

MAINE STATE LEGISLATURE

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R. of S.

L.D. 235

(Filing No. H- 150)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 183, L.D. 235, Bill, "An Act to Conform Maine Law Related to Commission Salespersons with Federal Law"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 26 MRSA §663, sub-§14 is enacted to read:

14. Commissioned sales representatives employed by retail or service establishments. "A commissioned sales representative employed by a retail or service establishment" means any person employed by a retail or service establishment whose regular rate of pay is in excess of 1 1/2 times the state minimum wage and more than 1/2 the compensation for a representative period of not less than one month represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate are considered commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

Sec. 2. 26 MRSA §664, first ¶, as amended by PL 1991, c. 507, §2, is further amended to read:

By reason of the declaration of policy set forth in section 661 and in the protection of the industry or business and in the enhancement of public interest, health, safety and welfare, it is declared unlawful for any employer to employ any employee, except as otherwise provided in this subchapter, at the rate of less than \$3.65 per hour in 1987 and \$3.75 per hour starting January

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1, 1989 and \$3.85 per hour starting January 1, 1990, but in no case may the minimum hourly wage exceed the average minimum hourly wage of the 5 other New England states; or to require any employee to work more than 40 hours in one week, unless 1 1/2 times the regular hourly rate is paid for all work done over 40 hours in any one week; and whenever the highest federal minimum wage is increased in excess of the minimum wage established under this section, the minimum wage must be increased to the same amount, effective on the same date as the increase in the highest federal minimum wage, but in no case may the minimum wage exceed \$5 per hour. The overtime provision of this section does not apply to mariners; 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 goods; nor to hotels, motels, restaurants and other eating establishments; public employees; nor to automobile mechanics, automobile parts clerks or automobile sales representatives, nor to employment prior to October 15, 1995 of commissioned sales representatives employed by a retail or service establishment.

Sec. 3. Report by Department of Labor. The Department of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters by January 30, 1995 on the number and type of complaints, if any, arising out of this legislation.

FISCAL NOTE

The Department of Labor will incur some minor additional costs to administer and enforce the expanded exemption for commissioned sales representatives from minimum wage requirements and to report to the Legislature. These costs can be absorbed within the department's existing budgeted resources.

STATEMENT OF FACT

This amendment replaces the original bill with language that exempts commissioned sales representatives from the overtime provisions of the state wage laws if the sales representative earns at least 1 1/2 times the state minimum wage and at least 1/2 of the person's earnings are from commissions. This exemption from overtime pay is the same as the exemption provided under the federal Fair Labor Standards Act, 29 United States Code, Section 207(i) and the same as what was intended in the original

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2 bill, except that the amendment provides that the new exemption
3 does not apply to work performed on or after October 15, 1995.
4 The amendment also requires the Department of Labor to report to
5 the joint standing committee of the Legislature having
6 jurisdiction over labor matters on any complaints arising out of
7 this legislation. The amendment also adds a fiscal note to the
8 bill.

Reported by the Minority of the Committee on Labor
Reproduced and distributed under the direction of the Clerk of the
House
April 13, 1993 (Filing No. 150)

COMMITTEE AMENDMENT