

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 490**

S. P. 188

In Senate, January 29, 1981

Referred to the Committee on Labor. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Pray of Penobscot.

Cosponsor: Representative Michael of Auburn.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT Relating to the Employment of Minors and Overtime Pay.**

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 26 MRSA § 664, first ¶, 2nd sentence, as last amended by PL 1979, c. 516, § 3, is further amended to read:

The overtime provision of this section shall not apply to seamen, the canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of herring as sardines, of perishable foods, of agricultural produce and meat and fish products, nor to the canning of perishable good, nor to hotels, motels, restaurants and other eating establishments, nor to public employees, **except insofar as individuals so employed are deemed employees under section 663.**

Sec. 2. 26 MRSA § 738, as amended by PL 1975, c. 701, § 15, is repealed.

Sec. 3. 26 MRSA c. 7, sub-c. IV, Art. 2-A, is enacted to read:

**ARTICLE 2-A. OPPRESSIVE CHILD LABOR**

§ 741. **Declaration of policy**

**It is the declared public policy of this State that no employer may employ any oppressive child labor.**

**§ 742. Definitions**

As used in this article, unless the context indicates otherwise, the following terms have the following meanings.

1. **Agriculture.** "Agriculture" means all employment so defined under the Maine Employment Security Law and the Federal Unemployment Tax Act, 1939, chapter 2.

2. **Director.** "Director" means the Director of the Bureau of Labor.

3. **Employ.** "Employ" means to suffer or permit to work.

4. **Employee.** "Employee" means any individual employed or permitted to work by an employer.

5. **Oppressive child labor.** "Oppressive child labor" means a condition of employment under which:

A. Any employee under the age of 16 years employed by an employer, other than a parent or a person standing in the place of a parent employing his own child or a child in his custody under the age of 16 years in an occupation other than manufacturing or mining or an occupation found by the director or the United States Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or detrimental to their health and well-being, in any occupation;

B. Any employee under the age of 16 years is employed in agriculture in an occupation the director or the United States Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of 16 years, except when the employee is employed by his parent or by a person standing in the place of his parent on a farm owned and operated by the parent or person; or

C. Any employee between the ages of 16 and 18 years is employed by an employer in any occupation which the director or the United States Secretary of Labor shall find and declare to be particularly hazardous for the employment of minors between those ages of detrimental to their health or well-being.

Oppressive child labor is not deemed to exist where the employer has on file an unexpired work permit issued and held pursuant to this subchapter, where the employer has relied in good faith on this permit and where the employer has otherwise conformed to the provisions of this subchapter.

**§ 743. Child labor provisions**

1. **Oppressive child labor.** No employer may use any oppressive child labor.

2. **Investigations and inspections.** The director or any of his authorized representatives shall make investigations and inspections under this article with respect to the employment of minors and subject to the direction and control of the Attorney General, shall bring all actions under sections 781 to 784 to enjoin any

act or practice which is unlawful by reason of the existence of oppressive child labor and shall administer all other provisions of this subchapter relating to employment of minors.

3. Rules and regulations. In order to carry out the objectives of this article, the director shall adopt rules and regulations as are necessary.

§ 744. Exemptions

The provisions of section 743 do not apply to the following:

1. Agriculture. Except as provided in section 742, subsection 5, paragraph B, any employee employed in agriculture outside of school hours for the school district where the employee is living while he is so employed, if that employee:

A. Is less than 12 years of age and is:

(1) Employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by the parent or person; or

(2) Employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are required to be paid at the state or federal minimum wage;

B. Is 12 or 13 years of age and:

(1) The employment is with the consent of his parent or person standing in the place of his parent; or

(2) His parent or the person is employed on the same farm as that employee; or

C. Is 14 years of age or older;

2. School lunch programs. Any individual employed in school lunch programs if limited to serving food and cleaning up dining rooms;

3. Waiver. Any individual who is employed in accordance with a child labor waiver granted by the United States Department of Labor pursuant to United States Code, Title 29, section 213, subsection (c), paragraph (4);

4. Actor or performer. Any child employed as an actor or performer in motion pictures or theatrical productions or in radio or television productions;

5. Specifically designated occupations. Those individuals between the ages of 14 and 16 years, in occupations other than manufacturing and mining, who are employed at such times and in such occupations as specifically designated by the United States Secretary of Labor or the director as not interfering with schooling, health and well-being;

6. Newspaper delivery. Any employee engaged in the delivery of newspapers to the consumer; or

7. Wreaths. Any homemaker engaged in the making of wreaths composed

principally of natural holly, pine, cedar or other evergreens, including the harvesting of the evergreens or other forest products used in making the wreaths.

Sec. 4. 26 MRSA § 771, as last amended by PL 1979, c. 468, § 2, is repealed.

Sec. 5. 26 MRSA § 772, as last amended by PL 1979, c. 663, § 159, is repealed.

Sec. 6. 26 MRSA § 773, as amended by PL 1975, c. 238, § 2, is repealed.

Sec. 7. 26 MRSA § 781 is repealed and the following enacted in its place:

**§ 781. Penalties; employers**

Any person, firm or corporation, agent or manager of any firm or corporation who either for himself, or through his agents, servants or foremen, employs, permits or suffers any child to be employed, or to work in violation of any of the provisions of this subchapter or otherwise fails to comply with any of the provisions of this subchapter, is guilty of a Class D crime.

In the event of the violation of any of the provisions of this subchapter, the Attorney General may institute injunction proceedings in the Superior Court to enjoin further violations thereof.

Sec. 8. 26 MRSA § 783 is amended to read:

**§ 783. Penalties; failure to perform duties of office**

Whoever, being authorized to issue a work permit, knowingly fails to perform the duties of his office as required by this subchapter ~~shall be punished by a fine of not less than \$25 nor more than \$50, for each offense is guilty of a Class D crime.~~

Sec. 9. 26 MRSA § 784 is amended to read:

**§ 784. Penalties; certification of false statements**

Whoever, being authorized to sign the work permit, or whoever, signing any certified copy of a town clerk's record of birth, or certified copy of a child's baptismal record or a physician's certificate, knowingly certifies to any false statement therein ~~shall be punished by a fine of not less than \$25 nor more than \$50, for each offense is guilty of a Class D crime.~~

**STATEMENT OF FACT**

The purpose of this bill is to insure that no employer may employ any oppressive child labor.