

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1609

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S.P. 565

In Senate, May 16, 2017

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**An Act To Support Maine's Employers and Encourage Employers  
To Hire Young Workers**

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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 CUSHING of Penobscot. (GOVERNOR'S BILL)  
Cosponsored by Senator: HAMPER of Oxford, Representatives: TIMBERLAKE of Turner,  
WINSOR of Norway.

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

2 **Sec. 1. 26 MRSA §603, sub-§3, ¶E**, as enacted by PL 1999, c. 750, §1, is  
3 amended to read:

4 E. A salaried employee who works in a bona fide executive capacity and whose  
5 regular compensation, when converted to an annual rate, meets or exceeds 3000 times  
6 ~~the State's minimum hourly wage~~ the annualized rate established by the United States  
7 Department of Labor under the federal Fair Labor Standards Act;

8 **Sec. 2. 26 MRSA §663, sub-§3, ¶K**, as amended by PL 2009, c. 529, §2, is  
9 further amended to read:

10 K. A salaried employee who works in a bona fide executive, administrative or  
11 professional capacity and whose regular compensation, when converted to an annual  
12 rate, meets or exceeds 3000 times the State's minimum hourly wage or the annualized  
13 rate established by the United States Department of Labor under the federal Fair  
14 Labor Standards Act, whichever is higher or who is a highly compensated employee  
15 or meets the occupational exemptions as described in that Act and not otherwise  
16 provided for under this chapter; and

17 **Sec. 3. 26 MRSA §663, sub-§12**, as amended by PL 2007, c. 360, §2, is further  
18 amended to read:

19 **12. Automobile mechanic.** "Automobile mechanic" means a person who is  
20 primarily engaged in the servicing of automobiles or trucks as an employee of an  
21 establishment primarily engaged in the business of selling automobiles or trucks to the  
22 ultimate purchaser, as long as the person's annual compensation meets or exceeds 3,000  
23 ~~times the state minimum hourly wage or the annualized rate established by the United~~  
24 ~~States Department of Labor under the federal Fair Labor Standards Act, whichever is~~  
25 ~~higher~~, except when the employee is paid by the employer on an hourly basis.

26 **Sec. 4. 26 MRSA §663, sub-§13**, as amended by PL 2007, c. 360, §3, is further  
27 amended to read:

28 **13. Automobile parts clerk.** "Automobile parts clerk" means a person employed  
29 for the purpose of and primarily engaged in requisitioning, stocking and dispensing  
30 automobile parts as an employee of an establishment primarily engaged in the business of  
31 selling automobiles or trucks to the ultimate purchaser, as long as the person's annual  
32 compensation meets or exceeds 3,000 times the state minimum hourly wage or the  
33 annualized rate established by the United States Department of Labor under the federal  
34 Fair Labor Standards Act, whichever is higher, except when the employee is paid by the  
35 employer on an hourly basis.

36 **Sec. 5. 26 MRSA §663, sub-§14**, as enacted by PL 2007, c. 360, §4, is amended  
37 to read:

38 **14. Automobile service writer.** "Automobile service writer" means a person  
39 employed for the purpose of and primarily engaged in receiving, analyzing and

1 referencing requests for service, repair or analysis of motor vehicles as an employee of an  
2 establishment primarily engaged in the business of selling automobiles or trucks to the  
3 ultimate purchaser, as long as the person's annual compensation meets or exceeds 3,000  
4 ~~times the state minimum hourly wage or~~ the annualized rate established by the United  
5 States Department of Labor under the federal Fair Labor Standards Act, ~~whichever is~~  
6 ~~higher,~~ except that "automobile service writer" does not include an employee who is paid  
7 by the employer on a an hourly basis.

8 **Sec. 6. 26 MRSA §663, sub-§15**, as enacted by PL 2011, c. 118, §2, is amended  
9 to read:

10 **15. Tip.** "Tip" means a sum presented by a customer in recognition of services  
11 performed by one or more service employees, ~~including a charge automatically included~~  
12 ~~in the customer's bill. "Tip" does not include a service charge added to a customer's bill~~  
13 ~~in a banquet or private club setting by agreement between the customer and employer.~~

14 **Sec. 7. 26 MRSA §664, sub-§1**, as amended by IB 2015, c. 2, §1, is further  
15 amended to read:

16 **1. Minimum wage.** The minimum hourly wage is \$7.50 per hour. Starting January  
17 ~~1~~ 7, 2017, the minimum hourly wage is \$9.00 per hour; starting January 1, 2018, the  
18 minimum hourly wage is ~~\$10.00~~ \$9.50 per hour; starting January 1, 2019, the minimum  
19 hourly wage is ~~\$11.00~~ \$10.00 per hour; ~~and~~ starting January 1, 2020, the minimum hourly  
20 wage is ~~\$12.00~~ \$10.50 per hour. ~~On;~~ and starting January 1, 2021 ~~and each January 1st~~  
21 ~~thereafter, the minimum hourly wage then in effect must be increased by the increase, if~~  
22 ~~any, in the cost of living. The increase in the cost of living must be measured by the~~  
23 ~~percentage increase, if any, as of August of the previous year over the level as of August~~  
24 ~~of the year preceding that year in the Consumer Price Index for Urban Wage Earners and~~  
25 ~~Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published~~  
26 ~~by the United States Department of Labor, Bureau of Labor Statistics or its successor~~  
27 ~~agency, with the amount of the minimum wage increase rounded to the nearest multiple~~  
28 ~~of 5¢, the minimum hourly wage is \$11.00 per hour. If the highest federal minimum~~  
29 ~~wage is increased in excess of the minimum wage in effect under this section, the~~  
30 ~~minimum wage under this section is increased to the same amount, effective on the same~~  
31 ~~date as the increase in the federal minimum wage, and must be increased in accordance~~  
32 ~~with this section thereafter but in no case may the minimum wage exceed the minimum~~  
33 ~~wage otherwise in effect under this section by more than \$1 per hour.~~

34 **Sec. 8. 26 MRSA §664, sub-§§1-A and 1-B** are enacted to read:

35 **1-A. Training wage.** Notwithstanding subsection 1, a training wage of not less than  
36 either 80%, rounded to the nearest 5¢, of the state minimum wage under subsection 1 or  
37 the minimum wage under the federal Fair Labor Standards Act, whichever is higher, may  
38 be paid for the first 90 consecutive days of employment to an employee who has not  
39 attained 20 years of age.

40 **1-B. Youth wage.** Notwithstanding subsection 1, a youth wage of not less than  
41 either 80%, rounded to the nearest 5¢, of the state minimum wage under subsection 1 or  
42 the minimum wage under the federal Fair Labor Standards Act, whichever is higher, may

1 be paid to an employee who has not attained 18 years of age and who is not covered  
2 under federal law.

3 **Sec. 9. 26 MRSA §664, sub-§2**, as amended by IB 2015, c. 2, §2, is further  
4 amended to read:

5 **2. Tip credit.** An employer may consider tips as part of the wages of a service  
6 employee, but such a tip credit may not exceed 50% of the minimum hourly wage  
7 established in this section. ~~Starting January 1, 2017, the minimum cash wage paid~~  
8 ~~directly to a tipped service employee may not be less than \$5.00 per hour, and the tip~~  
9 ~~credit may not exceed the difference between the minimum cash wage paid directly to a~~  
10 ~~tipped service employee and the minimum hourly wage established under subsection 1.~~  
11 ~~Starting January 1, 2018, and on each January 1st thereafter, the minimum cash wage~~  
12 ~~paid directly to a tipped service employee must be increased by an additional \$1.00 per~~  
13 ~~hour until it reaches the same amount as the annually adjusted minimum hourly wage~~  
14 ~~established under subsection 1, except that if the minimum cash wage paid directly to a~~  
15 ~~tipped service employee is less than \$1.00 less than the annually adjusted minimum~~  
16 ~~hourly wage, it must be increased by that lesser amount. An employer who elects to use~~  
17 ~~the tip credit, until it is eliminated under this subsection, must inform the affected~~  
18 ~~employee in advance and must be able to show that the employee receives at least the~~  
19 ~~minimum hourly wage when direct wages and the tip credit are combined. Upon a~~  
20 ~~satisfactory showing by the employee or the employee's representative that the actual tips~~  
21 ~~received were less than the tip credit, the employer shall increase the direct wages by the~~  
22 ~~difference.~~

23 The tips received by a service employee become the property of the employee and may  
24 not be shared with the employer. ~~Tips that are automatically included in the customer's~~  
25 ~~bill or that are charged to a credit card must be treated like tips given to the service~~  
26 ~~employee. A tip that is charged to a credit card must be paid by the employer to the~~  
27 ~~employee by the next regular payday and may not be held while the employer is awaiting~~  
28 ~~reimbursement from a credit card company.~~

29 **Sec. 10. 26 MRSA §664, sub-§2-B**, as enacted by PL 2011, c. 118, §4, is  
30 repealed and the following enacted in its place:

31 **2-B. Service charges.** A compulsory charge for service is not a tip. Such a charge  
32 is part of the employer's gross receipts. Sums distributed to employees from service  
33 charges may not be counted as tips received, but may be used to satisfy the employer's  
34 minimum wage and overtime obligations. If an employee receives tips in addition to the  
35 compulsory service charge, those tips may be considered in determining whether the  
36 employee is a tipped employee and in the application of the tip credit.

37 **SUMMARY**

38 This bill reduces increases to the minimum wage and provides a minimum wage of  
39 \$11 per hour starting January 1, 2021. The bill eliminates the annual cost-of-living  
40 adjustment to the minimum wage and reinstates the tip credit at 50% of the state  
41 minimum wage. The bill allows employers to pay a training or youth wage subject to  
42 certain conditions including the training or youth wage's meeting or exceeding the federal

1 minimum wage established under the federal Fair Labor Standards Act. The bill changes  
2 the description of certain salaried employees who are exempt from the limits on  
3 mandatory overtime. The bill changes the description of certain salaried employees who  
4 are exempt from the laws governing minimum wages. The bill changes the definitions of  
5 "automobile mechanic," "automobile parts clerk," "automobile service writer" and "tip" in  
6 the laws governing minimum wages. The bill amends the laws governing service charges  
7 in the minimum wage laws.