

**Testimony of  
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Before the Joint Standing Committee on Labor and Housing  
in opposition to  
L.D. 607, *An Act to Restore Overtime Protections to Maine Workers***

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Sen. Hickman, Rep. Sylvester and members of the Joint Standing Committee on Labor and Housing, my name is Peter Gore, and I am the Executive Vice President of the Maine State Chamber of Commerce, a statewide business association representing both large and small businesses speaking to you today in opposition to **L.D. 607, *An Act to Restore Overtime Protections to Maine Workers***,

L.D. 607 proposes to increase the overtime threshold by adjusting the multiplier that is currently part of Maine's wage and hour law, by more than \$20,000 over a three-year period, finally landing somewhere above \$55,000 by 2024.

Passage of this bill would be catastrophic for thousands of for-profit and non-profit businesses of all sizes, across the state of Maine.

Referred to as the "overtime" threshold, or alternately as the "salaried" threshold, it is the monetary dividing line between employees who are considered salaried/exempt for the purposes of overtime pay, and those who are hourly workers and therefore eligible for overtime pay after working 40 hours in a week.

Since 2009, Maine's monetary dividing line separating hourly/non-exempt versus salaried/exempt has been tied to changes in Maine's minimum wage. At that time, Title 26 was amended to create a threshold that is 3000 times the state's minimum wage. While the federal threshold, which was updated and became effective 1/1/2020 is currently set at \$35,568 Maine's threshold has climbed to its current level of \$36,450 since this bill was last debated in 2019. It will continue to increase, as Maine's minimum wage is indexed by changes to the CPI here yearly.

Under the amended version of LD 607, the multiplier would be increased each year; to 3500 times in 2022, 4000 times in 2023, and 4500 times by 2024. It is difficult to access where our threshold would be by the time the full implementation of this law was complete. That is itself presents problems for employers trying to plan and budget going forward, but the larger problem will be the cost. As I indicated, Maine's minimum wage will be adjusted annually based on changes in the UCPI. Last year that resulted in a 15-cent increase, leaving our minimum wage at \$12.15 cents an hour. But the size of that adjustment, like many other things, was also impacted

by the effects of the pandemic and national economic shutdown of 2020. In future years, the adjustment could result in increases of greater than 15 cents. However, taking a conservative approach, let us suppose that the 15-cent amount is consistent through 2024. That would leave Maine with minimum wage of 12.60 and hour, and a salary threshold of \$55,700 ( $\$12.60 \times 4500$ ), higher than the original bill.

In 2015 and 2016, the final two years of President Barack Obama's tenure, he directed the U.S. Department of Labor to undertake rulemaking to adjust the threshold nationally. The process was a contentious one, with the U.S. Department of Labor receiving literally hundreds of thousands of comments on the subject from employers and labor groups alike. After an initial recommendation of roughly \$52,000, the department issued threshold guidelines increasing the amount from \$23,660 to \$47,467, to take effect in 2016.

Not surprisingly, this represented a significant jump for many employers across the nation, and a particularly huge leap for many small businesses, who were paying salaried employees more than \$23,660, but less than \$47,467 (or \$912 per week). Employers balked, both at the amount and the small timeframe given to adjust salaries – or demote workers to hourly status.

Again, not surprisingly litigation ensued, and in August 2017, the U.S. District Court for the Eastern District of Texas later invalidated this regulation on the basis that the \$47,456 annual salary (\$913 per week) was so high as to render the duties tests for exemption irrelevant.

This is extremely important – because who is considered exempt from overtime eligibility versus those who qualify for overtime pay is a *multi-pronged test* – the aforementioned pay test and a *duties test*. In addition to the minimum salary level, employees must also perform certain duties to qualify for the Fair Labor Standards Act's white collar (executive, administrative and professional) exemption. The court found that the duties tests were the more appropriate representation of Congressional intent for exemption, and that the salary test was to serve merely as a proxy, or shorthand, for the duties test. The court ruled that the salary test was increased so much as to make the duties test irrelevant, and that the new salary test would render non-exempt those employees who should be exempt due to the duties they perform.

With the huge salary threshold leaps LD 607 would require of Maine employers, the bill appears to make the same mistake. The ultimate level of more than \$55,000 is even higher than the final Obama threshold level of more than \$47,000, and only slightly lower than the nation's highest salary threshold in California's for employers with more than 26 employees - \$58,240 – thereby making Maine the second highest threshold in the nation.

Before I mention the considerable unintended consequences, which would undoubtedly result from passage of this bill, it is important to point out the obvious – the economic impact on Maine employers due to the pandemic juxtaposed to this legislation. Passage of this bill would cause incredible damage to our slowly recovering small businesses. Many of these businesses are the ones who would struggle the most to comply with the new law, and whose productivity would be the most damaged. Restaurants, small retail, hospitality, really any service industry business who are now barely hanging on, would need to literally find tens of thousands of dollars they do not have – for each manager- in an economy fraught with unknowns, just to survive.

Many workers currently considered salaried, or management employees would likely see their position converted to hourly. Employers would just not be able to keep pace with the salary adjustments necessary to maintain exempt status, creating considerable morale issues in the workplace. Previously salaried workers will feel demoted and that their career trajectory stunted

due to the change. What is more, employers will be forced to retool their workforce, all the while trying to maintain productivity. In situations where business cannot meet the new salary requirements, employees who move from salaried to hourly will be asked to turn in cell phones, laptops, tablets, etc., and instructed to conduct no work after hours – even if their work ethic motivated them to continue to do so, and thereby negatively impacting productivity.

In the non-profit world, if LD 607 becomes law, the impact could be equally destructive – particularly for charitable non-profits. These groups survive on contributions, and in some cases, contracts with local governments to provide services. So, they are not necessarily able to go out and raise more revenue to cover these increased labor costs, particularly the amount necessary to cover the increases envisioned by LD 607. People working for these groups generally do so because they believe in the mission of helping others; they understand that they will not be making as much as other employees. In many cases, jacking up the salary thresholds for exempt employees means they will no longer be able to work the longer and irregular hours providing these services demands. The same holds true for local and state governments, whose only method of raising revenues to cover LD 607's increases would be to raise property taxes on their citizenry.

LD 607 will significantly increase to cost of doing business for nearly every employer – for profit or non-profit, large, or small – operating in Maine. Furthermore, it will make Maine an outlier compared nearly every other state that have not imposed such standards on their businesses. This bill will certainly hurt Maine's ability to attract new businesses, new jobs, and new opportunities for our citizens, at precisely the worst time. It is for these reasons that we are strongly opposed to LD 607. Thank you for the opportunity to provide you with our comments.