

# MAINE STATE LEGISLATURE

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MINORITY

L.D. 1545

Date: 3-30-10

(Filing No. S-496)

LABOR

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STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

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'Sec. 1. 26 MRSA §872, sub-§1, as amended by PL 2009, c. 201, §11, is repealed and the following enacted in its place:

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

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

B. "Immediate family member" means the bond worker's child, spouse or parent.

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

2. Proof of ownership required. An employer in this State who employs applies for a bond worker in a logging occupation shall provide proof of the employer's ownership of any logging equipment used by that worker in the course of employment, including proof of ownership of at least one piece of logging equipment for every 2 bond workers employed by the employer in a logging occupation. The employer shall provide proof of ownership as required by this subsection on a form provided by the Commissioner of Labor. The proof required by this subsection must include, but not be limited to, a receipt for payment for the equipment purchased in a bona fide transaction and documentation of payment of any tax assessed on the equipment pursuant to Title 36, chapter 105 for the year in which the bond worker is employed by the employer. Proof of ownership must be carried in the equipment and, upon request by the department, the operator of equipment subject to this section shall provide proof of ownership. A lease of equipment to the employer from the bond worker, an entity owned or controlled by the bond worker or an entity owned or controlled by the bond worker's immediate family is

COMMITTEE AMENDMENT

1 not sufficient to show ownership. Notwithstanding section 3, information regarding  
2 proof of ownership is not confidential and may be disclosed to the public.

3 **Sec. 3. 26 MRSA §872, sub-§2-A** is enacted to read:

4 **2-A. Notification.** An employer filing for certification from the United States  
5 Department of Labor to hire a bond worker to operate logging equipment shall at the time  
6 of filing notify the Maine Department of Labor and provide, for the year in which a bond  
7 worker is employed, the number of bond workers requested; a list of each piece of  
8 logging equipment, including serial number, a bond worker will operate; receipts for  
9 payment for the logging equipment purchased in bona fide transactions; and  
10 documentation of payment of any tax assessed on the logging equipment pursuant to Title  
11 36, chapter 105.

12 **Sec. 4. 26 MRSA §872, sub-§2-B** is enacted to read:

13 **2-B. Violation.** Upon conviction of a violation of subsection 2, an employer may  
14 not employ bond workers in this State for 2 years.

15 **Sec. 5. 26 MRSA §872, sub-§4**, as enacted by PL 2005, c. 461, §1, is repealed  
16 and the following enacted in its place:

17 **4. Enforcement; rules.** The Commissioner of Labor shall adopt rules to  
18 implement and enforce the provisions of this section, including rules regarding the receipt  
19 of documentation and the investigation and prosecution of employer proof of ownership  
20 of logging equipment. Rules adopted pursuant to this subsection are major substantive  
21 rules as defined in Title 5, chapter 375, subchapter 2-A.

22 **Sec. 6. 26 MRSA §872, sub-§5**, as amended by PL 2009, c. 381, §2, is repealed  
23 and the following enacted in its place:

24 **5. Penalty; enforcement.** An employer who violates subsection 2, 2-A or 2-B or the  
25 rules adopted pursuant to this section commits a civil violation for which a fine of not less  
26 than \$3,000 and not more than \$15,000 per violation may be adjudged.

27 In the event of a violation of the provisions of this section, the Attorney General may  
28 institute injunction proceedings in the Superior Court to enjoin further violation of this  
29 section.

30 **Sec. 7. 26 MRSA §872, sub-§6**, as enacted by PL 2009, c. 381, §3, is amended to  
31 read:

32 **6. Assistance.** The Department of Conservation and the Department of  
33 Administrative and Financial Services, Bureau of Revenue Services shall provide  
34 interagency support and field information to assist the Department of Labor in enforcing  
35 this section.

36 **Sec. 8. 26 MRSA §1043, sub-§11, ¶F**, as amended by PL 2009, c. 211, Pt. B,  
37 §24, is further amended to read:

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

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

4 (2) Service performed in the employ of the United States Government or an  
5 instrumentality of the United States immune under the Constitution of the United  
6 States from the contributions imposed by this chapter, except that on and after  
7 January 1, 1940 to the extent that the Congress of the United States has permitted  
8 states to require any instrumentalities of the United States to make payments into  
9 an unemployment compensation fund under a state unemployment compensation  
10 or employment security law, all of the provisions of this chapter are applicable to  
11 such instrumentalities and to services performed for such instrumentalities in the  
12 same manner, to the same extent and on the same terms as to all other employers,  
13 employing units, individuals and services. If this State is not certified for any  
14 year by the Secretary of Labor under section 3304 of the Federal Internal  
15 Revenue Code, the payments required of such instrumentalities with respect to  
16 that year must be refunded by the commissioner from the fund in the same  
17 manner and within the same period as is provided in section 1225, subsection 5,  
18 with respect to contributions erroneously collected;

19 (3) Service with respect to which unemployment compensation is payable under  
20 an unemployment compensation system or employment security system  
21 established by an Act of Congress. The commissioner is authorized and directed  
22 to enter into agreements with the proper agencies under such an Act of Congress,  
23 which agreements become effective 10 days after publication thereof in the  
24 manner provided in section 1082, subsection 2, for regulations, to provide  
25 reciprocal treatment to individuals who have, after acquiring potential rights to  
26 benefits under this chapter, acquired rights to unemployment compensation under  
27 such an Act of Congress, or who have, after acquiring potential rights to  
28 unemployment compensation under such an Act of Congress, acquired rights to  
29 benefits under this chapter;

30 (4) Agricultural labor as defined in subsection 1, except as provided in paragraph  
31 A-2;

32 ~~(4-1) Agricultural labor, if Services performed by an individual who is an alien;~~  
33 ~~other than a citizen of a contiguous country with which the United States has an~~  
34 ~~agreement with respect to unemployment compensation, admitted to the United~~  
35 ~~States to perform agricultural labor pursuant to the United States Immigration~~  
36 ~~and Nationality Act, Sections 214(c) and 101(a) (15) (H);~~

37 (5) Domestic service in a private home, except as provided in paragraph A-3;

38 (6) Service performed by an individual in the employ of that individual's son,  
39 daughter or spouse and service performed by a child under the age of 18 in the  
40 employ of that child's father or mother, except for periods of such service for  
41 which unemployment insurance contributions are paid;

42 (6-1) Services performed by a student attending an elementary, secondary or  
43 postsecondary school while participating in a cooperative program of education

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and occupational training or on-the-job training that is part of the school curriculum;

(9) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094);

(10) Services performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing that is wholly owned by one or more states or political subdivisions and any services performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such a service, immune under the Constitution of the United States from the tax imposed by section 3301 of the Federal Internal Revenue Code, except as provided in paragraph A-1, subparagraph (1);

(11) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Federal Internal Revenue Code other than an organization described in section 401(a) or under section 521 of the Code, if the remuneration for such service is less than \$150;

(16) Service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(17) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(a) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or an instrumentality thereof; and

(b) If the commissioner finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(18) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to state law;

(19) Service performed by an individual for a person as a real estate broker, a real estate sales representative, an insurance agent or an insurance solicitor, if all such service performed by that individual for that person is performed for remuneration solely by way of commission;

**COMMITTEE AMENDMENT**

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(20) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news except delivery or distribution to any point for subsequent delivery or distribution;

(21) Service performed in the employ of any organization that is excluded from the term "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(7) or (8) if:

(a) Service is performed in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) Service is performed by a duly ordained, commissioned or licensed minister of a church in the exercise of that minister's ministry or by a member of a religious order in the exercise of duties required by that order;

(c) Prior to January 1, 1978, service is performed in the employ of a school primarily operated as an elementary, secondary or preparatory school for higher education that is not an institution of higher education;

(d) Service is performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) Service is performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving that work-relief or work-training;

(f) Service is performed in the employ of a hospital as defined in subsection 26 by a patient of that hospital;

(g) Services are performed prior to January 1, 1978 for a hospital in a state prison or other state correctional institution by an inmate of that prison or correctional institution and after December 31, 1977 by an inmate of a custodial or penal institution;

(h) Service is performed in the employ of a school, college or university if that service is performed by a student who is enrolled and is regularly attending classes at such a school, college or university; or

(i) Prior to January 1, 1978, service is performed in the employ of a school that is not an institution of higher education and after December 31, 1977, service is performed in the employ of a governmental entity referred to in paragraph A-1, subparagraph (1) if that service is performed by an individual in the exercise of duties:

(i) As an elected official;

COMMITTEE AMENDMENT "b" to S.P. 593, L.D. 1545

- 1 (ii) As a member of a legislative body or a member of the judiciary of a  
2 state or political subdivision of a state;
- 3 (iii) As a member of the State National Guard or Air National Guard;
- 4 (iv) As an employee serving on a temporary basis in case of fire, storm,  
5 snow, earthquake, flood or similar emergency;
- 6 (v) In a position that, under or pursuant to the laws of this State, is  
7 designated as a major nontenured policymaking or advisory position or a  
8 policymaking or advisory position the performance of the duties of which  
9 ordinarily does not require more than 8 hours per week; or
- 10 (vi) As an election official or election worker if the amount of  
11 remuneration received by the individual during the calendar year for  
12 services as an election official or election worker is less than \$1,000;
- 13 (29) Services performed by a hairdresser who holds a booth license and operates  
14 within another hairdressing establishment if operated under a booth rental  
15 agreement or other rental agreement;
- 16 (30) Services performed by a barber who holds a booth license and operates  
17 within another barbering establishment if operated under a booth rental  
18 agreement or other rental agreement;
- 19 (31) Services performed by a contract interviewer engaged in marketing research  
20 or public opinion interviewing when such interviewing is conducted in the field  
21 or over the telephone on premises not used or controlled by the person for whom  
22 such contract services are being provided;
- 23 (32) After December 31, 1981, services performed by an individual on a boat  
24 engaged in catching fish or other forms of aquatic animal life, unless those  
25 services would be included in the definition of "employment" for federal  
26 unemployment tax purposes under the Federal Unemployment Act, United States  
27 Code, Title 26, Section 3306(c), as it may be amended. Also included in this  
28 exemption are services performed in harvesting shellfish for depuration from  
29 designated areas as authorized by Title 12, section 6856;
- 30 (33) Services performed by a member or leader of a musical group, band or  
31 orchestra or an entertainer when the services are performed under terms of a  
32 contract entered into by the leader or an agent of the musical group, band,  
33 orchestra or entertainer with an employing unit for whom the services are being  
34 performed, provided the leader or agent is not an employer by reason of  
35 subsection 9 or of section 1222, subsection 3;
- 36 (34) Services performed in the delivery or distribution of newspapers or  
37 magazines to the ultimate consumer by an individual who is compensated by  
38 receiving or retaining a commission or profit on the sale of the newspaper or  
39 magazine;

- 1 (35) Services performed by a homemaker in the knitted outerwear industry as  
2 those terms are defined, on the effective date of this subparagraph, in 29 Code of  
3 Federal Regulations, Part 530, Section 530.1;
- 4 (36) Service performed by a full-time student, as defined in subsection 30, in the  
5 employ of a youth camp licensed under Title 22, section 2495 if the full-time  
6 student performed services in the employ of the camp for less than 13 calendar  
7 weeks in the calendar year and the camp:
- 8 (a) Did not operate for more than 7 months in the calendar year and did not  
9 operate for more than 7 months in the preceding calendar year; or
- 10 (b) Had average gross receipts for any 6 months in the preceding calendar  
11 year that were not more than 33 1/3% of its average gross receipts for the  
12 other 6 months in the preceding calendar year;
- 13 (37) Services performed by an individual as a home stitcher as long as that  
14 employment is not subject to federal unemployment tax;
- 15 (38) Services performed by a person licensed as a guide as required by Title 12,  
16 section 12853, as long as that employment is not subject to federal  
17 unemployment tax;
- 18 (39) Services performed by a direct seller as defined in 26 United States Code,  
19 Section 3508, Subsection (b), Paragraph (2). This subparagraph does not include  
20 a person selling major improvements or renovations to the structure of a home,  
21 business or property;
- 22 (40) Services performed by lessees of taxicabs, as long as that employment is not  
23 subject to federal unemployment tax. This subparagraph may not be construed to  
24 affect a determination regarding a lessee's status as an independent contractor for  
25 workers' compensation purposes;
- 26 (41) Services provided by a dance instructor to students of a dance studio when  
27 there is a contract between the instructor and the studio under which the  
28 instructor's services are not offered exclusively to the studio, the studio does not  
29 control the scheduling of the days and times of classes other than beginning and  
30 end dates, the instructor is paid by the class and not on an hourly or salary basis,  
31 the compensation rate is the result of negotiation between the instructor and the  
32 studio and the instructor is given the freedom to develop the curriculum;
- 33 (42) Services performed by participants enrolled in programs or projects under  
34 the national service laws including the federal National and Community Service  
35 Act of 1990, as amended, 42 United States Code, Section 12501 et seq., and the  
36 federal Domestic Volunteer Service Act, as amended, 42 United States Code,  
37 Section 4950 et seq.;
- 38 (43) Services of an author in furnishing text or other material to a publisher who:
- 39 (a) Does not control the author's work except to propose topics or to edit  
40 material submitted;



- 1 (b) Does not restrict the author from publishing elsewhere;
- 2 (c) Furnishes neither a place of employment nor equipment for the author's
- 3 use;
- 4 (d) Does not direct or control the time devoted to the work; and
- 5 (e) Pays only for material that is accepted for publication.

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

8 (44) Services provided by an owner-operator of a truck or truck tractor while it is  
9 leased to a motor carrier, as defined in 49 Code of Federal Regulations, 390.5  
10 (2000), as long as that employment is not subject to federal unemployment tax.

11 **Sec. 9. 36 MRSA §191, sub-§2, ¶V**, as amended by PL 2007, c. 352, Pt. A, §4, is  
12 further amended to read:

13 V. The disclosure by employees of the Bureau of Revenue Services, to designated  
14 representatives of the Department of Labor, of all information required by the State  
15 Tax Assessor and the Commissioner of Labor for the administration of the taxes  
16 imposed by Part 8 and by Title 26, chapter 13 and the Competitive Skills Scholarship  
17 Fund contribution imposed by Title 26, section 1166 and of all information required  
18 by the Director of the Bureau of Labor Standards within the Department of Labor for  
19 the enforcement of Title 26, section 872;

20 **SUMMARY**

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

- 22 1. Defines "immediate family";
- 23 2. Clarifies the use of a lease as proof of ownership for logging equipment;
- 24 3. Directs an employer to notify the Maine Department of Labor at the time of filing  
25 for certification from the United States Department of Labor to hire a bond worker. The  
26 employer shall provide, for the year in which the bond worker is employed, the number  
27 of bond workers requested, a list of each piece of logging equipment a bond worker will  
28 operate, receipts of payment for logging equipment purchased in bona fide transactions  
29 and documentation of payment of any tax assessed on the equipment;
- 30 4. Directs the Commissioner of Labor to adopt rules to implement and enforce the  
31 provisions regarding proof of logging equipment ownership;
- 32 5. Clarifies that the Attorney General may institute injunction proceedings for  
33 violations of the laws pertaining to the employment of aliens;
- 34 6. Directs the Department of Administrative and Financial Services, Bureau of  
35 Revenue Services to provide interagency support and field information to assist the  
36 Department of Labor in enforcing proof of equipment ownership for employers using  
37 bond workers; and

COMMITTEE AMENDMENT "B" to S.P. 593, L.D. 1545

1           7. Eliminates the allowance in the unemployment laws that permits alien agricultural  
2 laborers to collect unemployment.

3           This amendment does not affect any punishment, penalty or fine incurred before this  
4 amendment takes effect or any action or proceeding pending at the time of this  
5 amendment.

FISCAL NOTE REQUIRED  
(See Attached)



# 124th MAINE LEGISLATURE

LD 1545

LR 2087(03)

An Act To Protect Maine Workers

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

Committee: Labor

Fiscal Note Required: Yes

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## 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.