

MAINE STATE LEGISLATURE

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L.D. 991

Date: 6/12/2017

Majority

(Filing No. S-248)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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STATE OF MAINE

SENATE

128TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 330, L.D. 991, Bill, "An Act To Establish a Minimum Wage for Minors"

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

'An Act To Conform State Law to Federal Law, Promote a Safe Working Environment for Minors and Study a Minimum Wage for Minors'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 26 MRSA §771, as amended by PL 1991, c. 544, §4, is further amended to read:

§771. Minors under 14 years of age

A minor under 14 years of age may not be employed, permitted or suffered to work in, ~~about or in connection with agriculture~~ nonagricultural or agricultural employment, except for agricultural employment in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, any eating place, automatic laundries, retail establishment where frozen dairy products are manufactured on the premises, sporting or overnight camp, mercantile establishment or in outdoor occupations on the grounds of a hotel, and a minor between the ages of 14 and 16 years may not be so employed when the distance between the work place and the home of the minor, or any other factor, necessitates the minor's remaining away from home overnight as long as the employment is in accordance with rules adopted pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570. This section does not apply to any ~~such minor who is employed directly by, with or under the supervision of either or both of the minor's parents; or to any such minor under 14 years of age employed in school lunch programs, if limited to serving food and cleaning up dining rooms, or in a business solely owned by the minor's parents. A parent is prohibited from employing the parent's minor child in occupations declared hazardous by the director pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570.~~

COMMITTEE AMENDMENT

1 **Sec. 2. 26 MRSA §772, sub-§2**, as amended by PL 2009, c. 631, §47 and affected
 2 by §51, is further amended to read:

3 **2. Rules; list of employment and occupations.** The director shall adopt rules to
 4 develop and maintain a list of employment and occupations not suitable ~~for employment~~
 5 ~~of for~~ a minor. The rules must conform as far as practicable to the child labor provisions
 6 of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and
 7 any associated regulations. The rules must also contain provisions prohibiting the
 8 employment of minors in places having nude entertainment and in registered dispensaries
 9 of marijuana for medical use authorized under Title 22, chapter 558-C and in
 10 establishments that cultivate, produce or sell marijuana or products in which marijuana is
 11 an ingredient or in recreational marijuana social clubs authorized under Title 7, chapter
 12 417.

13 **Sec. 3. 26 MRSA §773**, as amended by PL 2009, c. 487, Pt. B, §12, is repealed.

14 **Sec. 4. 26 MRSA §773-A** is enacted to read:

15 **§773-A. Occupations**

16 **1. Minors under 16 years of age.** A minor under 16 years of age may not be
 17 employed, permitted or suffered to work in, about or in connection with any
 18 manufacturing or mechanical establishment, hotel, rooming house, laundry, except a
 19 laundry commonly known as an automatic laundry, dry cleaning establishment, bakery,
 20 poolroom or commercial place of amusement, including a traveling show or circus, or in
 21 conjunction with an amusement, game or show that allows or conducts betting.

22 **2. Minors 14 and 15 years of age.** The provisions of subsection 1 pertaining to
 23 manufacturing establishments do not apply to minors 14 years of age or older and under
 24 16 years of age who are employed in retail establishments where any frozen dairy product
 25 or frozen dairy product mix or related food product is produced on the premises for retail
 26 sale locally, regardless of trade name or brand or coined name.

27 The provisions of subsection 1 pertaining to hotels or rooming houses do not apply to
 28 minors 14 years of age or older and under 16 years of age who are employed in outdoor
 29 occupations on the grounds of a hotel or who are employed in kitchens, dining rooms,
 30 recreational areas, lobbies and offices of a hotel. Minors 14 years of age or older and
 31 under 16 years of age are expressly prohibited from performing room service,
 32 housekeeping and making deliveries to guest rooms.

33 The provisions of subsection 1 pertaining to bakeries do not apply to minors 14 years of
 34 age or older and under 16 years of age who are employed in retail sales, product
 35 decorating, customer service operations or office work for these establishments, as long
 36 as the retail, decorating, customer service or office areas are in a room separate from any
 37 baking operation.

38 Notwithstanding other provisions of subsection 1, a minor 14 years of age or older and
 39 under 16 years of age may be employed at a commercial place of amusement operating at
 40 a permanent location, except that the minor may not be employed at games of chance as
 41 defined in Title 17, chapter 62 or hazardous occupations as determined by the director.

1 Subsection 1 does not apply to any minor under 16 years of age employed in a business
2 solely owned by the minor's parents. A parent is prohibited from employing the parent's
3 minor child in occupations declared hazardous by the director pursuant to section 772 and
4 in accordance with 29 Code of Federal Regulations, Part 570.

5 A minor 14 years of age or older and under 16 years of age may not be employed when
6 the distance between the workplace and the home of the minor, or any other factor,
7 necessitates the minor's remaining away from home overnight.

8 **3. Minors 16 and 17 years of age.** A minor who is 16 years of age or older and
9 under 18 years of age:

10 A. May perform work in both nonagricultural and agricultural employment not in
11 direct contact with hazardous machinery or hazardous substances in accordance with
12 rules adopted pursuant to section 772 and in accordance with 29 Code of Federal
13 Regulations, Part 570;

14 B. May perform work as a theatrical actor or film actor;

15 C. May be employed by a parent, but a parent is prohibited from employing the
16 parent's minor child who is 16 years of age or older and under 18 years of age in
17 occupations declared hazardous by the director in accordance with rules adopted
18 pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part
19 570;

20 D. Is exempt from section 774, subsection 1, paragraphs A and C when performing
21 work in the taking or catching of lobsters, fish or other marine organisms; and

22 E. Who has graduated from a vocational, career and technical or cooperative
23 education program approved by the Department of Education and is hired by an
24 employer to work in an occupation for which the minor has been trained and certified
25 by the vocational program may work for that employer in that occupation.

26 **Sec. 5. 26 MRS §774, sub-§1,** as amended by PL 2011, c. 174, §§1 to 3, is
27 further amended to read:

28 **1. Minors 16 and 17 years of age.** A minor 16 years of age or older and under 18
29 years of age, enrolled in school, may not be employed as follows:

30 A. More than 50 hours in any week when the minor's school is not in session;

31 B. More than 24 hours in any week when the minor's school is in session. In
32 addition, the maximum weekly hours a minor may work is 50 hours during any week
33 that the approved school calendar for the minor's school is less than 3 days or during
34 the first or last week of the school calendar, regardless of how many days the minor's
35 school is in session for the week. If requested, a school must provide verification of
36 its closings to the minor's employer or the Department of Labor;

37 C. More than 10 hours in any day when the minor's school is not in session;

38 D. More than 6 hours in any day when the minor's school is in session, except that
39 the minor may work up to 8 hours on the last scheduled day of the school week;

40 E. More than 6 consecutive days;

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F. After 10:15 p.m. on a day preceding a day on which the minor's school is in session or after 12 midnight on a day that does not precede such a school day; or

G. Before 7 a.m. on a day on which the minor's school is in session or before 5 a.m. on any other day.

Sec. 6. 26 MRSA §775, sub-§4, as amended by PL 2001, c. 398, Pt. A, §1, is further amended to read:

4. Conditions for revocation. The superintendent may revoke the work permit issued to a minor by the bureau if the superintendent determines that the minor has not maintained the conditions for issuance of the work permit under subsection 2, paragraph A. The superintendent shall revoke 2nd work permits at the end of the summer vacation in accordance with the limits imposed by subsection 2, paragraph D. The superintendent shall notify the ~~Director of the Bureau of Labor Standards~~ director and the minor's employer in writing upon revoking a minor's work permit. The revocation is effective upon receipt by the employer of the superintendent's notice.

The bureau may revoke the work permit if the director determines the minor has not been employed in accordance with section 771, 772, 773-A or 774 or if the bureau has determined that the permit was improperly signed. The director shall notify the superintendent and the minor's employer in writing upon revoking a minor's work permit.

Sec. 7. 26 MRSA §775, sub-§5, as enacted by PL 1991, c. 544, §5, is amended to read:

5. Permit on file. The employer shall keep all work permits issued for the employer's minor employees on file and accessible to any attendance officer, ~~factory inspector or other authorized officer~~ or agent of the director charged with the enforcement of this subchapter.

Sec. 8. 26 MRSA §775, sub-§6, as amended by PL 1993, c. 527, §1, is further amended to read:

6. Exception. This section does not apply to minors engaged in work performed in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances or to minors engaged in household work. Minors who are participants in summer youth employment and training programs funded by the Department of Labor are exempt from obtaining individual permits as long as the program employing the minor has submitted a ~~master permit as developed by notice to the director under section 777.~~

Sec. 9. 26 MRSA §777, as amended by PL 2001, c. 398, Pt. A, §2, is further amended to read:

§777. Permit formats

The blank work permit required by section 775 must be formulated by the director and furnished by appropriate means by the director to the persons authorized to sign work permits. The forms of the permits must be approved by the Office of the Attorney General. ~~Every work permit must be made out in triplicate. All triplicates, accompanied by the original papers on which the permits were signed, must be forwarded to the bureau by the officer signing the permits, within 24 hours of the time the permit was signed. The~~

COMMITTEE AMENDMENT "A" to S.P. 330, L.D. 991

1 bureau shall examine the papers and promptly return them to the officer who sent them
 2 after validating the copies and retaining one copy for bureau files. The officer may then
 3 return to the minor all papers filed in proof of age. Whenever there is reason to believe
 4 that a work permit was improperly signed, the director, deputy director or agent shall
 5 notify the local superintendent of schools of the place in which the certificate was signed.
 6 The local superintendent shall cancel the permit when directed to do so by the director.
 7 The director may develop an electronic transmittal system to fulfill these requirements.
 8 Permit forms may be made available by the bureau and submitted in paper or electronic
 9 format as long as the parent's or guardian's signature is submitted to the superintendent.

10 ~~The director shall develop a master permit system for participants in summer youth~~
 11 ~~employment and training programs funded by the Department of Labor. The master~~
 12 ~~permit eliminates the need for prior approval by the director or the superintendent of~~
 13 ~~schools. A minor on a master permit may be removed from the master permit for the~~
 14 ~~same reasons and in the same manner as applicable to an individual work permit.~~

15 **Sec. 10. 26 MRSA §781, sub-§2**, as enacted by PL 1991, c. 544, §10, is amended
 16 to read:

17 **2. Intentional or knowing violation of section 771, 772 or 773-A.** An employer
 18 who intentionally or knowingly employs, permits or suffers any minor to be employed or
 19 to work in violation of section 771, 772 or ~~773~~ 773-A is subject to the following
 20 ~~forfeiture or civil penalty~~ fines, payable to the State and recoverable in a civil action:

- 21 A. For the first violation or a violation not subject to an enhanced sanction under
 22 paragraph B or C, a ~~forfeiture or penalty~~ fine of not less than \$500;
- 23 B. For a 2nd violation occurring within 3 years of a prior adjudication, a ~~penalty~~ fine
 24 of not less than \$5,000 nor more than \$20,000; or
- 25 C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior
 26 adjudications, a ~~penalty~~ fine of not less than \$10,000 nor more than \$50,000.

27 **Sec. 11. 39-A MRSA §408, sub-§§1 and 2**, as enacted by PL 1991, c. 885, Pt.
 28 A, §8 and affected by §§9 to 11, are amended to read:

29 **1. Legally employed minors.** A minor is deemed sui juris for the purpose of this
 30 Act if the minor's employer was not in violation of Title 26, section 771, 772 or ~~773~~
 31 773-A at the time of the minor's injury. No other person has any cause of action or right
 32 to compensation for an injury to that minor employee except as provided in this section.

33 **2. Illegally employed minors.** A minor is not deemed to have waived the minor's
 34 right of action at common law and under section 104 if the minor's employer was in
 35 violation of Title 26, section 771, 772 or ~~773~~ 773-A at the time of the minor's injury.

36 A. The minor employee, the minor's parent or guardian or any other person, as
 37 permitted by common law or statute, may file a civil action permitted under this
 38 subsection.

39 B. The minor employee is entitled to compensation under this Act in addition to any
 40 right of action permitted under this subsection.

1 C. If the employer is self-insured for liability under this Act, any award received by
2 the minor in an action permitted under this subsection must be reduced by the amount
3 of compensation received under this Act.

4 D. If the employer is insured for liability under this Act, the employer is considered a
5 3rd party under section 107, and the employer's insurer is entitled to all rights of
6 subrogation, contribution or other rights granted to an employer under section 107.

7 **Sec. 12. Department of Labor to study minimum wage for minors.** The
8 Department of Labor shall analyze the potential effects of enacting a special minimum
9 wage applicable to minors under 18 years of age that is lower than the generally
10 applicable minimum wage in the State on:

- 11 1. Adult employment and youth employment;
- 12 2. Businesses in the State, including a special analysis of the effect on seasonal
13 businesses;
- 14 3. Overall wage trends, including for low-wage workers and in specific industries;
15 and
- 16 4. The conditions underlying teen employment levels.

17 The department may perform this analysis by looking at workforce data in the State
18 as well as data from other states that have established a special wage for minors under 18
19 years of age. The department shall report its findings to the Joint Standing Committee on
20 Labor, Commerce, Research and Economic Development by January 15, 2018.

21 **Sec. 13. Appropriations and allocations.** The following appropriations and
22 allocations are made.

23 **LABOR, DEPARTMENT OF**
24 **Workforce Research Z164**

25 Initiative: Provides one-time funds for the cost of conducting the necessary research and
26 analysis in order to study the potential impacts of implementing a special minimum wage
27 applicable to minors under the age of 18.

28	GENERAL FUND	2017-18	2018-19
29	Personal Services	\$15,000	\$0
30			
31	GENERAL FUND TOTAL	<u>\$15,000</u>	<u>\$0</u>
32			

33 **SUMMARY**

34 This amendment, which is the majority report of the committee, strikes the bill and
35 makes a number of changes relating to the employment of minors, including the
36 following.

- 37 1. It prohibits all employment for minors under 14, except for agricultural
38 employment in the planting, cultivating or harvesting of field crops or other agricultural

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2 employment not in direct contact with hazardous machinery or hazardous substances. It
3 maintains an exception for employment in a business solely owned by the minor's
4 parents, as long as it is not hazardous employment prohibited under Department of Labor
rules or federal law.

5 2. It adds establishments that cultivate, produce or sell marijuana or products in
6 which marijuana is an ingredient and recreational marijuana social clubs to the list of
7 employment and occupations not suitable for minors that the Department of Labor must
8 prohibit by rulemaking.

9 3. It changes the laws relating to minors 14 and 15 years of age to allow them to work
10 in bowling alleys and movie theaters and to clarify their employment in bakeries, hotels
11 and rooming houses.

12 4. It moves the occupational restrictions for minors 16 and 17 years of age to the
13 section with occupational restrictions for minors 14 and 15 years of age.

14 5. It clarifies that graduates of vocational, career and technical or cooperative
15 education programs approved by the Department of Education who are under 18 years of
16 age can work in the occupations for which they were trained.

17 6. It updates a provision regarding work permits for minors by deleting language
18 dealing with triplicate permits and a master permit system, allowing for use of electronic
19 permit submission and approval and changing the approval of the permit form from
20 approval by the Attorney General to approval by the Office of the Attorney General.

21 7. It grants the Department of Labor, Bureau of Labor Standards authority to revoke a
22 work permit for violations of the laws regarding employment of minors.

23 8. It directs the Department of Labor to study the potential effects of implementing a
24 lower minimum wage applicable to minors under 18 years of age and to report back to the
25 Joint Standing Committee on Labor, Commerce, Research and Economic Development
26 with the department's findings by January 15, 2018.

27 **FISCAL NOTE REQUIRED**

28 (See attached)



128th MAINE LEGISLATURE

LD 991

LR 2188(03)

An Act To Establish a Minimum Wage for Minors

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-248)
 Committee: Labor, Commerce, Research and Economic Development
 Fiscal Note Required: Yes

Fiscal Note

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
Net Cost (Savings)				
General Fund	\$15,000	\$0	\$0	\$0
Appropriations/Allocations				
General Fund	\$15,000	\$0	\$0	\$0

Fiscal Detail and Notes

This bill includes a one-time General Fund appropriation of \$15,000 in fiscal year 2017-18 to the Workforce Research program within the Department of Labor for the costs associated with the additional research and analysis that will need to be conducted in order to study the potential impacts of implementing a special minimum wage applicable to minors under the age of 18. According to the Department of Labor, the data necessary to perform the study is not readily available at either the state or federal level.