

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 733

H.P. 538

House of Representatives, February 11, 2019

An Act To Promote Keeping Workers in Maine

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SCHNECK of Bangor.
Cosponsored by Senator BELLOWS of Kennebec and
Representatives: CARDONE of Bangor, CUDDY of Winterport, KORNFELD of Bangor,
MARTIN of Sinclair, MASTRACCIO of Sanford, McCREA of Fort Fairfield, Senators:
CHIPMAN of Cumberland, DIAMOND of Cumberland.

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

2 **Sec. 1. 26 MRSA c. 7, sub-c. 13** is enacted to read:

3 **SUBCHAPTER 13**

4 **NONCOMPETE AGREEMENTS AND RESTRICTIVE EMPLOYMENT**
5 **AGREEMENTS**

6 **§880. Noncompete agreements**

7 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
8 following terms have the following meanings.

9 A. "Federal poverty level" means the nonfarm income official poverty line for an
10 individual, as defined by the federal Office of Management and Budget and revised
11 annually in accordance with the Omnibus Budget Reconciliation Act of 1981, Section
12 673(2).

13 B. "Noncompete agreement" means a contract or contract provision that prohibits an
14 employee or prospective employee from working in the same or a similar profession
15 or in a specified geographic area for a certain period of time following termination of
16 employment.

17 **2. Prohibited for certain workers.** An employer may not require or permit an
18 employee earning wages at or below 300% of the federal poverty level to enter into a
19 noncompete agreement with the employer.

20 **3. Disclosure; notice.** An employer shall disclose in any advertisement for a
21 position of employment with the employer that will require the acceptance of a
22 noncompete agreement a statement that a noncompete agreement will be required.

23 An employer shall notify an employee or prospective employee of a noncompete
24 agreement requirement and provide a copy of the noncompete agreement not less than 3
25 business days before the employer requires the agreement to be signed to allow time for
26 the employee or prospective employee to review the agreement and negotiate the terms of
27 the agreement or employment with the employer if the employee or prospective employee
28 wishes to do so.

29 **4. Effective date of a noncompete agreement.** Except for a noncompete agreement
30 between an employer and an allopathic physician or an osteopathic physician licensed
31 under Title 32, chapter 48 or chapter 36, respectively, the terms of a noncompete
32 agreement do not take effect until after one year of the employee's employment with the
33 employer or a period of 6 months from the date the agreement was signed, whichever is
34 later.

35 **5. Penalty; enforcement.** A person that violates subsection 2 or 3 commits a civil
36 violation for which a fine of not less than \$5,000 may be adjudged. The Department of
37 Labor shall enforce this section.

1 6. Application. This subchapter applies to all noncompete agreements entered into
2 or renewed after the effective date of this subchapter.

3 **§880-A. Restrictive employment agreements**

4 **1. Definition.** For purposes of this section, "restrictive employment agreement"
5 means an agreement that:

6 A. Is between 2 or more employers, including through a franchise agreement or a
7 contractor and subcontractor agreement; and

8 B. Prohibits or restricts one employer from soliciting or hiring another employer's
9 employees or former employees.

10 **2. Restrictive employment agreements prohibited.** An employer may not:

11 A. Enter into a restrictive employment agreement; or

12 B. Enforce or threaten to enforce a restrictive employment agreement.

13 **3. Penalty; enforcement.** A person that violates subsection 2 commits a civil
14 violation for which a fine of not less than \$5,000 may be adjudged. The Department of
15 Labor shall enforce this section.

16 **Sec. 2. Appropriations and allocations.** The following appropriations and
17 allocations are made.

18 **LABOR, DEPARTMENT OF**

19 **Regulation and Enforcement 0159**

20 Initiative: Provides ongoing funds for one half-time Labor and Safety Inspector position
21 and related All Other costs associated with enforcing the laws related to noncompete
22 agreements and restrictive employment agreements.

23

24 GENERAL FUND	2019-20	2020-21
25 POSITIONS - LEGISLATIVE COUNT	0.500	0.500
26 Personal Services	\$25,869	\$34,492
27 All Other	\$6,732	\$7,482
28		
29 GENERAL FUND TOTAL	<u>\$32,601</u>	<u>\$41,974</u>

30 **SUMMARY**

31 This bill prohibits an employer from requiring or entering into a so-called
32 noncompete agreement with an employee earning wages that are at or below 300% of the
33 federal poverty level. A noncompete agreement is defined as a contract or contract
34 provision that prohibits an employee or prospective employee from working in the same
35 or a similar profession or in a specified geographic area for a certain period of time
36 following termination of employment. If an employer requires a noncompete agreement

1 for a position of employment, the employer must disclose that requirement in any
2 advertisement for that position, and an employer must provide an employee or
3 prospective employee with a copy of a noncompete agreement at least 3 business days
4 before requiring that employee or prospective employee to sign the agreement. An
5 employer that violates this law commits a civil violation for which a fine of not less than
6 \$5,000 may be adjudged. The Department of Labor is responsible for enforcement of the
7 law. The terms of a noncompete agreement, except for a noncompete agreement with a
8 physician, are not in effect until after an employee has been employed with the employer
9 for at least one year or a period of 6 months from the date the agreement was signed,
10 whichever is later.

11 The bill also prohibits a restrictive employment agreement between 2 or more
12 employers that prohibits or restricts one employer from soliciting or hiring another
13 employer's employees or former employees.