

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1643

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S.P. 634

In Senate, December 23, 2013

**An Act To Enable the Bureau of Labor Standards To Access  
Federal Reimbursement by Amending State Law To Conform to  
Federal Law**

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Submitted by the Department of Labor pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 23, 2013. Referred to the Committee on Labor, Commerce, Research and Economic Development pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator PATRICK of Oxford.

Cosponsored by Representative HERBIG of Belfast and

Representatives: HAMANN of South Portland, LOCKMAN of Amherst, MALABY of Hancock, VOLK of Scarborough.

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

2 **Sec. 1. 26 MRSA §43**, as amended by PL 1971, c. 620, §13, is further amended to  
3 read:

4 **§43. Facts and statistics; seal; testimony; sources confidential**

5 The director may furnish a written or printed list of interrogatories for the purpose of  
6 gathering such facts and statistics as are contemplated, to any person, or the proper officer  
7 of any corporation operating within the State, and may require full and complete answers  
8 thereto under oath. The director shall have a seal, and may take and preserve testimony,  
9 issue subpoenas, administer oaths and examine witnesses under oath in all matters  
10 relating to the duties required of ~~said the~~ bureau. Such testimony ~~shall~~ must be taken in  
11 some suitable place in the vicinity to which the testimony is applicable. Witnesses  
12 summoned and testifying before the director ~~shall~~ must be paid, from any funds at the  
13 disposal of the bureau, the same fees as witnesses before the Superior Court. In the report  
14 ~~of said bureau no use shall be made of the, except safety and health reports,~~ names of  
15 individuals, firms or corporations supplying the information called for by this section  
16 may not be used unless by written permission, such information being confidential and  
17 not for the purpose of disclosing personal affairs.

18 **Sec. 2. 26 MRSA §44**, as amended by PL 1975, c. 519, §4, is further amended to  
19 read:

20 **§44. Right of access**

21 The director as state factory inspector, and any authorized agent of the bureau, may  
22 enter any workplace as defined in section 1, provided by the State, or by a state agency,  
23 county, municipal corporation, school district or other public corporation or political  
24 subdivision when the same are open or in operation, for the purpose of gathering facts  
25 and statistics ~~such as are contemplated by~~ under sections 42 to 44, and may examine ~~into~~  
26 the methods of ~~protection~~ protecting employees from danger ~~to employees~~ and the  
27 sanitary conditions in and around ~~such the~~ buildings and places, and may make a record  
28 of such inspection. Upon petition of the director, a Superior Court in the county in which  
29 any refusal to permit entry or fact gathering or inspection was alleged to have occurred  
30 may order appropriate injunctive relief against any person in charge of ~~said the~~ workplace  
31 who refuses entry to the director or authorized agent of the bureau.

32 Each employer subject to this section shall make, keep and preserve, and make  
33 available to the director or ~~his~~ the director's authorized agent, upon request, such records  
34 regarding ~~his the employer's~~ activities relating to occupational safety and health as the  
35 director may prescribe by ~~regulation~~ rule as necessary or appropriate for the enforcement  
36 of section 45 or any ~~standard, rule or order promulgated~~ adopted pursuant to section 565  
37 or for developing information regarding the causes and prevention of occupational  
38 accidents, diseases and illnesses. Any information obtained by the director ~~shall~~ must be  
39 obtained with a minimum burden upon employers, especially those employing a small  
40 work force.

1 The ~~director~~ bureau shall also issue ~~regulations~~ rules requiring that employers  
2 through posting of notices or other appropriate means, keep their employees informed of  
3 their protections and obligations under this chapter and chapter 6, including the  
4 provisions of applicable standards.

5 **Sec. 3. 26 MRSA §45**, as amended by PL 1979, c. 95, §1, is further amended to  
6 read:

7 **§45. Notice of improper conditions**

8 If, upon inspection, the director or any authorized agent of the bureau finds that an  
9 employer has violated a requirement of section 561-A or any rule or order promulgated  
10 adopted pursuant to section 565, he the director or the authorized agent of the bureau  
11 shall immediately issue a citation to the employer. Each citation shall must be in writing  
12 and shall describe with particularity the nature of the violation, including a reference to  
13 the provision of this Title or the standard, rules, regulations or order alleged to have been  
14 violated. In addition, the citation shall must fix a specific time for the abatement of the  
15 violation.

16 Each citation issued under this section, or a copy or copies thereof, shall must be  
17 prominently posted at or near each place where a violation referred to in the citation  
18 occurred or existed. In addition, employees must have access to their toxic exposure  
19 records or records of employee observation of exposure monitoring and measuring.

20 **Sec. 4. 26 MRSA §561**, as enacted by PL 1969, c. 454, is repealed.

21 **Sec. 5. 26 MRSA §561-A** is enacted to read:

22 **§561-A. General duties**

23 **1. Employer duties.** An employer has the following duties.

24 A. An employer shall furnish to each employee employment and a place of  
25 employment that are free from recognized hazards that are causing or are likely to  
26 cause death or serious physical harm to the employee.

27 B. An employer shall comply with occupational safety and health rules adopted  
28 under this chapter.

29 **2. Employee duties.** An employee shall comply with occupational safety and health  
30 rules and all rules adopted under this chapter that are applicable to the employee's own  
31 actions and conduct.

32 **Sec. 6. 26 MRSA §569**, as amended by PL 2013, c. 70, Pt. B, §4, is repealed and  
33 the following enacted in its place:

34 **§569. Rules**

35 The rules of the bureau must, at a minimum, conform to the standards of the federal  
36 Occupational Safety and Health Administration. If a rule adopted by the bureau conflicts  
37 with the rule of another state agency with regard to standards, including conflicts of rules

1 regarding employee health exposure, the bureau rule supersedes the other state agency  
2 rule.

3 **Sec. 7. 26 MRSA §570**, as enacted by PL 1979, c. 95, §3, is amended to read:

4 **§570. Discrimination**

5 ~~No person shall~~ A person may not discharge or in any manner discriminate against an  
6 employee because that ~~person~~ employee has filed any complaint concerning an alleged  
7 ~~violations of occupational safety or health standards~~ hazard or has testified or is about to  
8 testify in any proceeding relating to employee safety and health or because of the exercise  
9 by the employee on behalf of ~~himself~~ the employee or others of any right ~~granted him by~~  
10 under this chapter.

11 Any employee who believes that ~~he~~ the employee has been discharged or otherwise  
12 discriminated against by any person in violation of this section may, within 30 days after  
13 the alleged violation occurs, file a complaint with the director, alleging discrimination.  
14 Upon receipt of the complaint, the director shall conduct an investigation as ~~he deems~~ the  
15 director determines is appropriate. If upon investigation the director determines that the  
16 provisions of this chapter have been violated, ~~he~~ the director shall bring an action in the  
17 Superior Court in the county in which the alleged violation occurred. In any action, the  
18 Superior Court ~~shall have~~ has jurisdiction, for cause shown, to restrain violations of this  
19 section and order all appropriate relief, including rehiring or reinstatement of the  
20 employee to ~~his~~ the employee's former position with back pay.

21 Within 90 days of the receipt of a complaint filed under this section, the director shall  
22 notify the complainant of ~~his~~ the director's determination.

23 **SUMMARY**

24 This bill conforms laws regarding the enforcement of workplace safety by the  
25 Department of Labor, Bureau of Labor Standards to federal law, making the bureau  
26 eligible for federal funds.