

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1564

S.P. 548

In Senate, May 2, 2017

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### **An Act To Conform State Law to Federal Law While Promoting Safe Working Environments for Minors**

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Submitted by the Department of Labor pursuant to Joint Rule 204.  
Reference to the Committee on Labor, Commerce, Research and Economic Development  
suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator LANGLEY of Hancock.  
Cosponsored by Representative FREDETTE of Newport and  
Senator: VOLK of Cumberland, Representatives: AUSTIN of Gray, ESPLING of New  
Gloucester, FARRIN of Norridgewock, GERRISH of Lebanon, PARRY of Arundel, STETKIS  
of Canaan, VACHON of Scarborough.

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

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

4 **§771. Minors under 14 years of age**

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

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

25 **2. Rules; list of employment and occupations.** The director shall adopt rules to  
26 develop and maintain a list of employment and occupations not suitable ~~for employment~~  
27 ~~of~~ for a minor. The rules must conform as far as practicable to the child labor provisions  
28 of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and  
29 any associated regulations. The rules must also contain provisions prohibiting the  
30 employment of minors in places having nude entertainment and in registered dispensaries  
31 of marijuana for medical use authorized under Title 22, chapter 558-C.

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

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

34 **§773-A. Occupations**

35 **1. Minors 14 and 15 years of age.** A minor 14 years of age or older and under 16  
36 years of age may not be employed, permitted or suffered to work in, about or in  
37 connection with any manufacturing or mechanical establishment, hotel, rooming house,  
38 laundry, except a laundry commonly known as an automatic laundry, dry cleaning  
39 establishment, bakery, poolroom or commercial place of amusement, including a

1 traveling show or circus, or in conjunction with an amusement, game or show that allows  
2 or conducts betting.

3 The provisions of this subsection pertaining to manufacturing establishments do not apply  
4 to minors 14 years of age or older and under 16 years of age who are employed in retail  
5 establishments where any frozen dairy product or frozen dairy product mix or related  
6 food product is produced on the premises for retail sale locally, regardless of trade name  
7 or brand or coined name.

8 The provisions of this subsection pertaining to hotels or rooming houses do not apply to  
9 minors 14 years of age or older and under 16 years of age who are employed in outdoor  
10 occupations on the grounds of a hotel or who are employed in kitchens, dining rooms,  
11 lobbies and offices of a hotel. Minors 14 years of age or older and under 16 years of age  
12 may perform housekeeping duties but only in the presence or line of sight of an adult.  
13 Minors 14 years of age or older and under 16 years of age are expressly prohibited from  
14 performing room service and making deliveries to guest rooms.

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

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

24 This subsection does not apply to any minor 14 years of age or older and under 16 years  
25 of age employed in a business solely owned by the minor's parents. A parent is  
26 prohibited from employing the parent's minor child in occupations declared hazardous by  
27 the director pursuant to section 772 and in accordance with 29 Code of Federal  
28 Regulations, Part 570.

29 **2. Minors 16 and 17 years of age.** A minor who is 16 years of age or older and  
30 under 18 years of age:

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

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

36 C. May perform work without hour restrictions as set forth in section 774 if  
37 employed in a business solely owned by the minor's parents. A parent is prohibited  
38 from employing the parent's minor child who is 16 years of age or older and under 18  
39 years of age in occupations declared hazardous by the director in accordance with  
40 rules adopted pursuant to section 772 and in accordance with 29 Code of Federal  
41 Regulations, Part 570;

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

3 E. Who has graduated from an approved vocational cooperative education program  
4 and is hired by an employer to work in an occupation for which the graduate has been  
5 trained and certified by the vocational program may work for that employer in that  
6 occupation.

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

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

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

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

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

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

21 E. More than 6 consecutive days;

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

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

26 **Sec. 6. 26 MRSA §774, sub-§2**, as amended by PL 1993, c. 434, §4, is further  
27 amended to read:

28 **2. Minors 14 and 15 years of age.** A minor 14 years of age or older and under 16  
29 years of age may not be employed as follows:

30 A. More than 40 hours in any week when school is not in session;

31 B. More than 18 hours in any week when school is in session;

32 C. More than 8 hours in any day when school is not in session;

33 D. More than 3 hours in any day when school is in session;

34 E. More than 6 consecutive days; or

35 F. Between the hours of 7 p.m. and 7 a.m. except during summer vacation, when that  
36 minor may not work between the hours of 9 p.m. and 7 a.m.

1           **Sec. 7. 26 MRSA §775, sub-§4**, as amended by PL 2001, c. 398, Pt. A, §1, is  
2 further amended to read:

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

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

15           **Sec. 8. 26 MRSA §775, sub-§5**, as enacted by PL 1991, c. 544, §5, is further  
16 amended to read:

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

21           **Sec. 9. 26 MRSA §775, sub-§6**, as amended by PL 1993, c. 527, §1, is further  
22 amended to read:

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

30           **Sec. 10. 26 MRSA §777**, as amended by PL 2001, c. 398, Pt. A, §2, is further  
31 amended to read:

32           **§777. Permit formats**

33           The blank work permit required by section 775 must be formulated by the director  
34 and furnished by appropriate means by the director to the persons authorized to sign work  
35 permits. ~~The forms of the permits must be approved by the Attorney General. Every~~  
36 ~~work permit must be made out in triplicate. All triplicates, accompanied by the original~~  
37 ~~papers on which the permits were signed, must be forwarded to the bureau by the officer~~  
38 ~~signing the permits, within 24 hours of the time the permit was signed. The bureau shall~~  
39 ~~examine the papers and promptly return them to the officer who sent them after validating~~  
40 ~~the copies and retaining one copy for bureau files. The officer may then return to the~~

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

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

13 **Sec. 11. 26 MRSA §781, sub-§2**, as enacted by PL 1991, c. 544, §10, is amended  
14 to read:

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

19 A. For the first violation or a violation not subject to an enhanced sanction under  
20 paragraph B or C, a ~~forfeiture or penalty~~ fine of not less than \$500;

21 B. For a 2nd violation occurring within 3 years of a prior adjudication, a ~~penalty~~ fine  
22 of not less than \$5,000 nor more than \$20,000; or

23 C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior  
24 adjudications, a ~~penalty~~ fine of not less than \$10,000 nor more than \$50,000.

25 **Sec. 12. 39-A MRSA §408, sub-§§1 and 2**, as enacted by PL 1991, c. 885, Pt.  
26 A, §8 and affected by §§9 to 11, are amended to read:

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

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

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

37 B. The minor employee is entitled to compensation under this Act in addition to any  
38 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 **SUMMARY**

8 This bill amends laws relating to minors 14 and 15 years of age to allow them to  
9 work in bowling alleys and movie theaters and to clarify their employment in bakeries,  
10 hotels and rooming houses. It updates a provision regarding work permits for minors by  
11 deleting language dealing with triplicate permits and a master permit system and allowing  
12 for use of electronic permit submission and approval. It moves the occupational  
13 restrictions for minors 16 and 17 years of age to the section with occupational restrictions  
14 for minors 14 and 15 years of age. It also clarifies that graduates of vocational programs  
15 who are under 18 years of age can work in the occupations for which they were trained.