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LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 515, L.D. 1389, Bill, “An Act To Conform Maine Law to Federal Law Regarding Closings and Mass Layoffs and To Strengthen Employee Severance Pay Protections”

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

Sec. 1. 26 MRSA §625-B, as amended by PL 2009, c. 305, §§1 to 4 and affected by §5, is further amended to read:

§625-B. Severance pay due to closing, substantial shutdown or relocation of a covered establishment

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

A. "Covered establishment" means any industrial or commercial facility or part thereof ~~which~~ that employs or has employed at any time in the preceding 12-month period 100 or more persons.

A-1. "Closing" means the permanent shutdown of industrial or commercial operations at a covered establishment. A closing may occur due to relocation, termination or consolidation of the employer's business.

B. "Director" means the Director of the Bureau of Labor Standards.

B-1. "Eligible employee" means any employee who:

(1) Has been continuously employed at the covered establishment at the time of the closing or mass layoff for at least 3 years, including any period when the employee was on a leave of absence;

(2) Has not been terminated for cause; and

(3) Has not accepted employment at another or relocated establishment operated by the employer or remains employed at the covered establishment.

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1 "Eligible employee" includes an employee who has voluntarily quit employment at a
2 covered establishment to take a new job within a 30-day period prior to the date set
3 by the employer for a closing or mass layoff in an initial notice provided by the
4 employer under state or federal law.

5 C. "Employer" means any person who directly or indirectly owns and operates a
6 covered establishment. For purposes of this definition, a parent corporation is
7 considered the indirect owner and operator of any covered establishment that is
8 directly owned and operated by its corporate subsidiary.

9 C-1. "Gross earnings" includes all pay for regular hours, shift differentials,
10 premiums, overtime, floating holidays, holidays, funeral leave, jury duty pay, sick
11 pay and vacation pay earned within the last 12 months prior to the closing or mass
12 layoff. "Gross earnings" does not include payments made under a 3rd-party benefit
13 program, such as disability payments.

14 C-2. "Mass layoff" means a reduction in workforce, not the result of a closing, that
15 results in an employment loss at a covered establishment for at least 6 months of at
16 least:

17 (1) Thirty-three percent of the employees and at least 50 employees; or

18 (2) Five hundred employees.

19 D. "Person" means any individual, group of individuals, partnership, corporation,
20 association or any other entity.

21 E. "Physical calamity" means any calamity such as fire, flood or other natural
22 disaster.

23 F. "Relocation" means the removal of all or substantially all of industrial or
24 commercial operations in a covered establishment to a new location, within or
25 without the State of Maine, 100 or more miles distant from its original location.

26 ~~G. "Termination" means the substantial cessation of industrial or commercial~~
27 ~~operations in a covered establishment.~~

28 H. "Week's pay" means an amount equal to the employee's gross earnings during the
29 12 months previous to the date of ~~termination or relocation~~ closing or mass layoff as
30 established by the director ~~or the date of the termination or layoff of the employee,~~
31 ~~should it occur earlier,~~ divided by the number of weeks in which the employee
32 ~~worked~~ received gross earnings during that 12-month period.

33 **2. Severance pay.** Any employer who ~~relocates or terminates~~ closes or engages in a
34 mass layoff at a covered establishment ~~shall be~~ is liable to ~~his~~ eligible employees of the
35 covered establishment for severance pay at the rate of one week's pay for each year, and
36 partial pay for any partial year, from the last full month of employment by the employee
37 in that establishment. The severance pay to eligible employees ~~shall be~~ is in addition to
38 any final wage payment to the employee and ~~shall~~ must be paid within one regular pay
39 period after the employee's last full day of work, notwithstanding any other provisions of
40 law.

41 **3. Mitigation of severance pay liability.** There is no liability under this section for
42 severance pay to an eligible employee if:

1 A. ~~Relocation or termination~~ Closing of or a mass layoff at a covered establishment
2 is necessitated by a physical calamity or the final order of a federal, state or local
3 government agency;

4 B. The employee is covered by, and has actually been paid under the terms of, an
5 express contract providing for severance pay that is ~~equal to or~~ in an amount that is
6 greater than the severance pay required by this section. An employer must
7 demonstrate, to the satisfaction of the director, that the severance pay provided under
8 the terms of an express contract provides a greater benefit to the employee than
9 provided in this section; or

10 C. ~~That employee accepts employment at the new location;~~

11 D. ~~That~~ The employee has been employed by the employer for less than 3 years; or,

12 E. ~~A covered establishment files for protection under 11 United States Code, Chapter~~
13 ~~11 unless the filing is later converted to a filing under 11 United States Code, Chapter~~
14 ~~7.~~

15 **3-A. Bankruptcy proceedings.** A covered establishment is not exempt from
16 liability for severance pay under this section solely because it files a voluntary petition for
17 bankruptcy protection under the provisions of Chapter 7 or Chapter 11 of the United
18 States Bankruptcy Code, 11 United States Code, Section 101, et seq., or because an
19 involuntary petition is commenced against it pursuant to 11 United States Code, Section
20 303.

21 **4. Suits by, or on behalf of, employees.** Any employer who violates the provisions
22 of this section ~~shall be~~ is liable to the employee or employees affected in the amount of
23 their unpaid severance pay. Action to recover the liability may be maintained against any
24 employer in any state or federal court of competent jurisdiction by any one or more
25 employees for and on behalf of ~~himself that employee or themselves those employees~~ and
26 any other employees similarly situated. Any labor organization may also maintain an
27 action on behalf of its members. The court in such action shall, in addition to any
28 judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid
29 by the defendant and costs of the action.

30 **5. Suits by the director.** The director is authorized to supervise the payment of the
31 unpaid severance pay owing to any employee under this section. The director may bring
32 an action in any court of competent jurisdiction to recover the amount of any unpaid
33 severance pay. The right provided by subsection 4 to bring an action by or on behalf of
34 any employee, and of any employee to become a party plaintiff to any ~~such pending~~
35 action brought and maintained under subsection 4, shall terminate ~~terminates~~ upon the
36 filing of a complaint by the director in an action under this subsection, unless the action is
37 dismissed without prejudice by the director. Any sums recovered by the director on
38 behalf of an employee pursuant to this subsection ~~shall~~ must be held in a special deposit
39 account and ~~shall~~ must be paid, on order of the director, directly to the employee affected.
40 Any sums thus recovered not paid to an employee because of inability to do so within a
41 period of 3 years ~~shall~~ must be paid over to the State of Maine.

42 **6. Notice of director.** Any person proposing to relocate or ~~terminate~~ close a covered
43 establishment shall notify the director in writing not less than 60 days prior to the
44 relocation or closing. A person initiating a mass layoff at a covered establishment shall

1 notify the director as far in advance as practicable, and no later than within 7 days of the
2 layoff, and shall report to the director the expected duration of the layoff and whether it is
3 of indefinite or definite duration. The director shall, from time to time, but no less
4 frequently than every 30 days, require the employer to report such facts as the director
5 considers relevant to determine whether the mass layoff constitutes a closing under this
6 section or whether there is a substantial reason to believe the affected employees will be
7 recalled. A notification or report provided to the director pursuant to this subsection must
8 contain all relevant information in the possession of the employer regarding a potential
9 recall, if applicable.

10 **6-A. Notice to employees and municipality.** A person proposing to ~~terminate or to~~
11 ~~relocate~~ close a covered establishment ~~outside the State~~ shall notify employees and the
12 municipal officers of the municipality where the ~~plant~~ covered establishment is located in
13 writing not less than 60 days prior to the ~~termination or relocation~~ closing, unless this
14 notice requirement is waived by the director. A person that violates this provision
15 commits a civil violation for which a fine of not more than \$500 may be adjudged, except
16 that a fine may not be adjudged if the ~~relocation~~ closing is necessitated by a physical
17 calamity ~~or the final order of a federal, state or local government agency~~, or if the failure
18 to give notice is due to unforeseen circumstances. A fine imposed pursuant to this
19 subsection may not be collected by the Department of Labor to the extent such collection
20 prevents the violator from making all payments required under subsection 2.

21 **7. Powers of director.** In any investigation or proceeding under this section, the
22 director ~~shall have~~ has, in addition to all other powers granted by law, the authority to
23 examine books and records of any employer affected by this section as set out in section
24 665, subsection 1.

25 **8. Rules.** The Department of Labor shall adopt rules to implement this section.
26 Rules adopted pursuant to this subsection are ~~major substantive~~ routine technical rules as
27 defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A. ~~Initial rules must be provisionally~~
28 ~~adopted and submitted to the Legislature not later than January 15, 2003.~~

29 **9. Penalties.** A person that violates subsection 2 commits a civil violation for which
30 a fine of not more than \$1,000 per violation may be adjudged. Each employee affected
31 constitutes a separate violation. Any such fine may not be collected by the Department of
32 Labor to the extent such collection prevents the violator from making all payments
33 required under subsection 2.

34 ~~**10. Mass layoff.** Whenever an employer lays off 100 or more employees at a~~
35 ~~covered establishment, the employer within 7 days of such a layoff shall report to the~~
36 ~~director the expected duration of the layoff and whether it is of indefinite or definite~~
37 ~~duration. The director shall, from time to time, but no less frequently than every 30 days,~~
38 ~~require the employer to report such facts as the director considers relevant to a~~
39 ~~determination as to whether the layoff constitutes a termination or relocation under this~~
40 ~~section or whether there is a substantial reason to believe the affected employees will be~~
41 ~~recalled within a reasonable time.'~~

42 SUMMARY

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

