**An Act To Increase Workplace Transparency with Regard to Arbitration Agreements, the Rights of Employees and Legal Remedies**

**Be it enacted by the People of the State of Maine as follows:**

**Sec.** **1. 26 MRSA c. 47** is enacted to read:

**CHAPTER** **47**

**MAINE WORKPLACE TRANSPARENCY ACT**

**§****3701.** **Short title**

This chapter may be known and cited as "the Maine Workplace Transparency Act."

**§****3702.** **Definitions**

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

**1.** **Arbitration agreement.** "Arbitration agreement" means an agreement between an employer and an employee to submit to arbitration all or certain disputes that arise in respect to a defined legal relationship, whether contractual or not, and may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

**2.** **Electronic device.** "Electronic device" means a device that is electric and that enables access to, or use of, an electronic communication service, remote computing service or location information service.

**3.** **Employee.** "Employee" means an individual employed or formerly employed by or applying for employment with an employer.

**4.** **Employer.** "Employer" means a person in the State employing an employee, whatever the place of employment of the employee, and any person outside the State employing an employee whose usual place of employment is in the State; a person acting in the interest of an employer, directly or indirectly, so that the person's actions are considered the actions of the employer for purposes of liability; and a labor organization, whether or not organized on a religious, fraternal or sectarian basis, with respect to the organization's employment of employees. "Employer" does not include a religious or fraternal corporation or association, not organized for private profit or conducted for private profit, with respect to employment of the corporation's or association's employment of members of the same religion, sect or fraternity.

**5.** **Inconvenient venue.** "Inconvenient venue" means:

A. For state law claims, a place other than the county in which the employee resides or where the contract was executed; and

B. For federal law claims, a place other than the federal judicial district in accordance with Local Rule 3(b) of the Local Rules of the United States District Court for the District of Maine in which the employee resides or the contract was executed.

**§****3703.** **Unconscionable terms and rights**

**1.** **Unconscionable terms.** There is a rebuttable presumption that the following contractual terms are unconscionable if they are included in an arbitration agreement and the employee does not draft the contract or agreement:

A. A requirement that resolution of a claim takes place in an inconvenient venue;

B. A waiver of the employee's right to assert a claim or seek a remedy provided by a common law or statute of the State or a federal statute;

C. A waiver of the employee's right to seek punitive damages as provided by law;

D. A provision limiting the time that an employee may bring an action to a period shorter than the applicable statute of limitations;

E. A requirement that an employee pay fees or costs to bring a claim in excess of the fees and costs that a state or federal court requires to bring a claim;

F. A requirement to arbitrate an employee claim that stems from the United States Equal Employment Opportunity Commission laws or the Maine Human Rights Act; and

G. A waiver of the employee's right to pursue or participate in a class action or collective action against an employer.

**2.** **Rights.** An employee has rights that may not be waived in an arbitration agreement, including:

A. To criticize the employee's employer, protest the employee's wages or working conditions and share information in support of a complaint of wages or working conditions;

B. To use and possess an electronic device during work hours in workplace and nonworkplace areas to photograph or make video and audio recordings in furtherance of a concerted activity for mutual aid or protection, such as the right to use an electronic device to take such photographs or make video and audio recordings for the following limited purposes to document or attempt to document:

(1) An unfair labor practice under this Title;

(2) Any municipal, state or federal criminal conduct;

(3) An unlawful discriminatory practice under Title 5, chapter 337;

(4) A public health, traffic or safety violation; and

(5) An unlawful act of harassment under Title 5, chapter 337-A;

C. To pursue or participate in a class action or collective action against the employee's employer;

D. To rescind an employment separation agreement by notifying the employer in writing by mail or e-mail within 9 days of executing an employment separation agreement;

E. To distribute literature by electronic means in workplace and nonworkplace areas during nonworking hours at the business premises of the employer;

F. To distribute literature in paper form in workplace break areas and nonworkplace areas during nonworking hours at the business premises of the employer; and

G. To strike and picket.

An employee who exercises a right under subsection 2 must do so in accordance with the laws concerning confidential information, including confidentiality of health care information under Title 22, section 1711-C, confidential information provided to professional and occupational licensing boards under Title 22, section 3294 and the limitations of information under Title 16, chapters 7 and 9.

**§****3704.** **Action**

**1.** **Action.** An employee may bring an action under this chapter for the intentional, knowing or reckless use of an unconscionable contractual term or violation of a right under section 3703, subsection 2 for actual damages, compensatory damages, punitive damages, equitable relief, back pay damages, front pay damages, injunctive relief, including issuance of a temporary restraining order, or any other appropriate relief.

**2.** **Place of action.** Notwithstanding the federal court's authority to exercise supplemental jurisdiction under 28 United States Code, Section 1367, an action under this chapter must be instituted in the Superior Court of the county where the alleged violator resides or has a principal place of business.

**3.** **Impartial jury trial.** An employee may request a jury trial on the merits of an action brought under this section, except for an application for a preliminary injunction or temporary restraining order.

**4.** **Limitation of action.** An action under this chapter must be commenced within 6 years after the cause of action accrues. The period to commence an action under this subsection tolls for an employee determined incompetent even if a guardian ad litem has been appointed during the pendency of any criminal proceedings against the employee.

**5.** **Preponderance of evidence.** An action under this chapter must be decided by a preponderance of evidence.

**6.** **Causation.** An action under this chapter may not be decided by a "but for" causation standard.

**7.** **Service of order of injunction.** A temporary restraining order or preliminary or permanent injunction issued under this chapter must include a statement describing the penalties provided in this chapter for a knowing violation of the order or injunction. The clerk of the Superior Court shall transmit a certified copy of each order or injunction issued under this chapter to the appropriate law enforcement agency having jurisdiction over a location where the defendant is alleged to have committed the act giving rise to the action, and service of the order or injunction must be accomplished pursuant to the Maine Rules of Civil Procedure unless otherwise ordered by the court. Service must be made by the delivery of a copy in hand to the defendant.

**8.** **Violation of court order.** A person who knowingly violates a temporary restraining order or preliminary or permanent injunction issued under this chapter commits a Class D crime.

**9.** **Protection against violation.** The rights secured by this chapter are protected against violation due to nongovernmental discrimination and violation under color of state law. For purposes of this chapter, rights secured under this chapter and the laws of the State include rights that would be protected from interference of the exercise of rights by governmental actors regardless of whether the specific interference complained of is performed or attempted by private parties.

**10.** **Right to pursue cause of action.** An employee may not be denied the right to pursue a cause of action arising under this chapter in a court of competent jurisdiction solely because the employee has not filed a charge of discrimination to the Maine Human Rights Commission or the employee is covered by a collective bargaining agreement.

**11.** **Cause of action on employee's behalf.** In a cause of action brought under this chapter, a legal guardian, family member, representative of the employee or court appointee may represent the employee or the employee's estate if the employee is deceased.

**§****3705.** **State penalty; state enforcement**

An employer that violates this chapter commits a civil violation for which a fine of not less than $10,000 may be adjudged. The Department of Labor is responsible for the enforcement of this section.

**§****3706.** **Attorney's fees and costs**

In an action under this chapter, the court, in its discretion, may allow the prevailing party, other than the State, reasonable attorney's fees and costs, and the State is liable for attorney's fees and costs in the same manner as a private party.

**§****3707.** **Rights of labor unaffected**

This chapter may not be construed to impair, curtail or destroy the lawful rights of employees and their representatives to organize; to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing; to strike; to picket; and to engage in activities for the purpose of collective bargaining or other mutual aid or protection.

**SUMMARY**

This bill enacts the Maine Workplace Transparency Act that ensures certain rights for employees subject to arbitration agreements as part of their employment. The bill provides a list of unconscionable terms in an arbitration agreement that may not be used against employees and a list of rights for employees in their conduct in and out of the workplace. The bill provides the right to bring an action to dispute an unconscionable term or to enforce a right, including the issuance of a temporary restraining order or a preliminary or permanent injunction. The limitation period is 6 years, the burden of proof is by a preponderance of evidence and an employee may request a jury trial. A violation of the provisions is subject to a civil penalty of not less than $10,000 enforceable by the Department of Labor, and a violation of a court order for a temporary restraining order or a preliminary or permanent injunction is a Class D crime. The prevailing party in an action, except for the State, is entitled to receive attorney's fees and costs, and the State is liable for attorney's fees and costs in the same manner as a private party.