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LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 553, L.D. 1575, Bill, “An Act To Update the Statutes Governing the Bureau of Labor Standards To Promote Clarity for Workers and Employers”

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:

COMMITTEE AMENDMENT

1 **§601. Rest breaks**

2 In the absence of a collective bargaining agreement or other written
3 employer-employee agreement providing otherwise, an employee, as defined in section
4 663, may be employed or permitted to work for no more than 6 consecutive hours at one
5 time unless ~~he~~ the employee is given the opportunity to take at least 30 consecutive
6 minutes of rest time, except in cases of emergency in which there is danger to property,
7 life, public safety or public health. This rest time may be used by the employee as a
8 unpaid mealtime, but only if the employee is completely relieved of duty.

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

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

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

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

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

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

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

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

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

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

38 Within 2 weeks after the sale of a business, the seller of the business shall pay
39 employees of that business any wages earned while employed by the seller. If the terms
40 of employment ~~include~~ or the employer's established practice includes provisions for paid
41 vacations, vacation pay on cessation of employment has the same status as wages earned.

1 The seller of a business may comply with the provisions of this paragraph through a
2 specific agreement with the buyer in which the buyer agrees to pay any wages earned by
3 employees through employment with the seller and to honor any paid vacation earned
4 under the seller's vacation policy.'

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

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

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

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

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

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

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

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

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

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

25 SUMMARY

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

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

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

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

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

1 breaks of shorter duration to be exempted from the 30-minute rest break requirement only
2 if the employees are completely relieved of duty during the frequent paid breaks;

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

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

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

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

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

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

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

22 This amendment also makes changes to the bill to provide further clarity regarding
23 the current exemption from overtime contained in the Maine Revised Statutes, Title 26,
24 section 664, subsection 3, paragraph F relating to work in the distribution of agricultural
25 produce, meat and fish products and perishable foods. The bill and the current
26 amendment are specifically intended to correct a perceived ambiguity identified by the
27 United States Court of Appeals for the First Circuit in O'Connor v. Oakhurst Dairy, 851
28 F.3d 69 (2017). The amendment attempts to clarify current law by using semicolons to
29 separate the applicable categories of work to which the exemption applies, and by
30 changing the term "distribution" to "distributing" to conform to the grammatical
31 convention of parallel usage by matching the gerund form of the other activities listed in
32 the exemption, with the intent that work done in the distribution of, or distributing of,
33 agricultural produce, meat and fish products and perishable foods is exempt from the
34 overtime requirements of Title 26, section 664. The amendment also adds a retroactivity
35 clause, applying the changes made to Title 26, section 664, subsection 3, paragraph F
36 retroactively to September 29, 1995. This retroactivity applies to pending cases except,
37 in deference to the authority of the judiciary to redress disputes, for cases pending on
38 March 12, 2017. The Legislature does not intend for any retroactive change to the
39 overtime requirements for egg processing facilities enacted by Public Law 2011, chapter
40 681.

41 **FISCAL NOTE REQUIRED**

42 **(See attached)**