

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ms
ROS

L.D. 2108

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
DATE: *3-22-02*

(Filing No. H-*999*)

LABOR

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "*A*" to H.P. 1611, L.D. 2108, Bill, "An Act to Coordinate the Maine Overtime Pay Provisions with the Federal Fair Labor Standards Act Regarding Exceptions for Businesses Involved in the Transportation of Persons or Goods"

Amend the bill by striking out the title and substituting the following:

'An Act to Amend the Maine Overtime Pay Provisions Regarding Certain Drivers and Drivers' Helpers'

Further amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this Act is important to the economy of this State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Further amend the bill in section 2 in paragraph F in the last line (page 1, line 23 in L.D.) by striking out the following: "and"

COMMITTEE AMENDMENT

R. 018

COMMITTEE AMENDMENT "A" to H.P. 1611, L.D. 2108

Further amend the bill by striking out all of sections 3 and 4 and inserting in their place the following:

Sec. 3. 26 MRSA §664, sub-§3, ¶¶G to J are enacted to read:

G. A driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section. This paragraph is repealed August 31, 2003;

H. Effective September 1, 2003, a driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section if the driver or driver's helper is paid overtime pay reasonably equivalent to that required by this section for all hours worked in excess of 40 per week. The Department of Labor may adopt rules governing the determination of payment methods that satisfy the "reasonably equivalent" standard set forth in this paragraph. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A;

I. A driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section and who is represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board that is a party to a collective bargaining agreement that intends to regulate the rate of pay to be paid the driver or driver's helper; and

J. A driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section and who is employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid the driver or driver's helper.

Sec. 4. **Legislative intent; findings.** The Legislature finds that the practice in the State for at least 30 years has been that interstate truck drivers and other employees involved in interstate trucking have been considered exempt from the Maine overtime law. This practice was developed in reliance on a 1966 written interpretation by the Department of the Attorney General and an interpretation of the Department of Labor that federal overtime law superseded Maine law. These interpretations led the Department of Labor to routinely defer enforcement of overtime laws to the Federal Government. As a result of this longstanding

practice, a majority of employers and employees have adjusted their expectations and developed compensation practices that take into account the Department of Labor's interpretation that there is no statutory requirement for overtime pay.

As a result of cases pending before Maine courts in early 2002, the Legislature was asked to enact this interpretation of law. The Legislature now intends to enact the interpretation, retroactive to January 1, 1995. However, in deference to the authority of the judiciary to redress disputes, the Legislature exempts cases pending in Maine courts as of March 20, 2002 from the application of section 3 of this Act.

Sec. 5. Retroactivity. This Act applies retroactively to January 1, 1995 but does not apply to cases pending on March 20, 2002.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The additional costs associated with adopting rules can be absorbed by the Department of Labor utilizing existing budgeted resources.'

SUMMARY

This amendment enacts into statute the interpretation of Maine's overtime law by the Department of Labor that certain employees of motor carriers are exempt from the payment of overtime under federal wage law. Furthermore, effective September 1, 2003, this amendment will subject certain employees of motor carriers to an overtime requirement similar to that utilized in the State of Washington. The amendment also authorizes the Department of Labor to adopt rules similar to those used by the State of Washington, Washington Administrative Code, Section 296-128-012. Although this amendment is retroactive in application and will prevent the filing of a multiplicity of lawsuits under Maine's overtime law as of March 20, 2002, regardless of when the causes of action arose, the amendment is not intended to divest the courts of jurisdiction to hear and decide lawsuits pending as of March 20, 2002 nor to change the law with respect to such cases.

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1611, L.D. 2108

2 The amendment also adds a fiscal note, an emergency preamble
and an emergency clause to the bill.

COMMITTEE AMENDMENT