

Date:

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LABOR AND HOUSING

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 538, L.D. 733, Bill, “An Act To Promote Keeping Workers in Maine”

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

Sec. 1. 26 MRSA §§599-A and 599-B are enacted to read:

§599-A. Noncompete agreements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Federal poverty level" means the nonfarm income official poverty line for an individual, as defined by the federal Office of Management and Budget and revised annually in accordance with the Omnibus Budget Reconciliation Act of 1981, Section 673(2).

B. "Noncompete agreement" means a contract or contract provision that prohibits an employee or prospective employee from working in the same or a similar profession or in a specified geographic area for a certain period of time following termination of employment.

2. Public policy; enforceability of noncompete agreements. Noncompete agreements are contrary to public policy and are enforceable only to the extent that they are reasonable and are no broader than necessary to protect one or more of the following legitimate business interests of the employer:

A. The employer's trade secrets, as defined in Title 10, section 1542, subsection 4;

B. The employer's confidential information that does not qualify as a trade secret; or

C. The employer's goodwill.

A noncompete agreement may be presumed necessary if the legitimate business interest cannot be adequately protected through an alternative restrictive covenant, including but

1 not limited to a nonsolicitation agreement or a nondisclosure or confidentiality
2 agreement.

3 **3. Prohibited for certain workers.** Notwithstanding subsection 2, an employer may
4 not require or permit an employee earning wages at or below 300% of the federal poverty
5 level to enter into a noncompete agreement with the employer.

6 **4. Disclosure; notice.** An employer shall disclose prior to an offer of employment
7 with the employer that will require the acceptance of a noncompete agreement a
8 statement that a noncompete agreement will be required.

9 An employer shall notify an employee or prospective employee of a noncompete
10 agreement requirement and provide a copy of the noncompete agreement not less than 3
11 business days before the employer requires the agreement to be signed to allow time for
12 the employee or prospective employee to review the agreement and negotiate the terms of
13 the agreement or employment with the employer if the employee or prospective employee
14 wishes to do so.

15 **5. Effective date of a noncompete agreement.** Except for a noncompete agreement
16 between an employer and an allopathic physician or an osteopathic physician licensed
17 under Title 32, chapter 48 or chapter 36, respectively, the terms of a noncompete
18 agreement do not take effect until after one year of the employee's employment with the
19 employer or a period of 6 months from the date the agreement was signed, whichever is
20 later.

21 **6. Penalty; enforcement.** An employer that violates subsection 3 or 4 commits a
22 civil violation for which a fine of not less than \$5,000 may be adjudged. The Department
23 of Labor is responsible for enforcement of this section.

24 **7. Application.** This section applies to all noncompete agreements entered into or
25 renewed after the effective date of this section.

26 **§599-B. Restrictive employment agreements**

27 **1. Definition.** For purposes of this section, "restrictive employment agreement"
28 means an agreement that:

29 A. Is between 2 or more employers, including through a franchise agreement or a
30 contractor and subcontractor agreement; and

31 B. Prohibits or restricts one employer from soliciting or hiring another employer's
32 employees or former employees.

33 **2. Restrictive employment agreements prohibited.** An employer may not:

34 A. Enter into a restrictive employment agreement; or

35 B. Enforce or threaten to enforce a restrictive employment agreement.

36 **3. Penalty; enforcement.** An employer that violates subsection 2 commits a civil
37 violation for which a fine of not less than \$5,000 may be adjudged. The Department of
38 Labor is responsible for enforcement of this section.

39 **Sec. 2. Appropriations and allocations.** The following appropriations and
40 allocations are made.

1 **LABOR, DEPARTMENT OF**

2 **Regulation and Enforcement 0159**

3 Initiative: Provides ongoing funds for one half-time Labor and Safety Inspector position
4 and related All Other costs associated with enforcing the laws related to noncompete
5 agreements and restrictive employment agreements.

6	GENERAL FUND	2019-20	2020-21
7	POSITIONS - LEGISLATIVE COUNT	0.500	0.500
8	Personal Services	\$25,869	\$34,492
9	All Other	\$6,732	\$7,482
10			
11	GENERAL FUND TOTAL	\$32,601	\$41,974
12			

13 **SUMMARY**

14 This amendment strikes and replaces the bill. It moves the language in the bill to
15 another location in the Maine Revised Statutes, Title 26 and restricts the enforceability of
16 noncompete agreements to the extent that they are reasonable and are no broader than
17 necessary to protect a legitimate business interest of the employer, such as trade secrets,
18 confidential information or goodwill. It also adds a presumption that a noncompete
19 agreement is necessary if the legitimate business interest cannot be adequately protected
20 through an alternative restrictive covenant. As in the bill, it also provides for ongoing
21 appropriations to provide for enforcement of the provisions.

22 **FISCAL NOTE REQUIRED**

23 **(See attached)**