

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out all of sections 5 to 11 and inserting the following:

**Sec. 5. 26 MRSA §46, 6th ¶**, as amended by PL 1983, c. 296, is further amended to read:

Any employer who willfully or repeatedly violates any standard, rule or order ~~promulgated~~adopted pursuant to section 565, ~~and if that violation is specifically determined to be a serious violation, shall~~must, upon ~~conviction~~determination, be punished by a fine of not more than \$10,000 ~~or by imprisonment for not more than 6 months, or by both;~~, except that if the ~~conviction~~determination is for a violation committed after a first ~~conviction~~determination of violation by such person, punishment ~~shall~~must be by a fine of not more than \$20,000, ~~or by imprisonment for not more than one year, or by both.~~

**Sec. 6. 26 MRSA §597**, as enacted by PL 1991, c. 366, is amended to read:

### **§ 597. Conditions of employment**

An employer or an agent of an employer may not require, as a condition of employment, that any employee or prospective employee refrain from using tobacco products outside the course of that employment or otherwise discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment for using tobacco products outside the course of employment as long as the employee complies with any workplace policy concerning use of tobacco. This section does not prohibit an employer or an agent of an employer from offering a voluntary wellness program that offers incentives for the cessation of use of tobacco products in compliance with applicable federal regulations.

**Sec. 7. 26 MRSA §601**, as enacted by PL 1985, c. 212, is amended to read:

### **§ 601. Rest breaks**

In the absence of a collective bargaining agreement or other written employer-employee agreement providing otherwise, an employee, as defined in section 663, may be employed or permitted to work for no more than 6 consecutive hours at one time unless ~~he~~the employee is given the opportunity to take at least 30 consecutive minutes of rest time, except in cases of emergency in which there is danger to property, life, public safety or public health. This rest time may be used by the employee as ~~unpaid~~paid mealtime, but only if the employee is completely relieved of duty.

**1. Small business.** This section does not apply to any place of employment where:

A. Fewer than 3 employees are on duty at any one time; and

B. The nature of the work done by the ~~employees~~employee allows ~~them~~the employee frequent ~~paid~~paid breaks of a shorter duration during ~~their~~the employee's work day.

**Sec. 8. 26 MRSA §621-A, sub-§1**, as amended by PL 2005, c. 103, §1, is further amended to read:

**1. Minimum frequency and full payment.** At regular intervals not to exceed 16 days, every employer must pay in full all wages earned by each employee. Each payment must include all wages earned to within 8 days of the payment date. Payments that fall on a day when the business is regularly closed must be paid no later than the following business day. An employee who is absent from work at a time fixed for payment must be paid ~~on demand after that time~~ as if the employee was not absent.'

Amend the bill in section 13 in §622 in the last 2 lines (page 4, lines 18 and 19 in L.D.) by striking out the following: "An employer shall preserve the records required by this section for 3 years."

Amend the bill by striking out all of sections 14 and 15 and inserting the following:

**‘Sec. 14. 26 MRSA §626, first ¶,** as amended by PL 1991, c. 162, is further amended to read:

An employee leaving employment must be paid in full ~~within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid, provided that any~~ no later than the employee's next established payday. Any overcompensation may be withheld if authorized under section 635 and any loan or advance against future earnings or wages may be deducted if evidenced by a statement in writing signed by the employee. Whenever the terms of employment ~~include or the employer's established practice includes~~ provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned.

**Sec. 15. 26 MRSA §626, last ¶,** as enacted by PL 1995, c. 580, §1, is amended to read:

Within 2 weeks after the sale of a business, the seller of the business shall pay employees of that business any wages earned while employed by the seller. If the terms of employment ~~include or the employer's established practice includes~~ provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. The seller of a business may comply with the provisions of this paragraph through a specific agreement with the buyer in which the buyer agrees to pay any wages earned by employees through employment with the seller and to honor any paid vacation earned under the seller's vacation policy.'

Amend the bill by striking out all of sections 17 to 19.

Amend the bill by striking out all of sections 21 to 27 and inserting the following:

**‘Sec. 21. 26 MRSA §664, sub-§3, ¶F,** as amended by PL 2011, c. 681, §1, is further amended to read:

F. The canning; processing; preserving; freezing; drying; marketing; storing; packing for shipment; or ~~distribution~~ distributing of:

- (1) Agricultural produce;
- (2) Meat and fish products; and
- (3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection; and'

Amend the bill by striking out all of sections 31 and 32.

Amend the bill by inserting after section 33 a new section to read:

**'Sec. 34. Retroactivity.** Notwithstanding the Maine Revised Statutes, Title 1, section 302, the provision of this Act that amends Title 26, section 664, subsection 3, paragraph F applies retroactively to September 29, 1995 but does not apply to cases pending on March 12, 2017.'

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

## SUMMARY

This amendment makes a number of changes to the bill, including the following:

1. It restores the fine of up to \$20,000 for repeated violations of occupational safety requirements. It also removes the requirement for a conviction and instead provides that the fine is collectible upon a determination of a violation by the Department of Labor;

2. It allows an employer to offer a voluntary wellness program that offers incentives to employees for the cessation of use of tobacco products in compliance with federal regulations;

3. It eliminates the portion of the bill regarding possession of firearms by employees;

4. It amends the portion of the bill regarding rest breaks to specify that the 30-minute rest break may be used by the employee as unpaid mealtime only if the employee is completely relieved of duty, and limits the exception that allows small businesses with fewer than 3 employees on duty at any one time when the employee has frequent paid breaks of shorter duration to be exempted from the 30-minute rest break requirement only if the employees are completely relieved of duty during the frequent paid breaks;

5. It eliminates the portions of the bill regarding exemptions to mandatory overtime pay for certain salaried employees and automobile mechanics, automobile parts clerks and automobile service writers;

6. It eliminates the provision in the bill that allows a salaried employee to be paid on a monthly basis;

7. It eliminates the requirement in the bill that an employer preserve wage records for 3 years;

8. It changes the provision in the bill that specifies that when the terms of employment or the employer's established practice includes provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned;

9. It eliminates the exemption from minimum wage and overtime pay requirements in the bill for domestic service workers employed to provide companionship services;

10. It eliminates the provisions in the bill relating to the definition of "tip" and that make a mandatory service charge the property of the employer and not the service employee; and

11. It eliminates the provision in the bill that requires the Department of Labor, Bureau of Labor Standards to conduct a survey every 3 years to determine the prevailing hourly wage and benefits rate in the construction industry, instead of annually under current law.

This amendment also makes changes to the bill to provide further clarity regarding the current exemption from overtime contained in the Maine Revised Statutes, Title 26, section 664, subsection 3, paragraph F relating to work in the distribution of agricultural produce, meat and fish products and perishable foods. The bill and the current amendment are specifically intended to correct a perceived ambiguity identified by the United States Court of Appeals for the First Circuit in O'Connor v. Oakhurst Dairy, 851 F.3d 69 (2017). The amendment attempts to clarify current law by using semicolons to separate the applicable categories of work to which the exemption applies, and by changing the term "distribution" to "distributing" to conform to the grammatical convention of parallel usage by matching the gerund form of the other activities listed in the exemption, with the intent that work done in the distribution of, or distributing of, agricultural produce, meat and fish products and perishable foods is exempt from the overtime requirements of Title 26, section 664. The amendment also adds a retroactivity clause, applying the changes made to Title 26, section 664, subsection 3, paragraph F retroactively to September 29, 1995. This retroactivity applies to pending cases except, in deference to the authority of the judiciary to redress disputes, for cases pending on March 12, 2017. The Legislature does not intend for any retroactive change to the overtime requirements for egg processing facilities enacted by Public Law 2011, chapter 681.

**FISCAL NOTE REQUIRED**  
**(See attached)**