

MAINE STATE LEGISLATURE

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SWAY
ROFS

L.D. 733

Date: 5/16/19

Majority

(Filing No. H-280)

LABOR AND HOUSING

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

COMMITTEE AMENDMENT "A" 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

COMMITTEE AMENDMENT

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

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

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

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

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

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

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

§599-B. Restrictive employment agreements

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

- A. Is between 2 or more employers, including through a franchise agreement or a contractor and subcontractor agreement; and
- B. Prohibits or restricts one employer from soliciting or hiring another employer's employees or former employees.

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

- A. Enter into a restrictive employment agreement; or
- B. Enforce or threaten to enforce a restrictive employment agreement.

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

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

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COMMITTEE AMENDMENT "A" to H.P. 538, L.D. 733

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LABOR, DEPARTMENT OF

Regulation and Enforcement 0159

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

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

SUMMARY

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

FISCAL NOTE REQUIRED

(See attached)



Approved: 04/01/19 *MACC*

129th MAINE LEGISLATURE

LD 733

LR 238(02)

An Act To Promote Keeping Workers in Maine

Fiscal Note for Bill as Amended by Committee Amendment *A(H-280)*

Committee: Labor and Housing

Fiscal Note Required: Yes

Fiscal Note

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	\$32,601	\$41,974	\$43,354	\$44,789
Appropriations/Allocations				
General Fund	\$32,601	\$41,974	\$43,354	\$44,789

Correctional and Judicial Impact Statements

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional fine revenue will increase General Fund and dedicated revenue by minor amounts.

Fiscal Detail and Notes

This bill includes General Fund appropriations of \$32,601 in fiscal year 2019-20 and \$41,974 in fiscal year 2020-21 to the Regulation and Enforcement program within the Department of Labor for one half-time Labor and Safety Inspector position and related All Other costs associated with the enforcement of the laws related to noncompete agreements and restrictive employment agreements. This fiscal note assumes this legislation becomes effective October 1, 2019.