

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 435

H.P. 320

House of Representatives, January 27, 2005

An Act To Conform Maine Law to Federal Overtime Standards

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative McKANE of Newcastle.
Cosponsored by Senator SNOWE-MELLO of Androscoggin and
Representatives: McFADDEN of Dennysville, MILLETT of Waterford, TRAHAN of
Waldoboro, VAUGHAN of Durham.

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

2
3 **Sec. 1. 26 MRSA §664, sub-§3**, as amended by PL 2003, c. 423,
4 §1 and affected by §5, is further amended to read:

6 **3. Overtime rate.** An employer may not require an employee
7 to work ~~more than 40 hours in any one week unless 1-1/2 times the~~
8 ~~regular hourly rate is paid for all hours actually worked in~~
9 ~~excess of 40 hours in that week. The regular hourly rate~~
10 ~~includes all earnings, bonuses, commissions and other~~
11 ~~compensation that is paid or due based on actual work performed~~
12 ~~and does not include any sums excluded from the definition of~~
13 ~~"regular rate" under the Fair Labor Standards Act, 29 United~~
14 ~~States Code, Section 207(e) in excess of the limitations on~~
15 ~~maximum hours described in the Fair Labor Standards Act, 29~~
16 ~~United States Code, Section 207 and in federal regulations~~
17 ~~adopted pursuant to that section. Rules adopted by the director~~
18 ~~pursuant to section 665, subsection 2 to implement this section~~
19 ~~must conform to the Fair Labor Standards Act, 29 United States~~
20 ~~Code, Section 207 and to federal regulations adopted pursuant to~~
21 ~~that section, including, but not limited to, 29 Code of Federal~~
22 ~~Regulations, Part 541.~~

24 The overtime provision of this section does not apply to:

26 A. Automobile mechanics, automobile parts clerks and
27 automobile salesmen as defined in section 663. The
28 interpretation of these terms must be consistent with the
29 interpretation of the same terms under federal overtime law,
30 29 United States Code, Section 213;

32 B. Hotels and motels;

34 C. Mariners;

36 D. Public employees, except those employed by the executive
37 or judicial branch of the State;

38 E. Restaurants and other eating establishments;

40 F. The canning, processing, preserving, freezing, drying,
41 marketing, storing, packing for shipment or distribution of:

44 (1) Agricultural produce;

46 (2) Meat and fish products; and

48 (3) Perishable foods.

50 Individuals employed, directly or indirectly, for or at an
51 egg processing facility that has over 300,000 laying birds
52 must be paid overtime in accordance with this subsection;

2 H. Effective September 1, 2003, a driver or driver's helper
4 who is subject to the provisions of 49 United States Code,
6 Section 31502 as amended or to regulations adopted pursuant
8 to that section if the driver or driver's helper is paid
10 overtime pay reasonably equivalent to that required by this
12 section for all hours worked in excess of 40 per week. The
14 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 2-A;

16 I. A driver or driver's helper who is subject to the
18 provisions of 49 United States Code, Section 31502 as
20 amended or to regulations adopted pursuant to that section
22 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

24 J. A driver or driver's helper who is subject to the
26 provisions of 49 United States Code, Section 31502 as
28 amended or to regulations adopted pursuant to that section
30 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.

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SUMMARY

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This bill conforms Maine overtime laws to those of the
federal Fair Labor Standards Act and requires that rules adopted
38 by the Director of Labor Standards within the Department of Labor
conform to regulations adopted pursuant to the federal Fair Labor
Standards Act, including the "white-collar exemptions" that
40 became effective on August 23, 2004.