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Date: (Filing No. H-)

LABOR AND HOUSING

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 249, L.D. 398, “An Act to Make Agricultural Workers and Other Related Workers Employees Under the Wage and Hour Laws ”

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

'An Act to Make Agricultural Workers and Certain Other Workers Employees Under the Minimum Wage Law and to Allow Such Workers to Engage in Certain Concerted Activity'

Amend the bill by striking out all of section 2.

Amend the bill by striking out all of section 4.

Amend the bill by striking out all of section 5 and inserting the following:

'Sec. 5. 26 MRSA §664, sub-§3, ¶F-1 is enacted to read:

F-1. An individual employed in agriculture as defined in the state Employment Security Law and the Federal Unemployment Tax Act.

Sec. 6. 26 MRSA c. 51 is enacted to read:

CHAPTER 51

AGRICULTURAL EMPLOYEES CONCERTED ACTIVITY PROTECTION ACT

§3901. Purpose

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

COMMITTEE AMENDMENT

1 strife, promote stability in the farm labor force and improve the economic status of workers
2 and businesses.

3 **§3902. Definitions**

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

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

9 A. Agricultural produce;

10 B. Meat and fish products; and

11 C. Perishable foods.

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

19 **2. Agricultural employer.** "Agricultural employer" means a person or entity that
20 directly or indirectly engages the services or suffers or permits the work of an agricultural
21 employee and includes a person acting on behalf of an agricultural employer directly or
22 indirectly and a person or entity exercising control over the terms and conditions of
23 employment.

24 **3. Agriculture.** "Agriculture" means farming in all its branches and includes but is
25 not limited to the cultivation and tillage of the soil; dairying; the production, cultivation,
26 growing and harvesting of any agricultural or horticultural commodities, including
27 commodities defined as agricultural commodities in 12 United States Code, Section
28 1141j(f) in effect on May 22, 2008; the raising of livestock, bees, fur-bearing animals or
29 poultry; and any practices, including any forestry or lumbering operations, performed by a
30 farmer or on a farm incidental to or in conjunction with farming operations, including
31 preparation for market and delivery to storage, to market or to carriers for transportation to
32 market.

33 **4. Board.** "Board" means the Maine Labor Relations Board as established in section
34 968, subsection 1.

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

37 **6. Executive director.** "Executive director" means the executive director of the Maine
38 Labor Relations Board as appointed in section 968, subsection 2.

39 **§3903. Right of agricultural employees to engage in concerted activity**

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

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

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

6 C. Conferring with 3rd parties, including but not limited to representatives of
7 organizations that provide social, economic, health care, legal, educational or other
8 services to agricultural employees; employees of any local, state or federal
9 governmental unit or agency and employees of any press or media entity;

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

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

16 2. Right to refrain. An agricultural employee may not be compelled to engage in
17 concerted activity.

18 **§3904. Prohibited acts of agricultural employers and agricultural employees**

19 1. Prohibited acts of agricultural employers. An agricultural employer or a
20 representative or agent of the agricultural employer may not:

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

23 B. Discharge, retaliate against, discipline or otherwise discriminate against an
24 agricultural employee because that employee has engaged in an activity described in
25 section 3903.

26 2. Prohibited acts of agricultural employees. An agricultural employee or a
27 representative or agent of an agricultural employee may not:

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

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

33 3. Violation. The board shall process any violation of this section in the manner
34 provided in section 3906.

35 **§3905. Prevention of prohibited acts**

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

39 2. Complaints. An agricultural employer or an agricultural employee that believes
40 that an agricultural employer, agricultural employee or any other person has engaged in or
41 is engaging in a prohibited practice may file a complaint with the executive director stating

1 the charges. The complaint may not be filed with the executive director until the
2 complaining party has served a copy of the complaint upon the party named in the
3 complaint. On receipt of a complaint, the executive director or the executive director's
4 designee shall review the complaint to determine whether the facts as alleged constitute a
5 prohibited act under section 3904. If it is determined that the facts do not, as a matter of
6 law, constitute a violation, the complaint must be dismissed by the executive director,
7 subject to review by the board. If the executive director or the board determines that a
8 formal hearing is necessary, the executive director must serve upon the parties to the
9 complaint a notice of the prehearing conference and of the hearing before the board. The
10 notice must include the time and place of hearing for the prehearing conference or the
11 hearing, as appropriate. A hearing may not be held based upon an alleged prohibited
12 practice occurring more than 6 months before the filing of the complaint with the executive
13 director. The party named in the complaint has the right to file a written answer to the
14 complaint and to appear in person or otherwise and give testimony at the place and time
15 fixed for the hearing. In the discretion of the board, any other person or organization may
16 be allowed to intervene in the proceeding and to present testimony. This subsection does
17 not restrict the right of the board to require the executive director or the executive director's
18 designee to hold a prehearing conference on any prohibited practice complaint prior to the
19 hearing before the board and to take an action, including dismissal, to attempt to resolve
20 disagreements between the parties or to recommend an order to the board, when the
21 executive director determines appropriate, subject to review by the board.

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

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

38 **5. Enforcement action; scope of review; consolidation of actions.** If after the
39 issuance of an order by the board requiring a party to cease and desist or to take any other
40 affirmative action the party fails to comply with the order of the board, the party in whose
41 favor the order operates or the board may file a civil action in Superior Court to compel
42 compliance with the order of the board. Upon application of a party in interest or the board,
43 the court may grant temporary relief or a restraining order and may impose terms and
44 conditions as determined just and proper. The board's decision may not be stayed except
45 when it is clearly shown to the satisfaction of the court that substantial and irreparable
46 injury is likely to be sustained or that there is a substantial risk of danger to the public health

1 or safety. In an action to compel compliance, the Superior Court may not review the action
2 of the board other than to determine whether the board has acted in excess of its jurisdiction.
3 If an action to review the decision of the board is pending at the time of the commencement
4 of an action for enforcement pursuant to this subsection or is filed later, the enforcement
5 action and the request for review of a board decision in the Superior Court must be
6 consolidated.

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

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

31 **§3906. Hearings**

32 **1. Hearings; rules of evidence; evidence.** Hearings conducted by the board must be
33 informal and the rules of evidence prevailing in judicial proceedings are not binding. Any
34 documentary evidence and other evidence determined to be relevant by the board may be
35 received.

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

42 **§3907. Federal precedents**

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

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

3 **SUMMARY**

4 This amendment makes the following changes to the bill.

5 1. It provides that individuals employed in agriculture are employees under state law
6 subject to the mandatory overtime law by removing the current exemption.

7 2. It requires that individuals employed in agriculture must be paid the state minimum
8 wage.

9 3. It provides that an employer may require an agricultural employee to work more
10 than 40 hours in any one week without paying the employee 1 1/2 times the regular hourly
11 rate for all hours actually worked in excess of 40 hours in that week.

12 4. It gives employees of agricultural employers the right to engage in certain concerted
13 activity.

14 **FISCAL NOTE REQUIRED**

15 **(See attached)**