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LABOR AND HOUSING

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 330, L.D. 525, “An Act to Protect Farm Workers by Allowing Them to Organize for the Purposes of Collective Bargaining”

Amend the bill by striking out the title and substituting the following:

'An Act to Enact the Agricultural Employees Concerted Activity Protection Act'

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

'Sec. 1. 26 MRSA c. 51 is enacted to read:

CHAPTER 51

AGRICULTURAL EMPLOYEES CONCERTED ACTIVITY PROTECTION ACT

§3901. Purposes

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between agricultural employers and their employees by providing a uniform basis for recognizing the right of agricultural employees to engage in the concerted activity protected by this chapter. It is also the public policy of this State and the purpose of this chapter to encourage cooperation and the voluntary resolution of issues between agricultural employers and their employees, to limit industrial strife, to promote stability in the farm labor force and to improve the economic status of workers and businesses.

§3902. Definitions

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

1. Agricultural employee. "Agricultural employee" means a person engaged in agriculture and also means a person engaged in the canning; processing; preserving; freezing; drying; marketing; storing; packing for shipment; or distributing of:

COMMITTEE AMENDMENT

- 1 A. Agricultural produce;
- 2 B. Meat and fish products; and
- 3 C. Perishable foods.

4 This subsection may not be construed to include a person other than those employees
5 excluded from the coverage under the federal National Labor Relations Act, as amended,
6 as agricultural laborers, pursuant to 29 United States Code, Section 152(3). "Agricultural
7 employee" includes any person whose work has ceased as a consequence of, in connection
8 with or because of any prohibited practice. "Agricultural employee" includes supervisors
9 but does not include any higher-level managers or those employees whose duties
10 necessarily imply a confidential relationship to the agricultural employer.

11 **2. Agricultural employer.** "Agricultural employer" means a person or entity that
12 directly or indirectly engages the services or suffers or permits the work of an agricultural
13 employee and includes a person acting on behalf of an agricultural employer directly or
14 indirectly and a person or entity exercising control over the terms and conditions of
15 employment.

16 **3. Agriculture.** "Agriculture" means farming in all its branches and includes but is
17 not limited to the cultivation and tillage of the soil; dairying; the production, cultivation,
18 growing and harvesting of any agricultural or horticultural commodities, including
19 commodities defined as agricultural commodities in 12 United States Code, Section
20 1141j(f) in effect on May 22, 2008; the raising of livestock, bees, fur-bearing animals or
21 poultry; and any practices, including any forestry or lumbering operations, performed by a
22 farmer or on a farm incidental to or in conjunction with farming operations, including
23 preparation for market and delivery to storage, to market or to carriers for transportation to
24 market.

25 **4. Board.** "Board" means the Maine Labor Relations Board as established in section
26 968, subsection 1.

27 **5. Concerted activity.** "Concerted activity" means activity by an employee or group
28 of employees to bring about change in a workplace.

29 **6. Executive director.** "Executive director" means the Executive Director of the
30 Maine Labor Relations Board as appointed in section 968, subsection 2.

31 **§3903. Right of agricultural employees to engage in concerted activity**

32 **1. Right to engage in concerted activity.** An agricultural employee has the right to
33 engage in concerted activity for the purpose of mutual aid or protection, including, but not
34 limited to:

35 A. Conferring with another agricultural employee with regard to wages, working
36 conditions, terms of employment or other matters related to employment;

37 B. Conferring, or attempting to confer, with the agricultural employee's agricultural
38 employer, or an agent or representative of that agricultural employer, with regard to
39 wages, working conditions, terms of employment or other matters related to
40 employment;

41 C. Conferring with 3rd parties, including but not limited to representatives of
42 organizations that provide social, economic, health care, legal, educational or other

1 services to agricultural employees; employees of any local, state or federal
2 governmental unit or agency; and employees of any press or media entity;

3 D. Publicizing complaints about wages, working conditions, terms of employment or
4 other matters related to the agricultural employee's employment in a lawful manner;
5 and

6 E. Taking action to further or protect the rights of an agricultural employee under this
7 chapter or to file or initiate, testify about, participate in the investigation of or support
8 in any way a complaint about a violation of this chapter by an agricultural employer.

9 **2. Right to refrain.** An agricultural employee may not be compelled to engage in
10 concerted activity.

11 **§3904. Prohibited acts of agricultural employers and agricultural employees**

12 **1. Prohibited acts of agricultural employers.** An agricultural employer or a
13 representative or agent of the agricultural employer may not:

14 A. Interfere with, restrain, surveil, interrogate or coerce an agricultural employee with
15 regard to engaging in an activity described in section 3903; or

16 B. Discharge, retaliate against, discipline or otherwise discriminate against an
17 agricultural employee because that agricultural employee has engaged in an activity
18 described in section 3903.

19 **2. Prohibited acts of agricultural employees.** An agricultural employee or a
20 representative or agent of an agricultural employee may not:

21 A. Interfere with, restrain or coerce an employee with regard to engaging in or
22 refraining from an activity described in section 3903; or

23 B. Cause or attempt to cause an agricultural employer to pay or deliver, or agree to pay
24 or deliver, money or any other thing of value for services not performed or not to be
25 performed.

26 **3. Violation.** The board shall process any violation of this section in the manner
27 provided in section 3906.

28 **§3905. Prevention of prohibited acts**

29 **1. Prevention of prohibited acts; board powers.** The board may prevent an
30 agricultural employer, agricultural employee or other person from engaging in a prohibited
31 act under section 3904 in accordance with this section.

32 **2. Complaints.** An agricultural employer or an agricultural employee that believes
33 that an agricultural employer, agricultural employee or any other person has engaged in or
34 is engaging in a prohibited practice may file a complaint with the executive director stating
35 the charges. The complaint may not be filed with the executive director until the
36 complaining party has served a copy of the complaint upon the party named in the
37 complaint. On receipt of a complaint, the executive director or the executive director's
38 designee shall review the complaint to determine whether the facts as alleged constitute a
39 prohibited act under section 3904. If it is determined that the facts do not, as a matter of
40 law, constitute a violation of this chapter, the complaint must be dismissed by the executive
41 director, subject to review by the board. If the executive director or the board determines
42 that a formal hearing is necessary, the executive director must serve upon the parties to the

1 complaint a notice of the prehearing conference and of the hearing before the board. The
2 notice must include the time and place of hearing for the prehearing conference or the
3 hearing, as appropriate. A hearing may not be held based upon an alleged prohibited
4 practice occurring more than 6 months before the filing of the complaint with the executive
5 director. The party named in the complaint has the right to file a written answer to the
6 complaint and to appear in person or otherwise and give testimony at the place and time
7 fixed for the hearing. In the discretion of the board, any other person or organization may
8 be allowed to intervene in the proceeding and to present testimony. This subsection does
9 not restrict the right of the board to require the executive director or the executive director's
10 designee to hold a prehearing conference on any prohibited practice complaint prior to the
11 hearing before the board and to take an action, including dismissal, to attempt to resolve
12 disagreements between the parties or to recommend an order to the board, when the
13 executive director determines appropriate, subject to review by the board.

14 **3. Cease and desist order.** If, after hearing and argument, upon a preponderance of
15 the evidence received, the board is of the opinion that a party named in the complaint has
16 engaged in or is engaging in a prohibited practice under section 3904, the board shall state
17 in writing its findings of fact and the reasons for its conclusions and issue and cause to be
18 served upon that party an order requiring the party to cease and desist from the prohibited
19 practice and to take affirmative action, including reinstatement of agricultural employees
20 with or without back pay and making agricultural employees whole for the loss of pay
21 resulting from the agricultural employer's prohibited action and to provide other relief. An
22 order of the board may not require the reinstatement of an individual as an agricultural
23 employee who has been suspended or discharged for cause or the payment to the
24 agricultural employee of any back pay if the individual was suspended or discharged for
25 cause.

26 **4. Dismissal of complaint.** If, after hearing and argument, upon a preponderance of
27 the evidence received, the board is not of the opinion that a party named in the complaint
28 has engaged in or is engaging in any prohibited practice under section 3904, the board shall
29 state in writing its findings of fact and the reasons for its conclusions and issue an order
30 dismissing the complaint.

31 **5. Enforcement action; scope of review; consolidation of actions.** If, after the
32 issuance of an order by the board requiring a party to cease and desist or to take any other
33 affirmative action, the party fails to comply with the order of the board, the party in whose
34 favor the order operates or the board may file a civil action in Superior Court to compel
35 compliance with the order of the board. Upon application of a party in interest or the board,
36 the Superior Court may grant temporary relief or a restraining order and may impose terms
37 and conditions as determined just and proper. The board's decision may not be stayed
38 except when it is clearly shown to the satisfaction of the Superior Court that substantial and
39 irreparable injury is likely to be sustained or that there is a substantial risk of danger to the
40 public health or safety. In an action to compel compliance, the Superior Court may not
41 review the action of the board other than to determine whether the board has acted in excess
42 of its jurisdiction. If an action to review the decision of the board is pending at the time of
43 the commencement of an action for enforcement pursuant to this subsection or is filed later,
44 the enforcement action and the request for review of a board decision in the Superior Court
45 must be consolidated.

1 **6. Review.** Either party may seek a review by the Superior Court of a decision or order
2 of the board by filing a complaint in accordance with the Maine Rules of Civil Procedure,
3 Rule 80C, if the complaint is filed within 15 days of the date of issuance of the board's
4 decision. The complaint must be served upon the board and all parties to the board
5 proceeding by certified mail, return receipt requested. Upon the filing of the complaint,
6 the Superior Court shall schedule the hearing and notify all interested parties and the board.
7 Pending review and upon application of an interested party, the Superior Court may grant
8 temporary relief or a restraining order and impose terms and conditions that the Superior
9 Court determines just and proper, including back pay and compensation for actual and
10 consequential losses except that the board's decision or order is not stayed unless it is
11 clearly shown to the satisfaction of the Superior Court that substantial and irreparable injury
12 will be sustained or that there is a substantial risk of danger to the public health or safety.
13 The executive director shall immediately file in the Superior Court the record in the
14 proceeding certified by the executive director or a member of the board. The record must
15 include all documents filed in the proceeding and the transcript, if any. A hearing must be
16 held after notice, and after the hearing the Superior Court may enforce, modify, enforce as
17 modified or set aside in whole or in part the decision or order of the board, except that the
18 findings of the board on questions of fact are final unless shown to be clearly erroneous.
19 An appeal to the Supreme Judicial Court must be the same as an appeal from an
20 interlocutory order under section 6.

21 **7. Privileges seeking injunctive relief.** In a judicial proceeding authorized by this
22 section in which injunctive relief is sought, subsections 5 and 6 apply, except that an
23 allegation or proof of unavoidable substantial and irreparable injury to the complainant's
24 property is not required to obtain a temporary restraining order or injunction.

25 **§3906. Hearings**

26 **1. Hearings; rules of evidence; evidence.** Hearings conducted by the board must be
27 informal and the rules of evidence prevailing in judicial proceedings are not binding. Any
28 documentary evidence and other evidence determined to be relevant by the board may be
29 received.

30 **2. Subpoenas; evidence; witness fees.** The chair of the board may administer oaths
31 and require by subpoena the attendance and testimony of witnesses and the presentation of
32 books, records and other evidence relative or pertinent to the issues presented to the board
33 for determination. Witnesses subpoenaed by the board are allowed the same fees paid to
34 witnesses in the Superior Court. These fees, together with all necessary expenses of the
35 board, must be paid by the Treasurer of State on warrants drawn by the State Controller.

36 **§3907. Federal precedents**

37 The board shall consult precedents under the federal National Labor Relations Act, as
38 amended, as appropriate.'

39 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
40 number to read consecutively.

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SUMMARY

This amendment replaces the bill and changes the title. The amendment enacts the Agricultural Employees Concerted Activity Protection Act, which gives employees of agricultural employers the right to engage in certain concerted activity.

FISCAL NOTE REQUIRED

(See attached)