

# EXTENSIONS OF REMARKS

## H.R. 1715—LEGISLATIVE INTENT ON SUBSTITUTE

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 13, 1995

Mr. GOODLING. Mr. Speaker, next week the House is scheduled to consider H.R. 1715. At that time I plan to offer a substitute to the version of H.R. 1715 that passed the Economic and Educational Opportunities Committee. I am pleased to be joined in offering the substitute by the ranking member, Mr. CLAY and the chairman and ranking member of the Subcommittee on Workforce Protections, Mr. BALLENGER and Mr. OWENS. Following is the substitute to H.R. 1715 which will be offered to the House and a statement of legislative intent which I offer on behalf of myself, and Representatives CLAY, BALLENGER, and OWENS.

### JOINT STATEMENT OF LEGISLATIVE INTENT ON SUBSTITUTE TO H.R. 1715

Section 1 reverses the effect of the decision of the United States Supreme Court in *Adams Fruit Company, Inc. v. Barrett* 494 U.S. 638(1990). The Supreme Court held that an action for damages under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) was preserved and could be maintained by injured farm workers, even though the farm workers were covered under State workers' compensation for the same injuries suffered in the course of employment for the Adams Fruit Company.

Section 1 amends MSPA to provide that where workers' compensation coverage is secured under a State worker's compensation law for a migrant or seasonal agricultural worker, workers' compensation shall be the farm worker's exclusive remedy, and the employer's sole liability under MSPA for bodily injury or death. Section 1 reinstates and makes permanent a change in law that was temporarily in effect from October 6, 1992 to July 6, 1993, pursuant to Section 325(c) of Public Law 102-392.

Section 1 bars actions under MSPA for actual damages for injuries suffered by a farm worker where State workers' compensation is applicable and coverage is provided. It does not bar actions under MSPA for statutory damages or for equitable relief so long as such equitable relief does not include back or front pay, or expand, alter or affect rights or recoveries under State workers' compensation laws. Nothing in the bill is intended to limit the inherent authority of a court to impose sanctions where the court finds a defendant in contempt of court for refusing to comply with a court order. Further, nothing in the bill is intended to bar a party from maintaining an action under State law which is not precluded by the State's workers' compensation law. These amendments are intended to incorporate into MSPA the full preclusive effect of the State's workers' compensation law, but not to create a broader preclusive effect in MSPA than is provided by the States' workers' compensation law.

Section 1 is applicable to all cases and claims under MSPA in which a final judgment has not yet been entered.

Section 2 provides for increased statutory damages under MSPA in certain cases where

(1) actual damages are precluded because of the plaintiff's coverage under State workers' compensation law provided in section 1 of the bill, and (2) the circumstances and the defendant's actions meet any one of four sets of criteria described in the bill. In those cases, the maximum award of statutory damages is increased from up to \$500 to up to \$10,000 per plaintiff per violation.

The bill provides that multiple infractions of a single provision of MSPA shall constitute only one violation per plaintiff for purposes of the statutory damages provided in section 2. This language is identical to and should be construed the same as present language in section 504(c)(1) of MSPA.

Section 2 is applicable to claims for statutory damages under MSPA on which a final judgment has not been entered, as well as to future claims for such damages.

Section 3 provides for tolling of the statute of limitations on actions brought under MSPA during the time period in which a claim under a State workers' compensation law is pending. Specifically, the purpose of this provision is two-fold: first, it tolls the applicable statute of limitations governing a suit for actual damages for bodily injury or death under MSPA while a determination is being made whether the State workers' compensation law was applicable to the injury or death. Second, it tolls the statute of limitations governing claims which arise out of the same transaction or occurrence but which do not implicate workers' compensation. It intends to avoid forcing parties to split their claims into two suits, litigating their non-bodily injury claims in one lawsuit in order to preserve these claims under the applicable statute of limitations and then later litigating the injury claims in another lawsuit, if it were subsequently determined under State workers' compensation law that the injury was not covered.

Section 4 requires disclosure of information regarding workers' compensation coverage to migrant agricultural workers and, upon request, to seasonal agricultural workers. The purpose of this amendment is to help ensure that farm workers have sufficient information to know whether workers' compensation insurance is provided, who is providing it and how to file timely workers' compensation claims where workers' compensation is provided. Compliance with this disclosure requirement may be met by giving the migrant or seasonal agricultural workers a photocopy of any notice regarding workers' compensation which state law requires that the workers receive. The amendment is not intended to modify the joint employment doctrine which determines employment relationships under MSPA.

Section 5 pertains to the level of liability insurance required by the Department of Labor by employers engaged in transportation of migrant and/or seasonal agricultural workers. Current DOL regulations (29 CFR 500.121.(b)) require that the vehicle liability insurance carried by covered employers engaged in transporting migrant and/or seasonal farm workers be no less than the amount established by the Interstate Commerce Commission (ICC) for carriers which transport passengers. Because of the difficulty many of those governed by this requirement experienced in obtaining the insurance limits established by the ICC and applicable to MSPA as of February 1, 1992, this

provision allows the Secretary of Labor to determine the appropriate insurance levels based upon the statutory criteria set forth in 401(b)(2)(B), which consider, among other factors, the protection of the health and safety of migrant and seasonal farmworkers and the extent to which the insurance standard would cause an undue burden on agricultural employers and associations or farm labor contractors.

It is necessary to reaffirm that voluntary carpool arrangements established by workers for their mutual economy and convenience are not subject to the Act's transportation and insurance requirements.

Workers participating in voluntary carpool arrangements should not be deemed farm labor contractors under MSPA merely because they receive remuneration from fellow workers to defray the cost of transportation. Employers, agricultural associations and farm labor contractors for whom voluntary carpools (as defined in the Department of Labor's regulations) work shall not be subject to transportation-related liability or liability for employment of an unregistered farm labor contractor under MSPA for employing such carpools.

H.R. 1715

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. WORKERS' COMPENSATION.

#### (a) AMENDMENTS.—

(1) Section 325 of the Legislative Branch Appropriations Act, 1993 (Public Law 102-392) is repealed.

(2) Section 504(d) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1854(d)) is amended to read as follows:

“(d)(1) Notwithstanding any other provision of this Act, where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker, the workers' compensation benefits shall be the exclusive remedy for loss of such worker under this Act in the case of bodily injury or death in accordance with such State's workers' compensation law.

“(2) The exclusive remedy prescribed by paragraph (1) precludes the recovery under subsection (c) of actual damages for loss from an injury or death but does not preclude recovery under subsection (c) for statutory damages or equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect (A) a recovery under a State workers' compensation law or (B) rights conferred under a State workers' compensation law.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall apply to all cases in which a final judgment has not been entered.

### SEC. 2. EXPANSION OF STATUTORY DAMAGES.

(a) AMENDMENT.—Section 504 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1854) is amended by adding after subsection (d) the following:

“(e) If the court finds in an action which is brought by or for a worker under subsection (a) in which a claim for actual damages is precluded because the worker's injury is covered by a State workers' compensation law as provided by subsection (d) that—

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

"(1)(A) the defendant in the action violated section 401(b) by knowingly requiring or permitting a driver to drive a vehicle for the transportation of migrant or seasonal agricultural workers while under the influence of alcohol or a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) and the defendant had actual knowledge of the driver's condition, and

"(B) such violation resulted in injury to or death of the migrant or seasonal worker by or for whom the action was brought and such injury or death arose out of and in the course of employment as determined under the State workers' compensation law,

"(2)(A) the defendant violated a safety standard prescribed by the Secretary under section 401(b) which the defendant was determined in a previous judicial or administrative proceeding to have violated, and

"(B) such safety violation resulted in an injury or death described in paragraph (1)(B),

"(3)(A)(i) the defendant willfully disabled or removed a safety device prescribed by the Secretary under section 401(b), or

"(ii) the defendant in conscious disregard of the requirements of section 401(b) failed to provide a safety device required under such section, and

"(B) such disablement, removal, or failure to provide a safety device resulted in an injury or death described in paragraph (1)(B), or

"(4)(A) the defendant violated a safety standard prescribed by the Secretary under section 401(b),

"(B) such safety violation resulted in an injury or death described in paragraph (1)(B), and

"(C) the defendant at the time of the violation of section 401(b) also was—

"(i) an unregistered farm labor contractor in violation of section 101(a), or

"(ii) a person who utilized the services of a farm labor contractor of the type specified in clause (i) without taking reasonable steps to determine that the farm labor contractor possessed a valid certificate of registration authorizing the performance of the farm labor contracting activities which the contractor was requested by or permitted to perform with the knowledge of such person,

the court shall award not more than \$10,000 per plaintiff per violation with respect to whom the court made the finding described in paragraph (1), (2), (3), or (4), except that multiple infractions of a single provision of this Act shall constitute only one violation for purposes of determining the amount of statutory damages due to a plaintiff under this subsection and in the case of a class action, the court shall award not more than the lesser of up to \$10,000 per plaintiff or up to \$500,000 for all plaintiffs in such class action."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to all cases in which a final judgment has not been entered.

### SEC. 3. TOLLING OF STATUTE OF LIMITATIONS.

Section 504 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1854), as amended by section 2, is amended by adding after subsection (e) the following:

"(f) If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of a migrant or seasonal agricultural worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (a) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for other actual damages,

statutory damages, or equitable relief arising out of the same transaction or occurrence as the injury or death of the migrant or seasonal agricultural worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law."

### SEC. 4. DISCLOSURE OF WORKERS' COMPENSATION COVERAGE.

(a) MIGRANT WORKERS.—Section 201(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1821(a)) is amended by striking "and" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting "; and", and by adding after paragraph (7) the following:

"(8) whether State workers' compensation insurance is provided, and, if so, the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

Compliance with the disclosure requirement of paragraph (8) for a migrant agricultural worker may be met if such worker is given a photocopy of any notice regarding workers' compensation insurance required by law of the State in which such worker is employed. Such worker shall be given such disclosure at the time of recruitment or if sufficient information is unavailable at that time, at the earliest practicable time but in no event later than the commencement of work."

(b) SEASONAL WORKERS.—Section 301(a)(1) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1831(a)(1)) is amended by striking "and" at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting "; and", and by adding after subparagraph (G) the following:

"(H) whether State workers' compensation insurance is provided, and, if so, the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

Compliance with the disclosure requirement of subparagraph (H) may be met if such worker is given, upon request, a photocopy of any notice regarding workers' compensation insurance required by law of the State in which such worker is employed."

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect upon the expiration of 90 days after the date final regulations are issued by the Secretary of Labor to implement such amendments.

### SEC. 5. LIABILITY INSURANCE.

(a) AMENDMENT.—Section 401(b)(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)(3)) is amended to read as follows:

"(3) The level of insurance required under paragraph (1)(C) shall be determined by the Secretary considering at least the factors set forth in paragraph (2)(B) and similar farm-worker transportation requirements under State law."

(b) REGULATIONS.—Within 180 days of the date of the enactment of this Act, the Secretary of Labor shall promulgate regulations establishing insurance levels under section 401(b)(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)(3)) as amended by subsection (a).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect upon the expiration of 180 days after the date of enactment of this Act or upon the issuance of final regulations under subsection (b), whichever occurs first.

TRIBUTE TO DR. FRANCIS A. HIGGINS

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 13, 1995

Mr. BONIOR. Mr. Speaker, I rise today to pay tribute to a distinguished educator and a friend for many years, Dr. Francis A. Higgins, retired superintendent of the L'Anse Creuse Public Schools in Macomb County, MI.

This Sunday, October 15, 1995, the people of L'Anse Creuse Public Schools will honor Dr. Higgins by proudly naming their newest facility the Francis A. Higgins Elementary School. Higgins elementary is now accommodating 700 kindergarten through fifth grade students.

I have known Dr. Higgins for many years and he richly deserves the honor that will be bestowed upon him. For 15 years, Frank Higgins' leadership made L'Anse Creuse a model school district that has been emulated throughout the county and State. He championed educational methods and programs that benefited students of all ages while instilling a sense of pride and commitment from all who worked with him.

In 1979, when Frank first assumed his role as superintendent, the school district faced severe financial difficulties and declining enrollment. Today, the L'Anse Creuse Public School District is an excellent school system where many parents choose to buy homes. And, it is in excellent financial shape.

While Dr. Higgins deserves much credit for the district's successes, he is first to acknowledge the role of the staff and a community that supported millages during difficult economic times. However, when one becomes familiar with Dr. Higgins' administrative and educational talents, it is easy to see why he received such support. His success at educating students and inspiring a desire to learn is only surpassed by his success at fostering support for education.

As the L'Anse Creuse Public Schools prepare to honor Dr. Higgins this weekend, I urge my colleagues to join with me and thank him for his many years of devoted service. I know he is proud to be immortalized by the community he so faithfully served for many years.

UPHOLDING THE AMERICAN DREAM IN CLEVELAND

HON. MARTIN R. HOKE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 13, 1995

Mr. HOKE. Mr. Speaker, I want to take a few minutes out of our hectic legislative schedule to congratulate several families in my district that are overcoming the odds and making their dreams come true. I also want to salute the Cleveland Housing Network, which helped make those dreams a reality.

For 13 years the Cleveland Housing Network [CHN] has been helping Clevelanders buy their own homes. The network's lease-purchase program is especially noteworthy since it offers stable, decent, and affordable housing—with the ultimate goal of homeownership—to families currently living in poverty. And it is widely recognized that homeownership stabilizes neighborhoods and unites