

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 everything after the enacting clause and inserting the following:

‘**Sec. 1. 5 MRSA §4577** is enacted to read:

§ 4577. Compensation history inquiry as evidence of unlawful discrimination

1. Legislative findings and intent. The Legislature finds that despite requirements regarding equal pay having been a part of the laws of Maine since 1965, wage inequality is an ongoing issue in the State. Wage inequality causes substantial harm to the citizens and to the economy of the State. The Legislature finds that when employers base compensation decisions on compensation history of a prospective employee, it directly perpetuates this wage inequality. An employer's knowledge of a prospective employee's compensation history is directly related to the practice of basing compensation decisions on compensation history. It is the intent of the Legislature to promote the payment of equal compensation for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility and to prevent unlawful employment discrimination with respect to compensation.

2. Evidence of unlawful employment discrimination. Evidence of unlawful employment discrimination under section 4572 and Title 26, section 628 includes, but is not limited to, an employer's inquiring, either directly or indirectly, about the compensation history of a prospective employee from the prospective employee or a current or former employer of the prospective employee or otherwise seeking the compensation history of a prospective employee.

3. Exceptions. Notwithstanding subsection 2, an employer or employment agency may inquire about or seek compensation history of an employee or prospective employee after an offer of employment that includes all terms of compensation has been negotiated and made to the prospective employee. If an employee or prospective employee has voluntarily disclosed compensation history information, without prompting by the employer or employment agency, the employer or employment agency may seek to confirm or permit a prospective employee to confirm such information prior to an offer of employment. This section does not apply to an employer who inquires about compensation history pursuant to any federal or state law that specifically requires the disclosure or verification of compensation history for employment purposes.

Sec. 2. 26 MRSA §626-A, first ¶, as amended by PL 1999, c. 465, §5, is further amended to read:

Whoever violates any of the provisions of sections 621-A to 623 or section 626, 628, 628-A, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.

Sec. 3. 26 MRSA §628, first ¶, as amended by PL 2009, c. 29, §1, is further amended to read:

An employer may not discriminate between employees in the same establishment on the basis of sex by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs that have comparable

requirements relating to skill, effort and responsibility. Differentials that are paid pursuant to established seniority systems or merit increase systems or difference in the shift or time of the day worked that do not discriminate on the basis of sex are not within this prohibition. An employer may not discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of this section. An employer may not prohibit an employee from disclosing the employee's own wages or from inquiring about or disclosing another employee's wages if the purpose of the disclosure or inquiry is to enforce the rights granted by this section. Nothing in this section creates an obligation to disclose wages.

Sec. 4. 26 MRSA §628-A is enacted to read:

§ 628-A. Compensation history inquiry prohibited

1. Legislative findings and intent. The Legislature finds that despite requirements regarding equal pay having been a part of the laws of Maine since 1965, wage inequality is an ongoing issue in the State. Wage inequality causes substantial harm to the citizens and to the economy of the State. The Legislature finds that when employers base compensation decisions on compensation history of a prospective employee, it directly perpetuates this wage inequality. An employer's knowledge of a prospective employee's compensation history is directly related to the practice of basing compensation decisions on compensation history. It is the intent of the Legislature to promote the payment of equal compensation for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility and to prevent unlawful employment discrimination with respect to compensation.

2. Prohibition. An employer may not use or inquire about the compensation history of a prospective employee from the prospective employee or a current or former employer of the prospective employee unless an offer of employment that includes all terms of compensation has been negotiated and made to the prospective employee, after which the employer may inquire about or confirm the prospective employee's compensation history.

3. Exception. This section does not apply to an employer who inquires about compensation history pursuant to any federal or state law that specifically requires the disclosure or verification of compensation history for employment purposes.

4. Penalty. This section may be enforced pursuant to section 626-A. The civil action provided pursuant to section 626-A may be brought to enforce this section by or on behalf of a person affected by a violation of subsection 2 or by the Department of Labor on behalf of a person affected by a violation of subsection 2, and the plaintiff or plaintiffs may also seek judgment for compensatory damages.'

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

SUMMARY

This amendment strikes and replaces the bill. The amendment prohibits an employer from inquiring about a prospective employee's compensation history until after an offer of employment that includes

all terms of compensation has been negotiated and made to the prospective employee. It creates an exception for compensation history sought pursuant to any federal or state law that specifically requires the disclosure or verification of compensation history for employment purposes, for example, when such information is related to economic development programs that specifically create employment opportunities for persons with low incomes. An employer that violates this provision is subject to a fine of not less than \$100 and not more than \$500 per violation and is also subject to a civil action that may be brought by or on behalf of an affected employee or applicant by the Department of Labor or the affected employee or applicant.

This amendment also amends the Maine Human Rights Act to provide that evidence of unlawful employment discrimination includes an employer's seeking information about a prospective employee's compensation history before an offer of employment, including all terms of compensation, to the applicant has been made. It also creates an exception for compensation history sought pursuant to any federal or state law that specifically requires the disclosure or verification of compensation history for employment purposes.

FISCAL NOTE REQUIRED
(See attached)