than an organization described in section 401(a) or under
36 section 521 of the Code, if the remuneration for such service is less than \$150;
- 37 (16) Service performed in the employ of a foreign government, including service
38 as a consular or other officer or employee or a nondiplomatic representative;
- 39 (17) Service performed in the employ of an instrumentality wholly owned by a
40 foreign government;

- 1 (a) If the service is of a character similar to that performed in foreign
2 countries by employees of the United States Government or an
3 instrumentality thereof; and
- 4 (b) If the commissioner finds that the United States Secretary of State has
5 certified to the United States Secretary of the Treasury that the foreign
6 government, with respect to whose instrumentality exemption is claimed,
7 grants an equivalent exemption with respect to similar service performed in
8 the foreign country by employees of the United States Government and of
9 instrumentalities thereof;
- 10 (18) Service performed as a student nurse in the employ of a hospital or a nurses'
11 training school by an individual who is enrolled and is regularly attending classes
12 in a nurses' training school chartered or approved pursuant to state law and
13 service performed as an intern in the employ of a hospital by an individual who
14 has completed a 4 years' course in a medical school chartered or approved
15 pursuant to state law;
- 16 (19) Service performed by an individual for a person as a real estate broker, a
17 real estate sales representative, an insurance agent or an insurance solicitor, if all
18 such service performed by that individual for that person is performed for
19 remuneration solely by way of commission;
- 20 (20) Service performed by an individual under the age of 18 in the delivery or
21 distribution of newspapers or shopping news except delivery or distribution to
22 any point for subsequent delivery or distribution;
- 23 (21) Service performed in the employ of any organization that is excluded from
24 the term "employment" as defined in the Federal Unemployment Tax Act solely
25 by reason of section 3306(c)(7) or (8) if:
- 26 (a) Service is performed in the employ of a church or convention or
27 association of churches or an organization that is operated primarily for
28 religious purposes and that is operated, supervised, controlled or principally
29 supported by a church or convention or association of churches;
- 30 (b) Service is performed by a duly ordained, commissioned or licensed
31 minister of a church in the exercise of that minister's ministry or by a member
32 of a religious order in the exercise of duties required by that order;
- 33 (c) Prior to January 1, 1978, service is performed in the employ of a school
34 primarily operated as an elementary, secondary or preparatory school for
35 higher education that is not an institution of higher education;
- 36 (d) Service is performed in a facility conducted for the purpose of carrying
37 out a program of rehabilitation for individuals whose earning capacity is
38 impaired by age or physical or mental deficiency or injury or providing
39 remunerative work for individuals who, because of their impaired physical or
40 mental capacity, cannot be readily absorbed in the competitive labor market
41 by an individual receiving such rehabilitation or remunerative work;

- 1 (e) Service is performed as part of an unemployment work-relief or work-
2 training program assisted or financed in whole or in part by any federal
3 agency or an agency of a state or political subdivision thereof by an
4 individual receiving that work-relief or work-training;
- 5 (f) Service is performed in the employ of a hospital as defined in subsection
6 26 by a patient of that hospital;
- 7 (g) Services are performed prior to January 1, 1978 for a hospital in a state
8 prison or other state correctional institution by an inmate of that prison or
9 correctional institution and after December 31, 1977 by an inmate of a
10 custodial or penal institution;
- 11 (h) Service is performed in the employ of a school, college or university if
12 that service is performed by a student who is enrolled and is regularly
13 attending classes at such a school, college or university; or
- 14 (i) Prior to January 1, 1978, service is performed in the employ of a school
15 that is not an institution of higher education and after December 31, 1977,
16 service is performed in the employ of a governmental entity referred to in
17 paragraph A-1, subparagraph (1) if that service is performed by an individual
18 in the exercise of duties:
- 19 (i) As an elected official;
- 20 (ii) As a member of a legislative body or a member of the judiciary of a
21 state or political subdivision of a state;
- 22 (iii) As a member of the State National Guard or Air National Guard;
- 23 (iv) As an employee serving on a temporary basis in case of fire, storm,
24 snow, earthquake, flood or similar emergency;
- 25 (v) In a position that, under or pursuant to the laws of this State, is
26 designated as a major nontenured policymaking or advisory position or a
27 policymaking or advisory position the performance of the duties of which
28 ordinarily does not require more than 8 hours per week; or
- 29 (vi) As an election official or election worker if the amount of
30 remuneration received by the individual during the calendar year for
31 services as an election official or election worker is less than \$1,000;
- 32 (29) Services performed by a hairdresser who holds a booth license and operates
33 within another hairdressing establishment if operated under a booth rental
34 agreement or other rental agreement;
- 35 (30) Services performed by a barber who holds a booth license and operates
36 within another barbering establishment if operated under a booth rental
37 agreement or other rental agreement;
- 38 (31) Services performed by a contract interviewer engaged in marketing research
39 or public opinion interviewing when such interviewing is conducted in the field

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- 1 or over the telephone on premises not used or controlled by the person for whom
2 such contract services are being provided;
- 3 (32) After December 31, 1981, services performed by an individual on a boat
4 engaged in catching fish or other forms of aquatic animal life, unless those
5 services would be included in the definition of "employment" for federal
6 unemployment tax purposes under the Federal Unemployment Act, United States
7 Code, Title 26, Section 3306(c), as it may be amended. Also included in this
8 exemption are services performed in harvesting shellfish for depuration from
9 designated areas as authorized by Title 12, section 6856;
- 10 (33) Services performed by a member or leader of a musical group, band or
11 orchestra or an entertainer when the services are performed under terms of a
12 contract entered into by the leader or an agent of the musical group, band,
13 orchestra or entertainer with an employing unit for whom the services are being
14 performed, provided the leader or agent is not an employer by reason of
15 subsection 9 or of section 1222, subsection 3;
- 16 (34) Services performed in the delivery or distribution of newspapers or
17 magazines to the ultimate consumer by an individual who is compensated by
18 receiving or retaining a commission or profit on the sale of the newspaper or
19 magazine;
- 20 (35) Services performed by a homemaker in the knitted outerwear industry as
21 those terms are defined, on the effective date of this subparagraph, in 29 Code of
22 Federal Regulations, Part 530, Section 530.1;
- 23 (36) Service performed by a full-time student, as defined in subsection 30, in the
24 employ of a youth camp licensed under Title 22, section 2495 if the full-time
25 student performed services in the employ of the camp for less than 13 calendar
26 weeks in the calendar year and the camp:
- 27 (a) Did not operate for more than 7 months in the calendar year and did not
28 operate for more than 7 months in the preceding calendar year; or
- 29 (b) Had average gross receipts for any 6 months in the preceding calendar
30 year that were not more than 33 1/3% of its average gross receipts for the
31 other 6 months in the preceding calendar year;
- 32 (37) Services performed by an individual as a home stitcher as long as that
33 employment is not subject to federal unemployment tax;
- 34 (38) Services performed by a person licensed as a guide as required by Title 12,
35 section 12853, as long as that employment is not subject to federal
36 unemployment tax;
- 37 (39) Services performed by a direct seller as defined in 26 United States Code,
38 Section 3508, Subsection (b), Paragraph (2). This subparagraph does not include
39 a person selling major improvements or renovations to the structure of a home,
40 business or property;

1 (40) Services performed by lessees of taxicabs, as long as that employment is not
2 subject to federal unemployment tax. This subparagraph may not be construed to
3 affect a determination regarding a lessee's status as an independent contractor for
4 workers' compensation purposes;

5 (41) Services provided by a dance instructor to students of a dance studio when
6 there is a contract between the instructor and the studio under which the
7 instructor's services are not offered exclusively to the studio, the studio does not
8 control the scheduling of the days and times of classes other than beginning and
9 end dates, the instructor is paid by the class and not on an hourly or salary basis,
10 the compensation rate is the result of negotiation between the instructor and the
11 studio and the instructor is given the freedom to develop the curriculum;

12 (42) Services performed by participants enrolled in programs or projects under
13 the national service laws including the federal National and Community Service
14 Act of 1990, as amended, 42 United States Code, Section 12501 et seq., and the
15 federal Domestic Volunteer Service Act, as amended, 42 United States Code,
16 Section 4950 et seq.;

17 (43) Services of an author in furnishing text or other material to a publisher who:
18 (a) Does not control the author's work except to propose topics or to edit
19 material submitted;
20 (b) Does not restrict the author from publishing elsewhere;
21 (c) Furnishes neither a place of employment nor equipment for the author's
22 use;
23 (d) Does not direct or control the time devoted to the work; and
24 (e) Pays only for material that is accepted for publication.

25 This exception does not apply if the employment is subject to federal
26 unemployment tax; and

27 (44) Services provided by an owner-operator of a truck or truck tractor while it is
28 leased to a motor carrier, as defined in 49 Code of Federal Regulations, 390.5
29 (2000), as long as that employment is not subject to federal unemployment tax.

30 **Sec. 11. 36 MRSA §191, sub-§2, ¶V, as amended by PL 2007, c. 352, Pt. A, §4,**
31 **is further amended to read:**

32 V. The disclosure by employees of the Bureau of Revenue Services, to designated
33 representatives of the Department of Labor, of all information required by the State
34 Tax Assessor and the Commissioner of Labor for the administration of the taxes
35 imposed by Part 8 and by Title 26, chapter 13 and the Competitive Skills Scholarship
36 Fund contribution imposed by Title 26, section 1166 and of all information required
37 by the Director of the Bureau of Labor Standards within the Department of Labor for
38 the enforcement of Title 26, section 872;

SUMMARY

This amendment is the majority report of the Joint Standing Committee on Labor. It:

1. Prohibits an employer from employing foreign laborers for 2 years if the employer violates the required proof of logging equipment ownership or foreign labor certification laws;

2. Defines "logging equipment";

3. Eliminates the use of a lease as proof of ownership for logging equipment;

4. Directs an employer to notify the Maine Department of Labor at the time of filing for certification from the United States Department of Labor to hire a bond worker. The employer shall provide for the year in which the bond worker is employed the number of bond workers requested, a list of each piece of equipment a bond worker will operate, receipts of payment for equipment purchased in bona fide transactions and documentation of payment of any tax assessed on the equipment;

5. Directs the Commissioner of Labor to adopt rules to implement and enforce the provisions regarding proof of logging equipment ownership;

6. Raises the fine from between \$3,000 and \$15,000 to \$10,000 and \$25,000 for a civil violation of the proof of ownership requirement;

7. Clarifies that the Attorney General may institute injunction proceedings for violations of the laws pertaining to employment of aliens;

8. Directs the Department of Administrative and Financial Services, Bureau of Revenue Services to provide interagency support and field information to assist the Department of Labor in enforcing proof of equipment ownership for employers using bond workers; and

9. Eliminates the allowance in the unemployment law that permits alien agricultural laborers to collect unemployment.

FISCAL NOTE REQUIRED
(See Attached)



124th MAINE LEGISLATURE

LD 1545

LR 2087(02)

An Act To Protect Maine Workers

Fiscal Note for Bill as Amended by Committee Amendment "A"

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 Class E crimes and civil violations.

The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional administrative costs to Maine Revenue Services, as well as any additional costs to the Department of Labor associated with rulemaking, can be absorbed within existing budgeted resources.