

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CB (H-857) (LD 1529 2020)

Date: 8/27/2020

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Date: (Filing No. H-)

LABOR AND HOUSING

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1112, L.D. 1529, “An Act Concerning Nondisclosure Agreements in Employment”

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

'Sec. 1. 26 MRSA §594-A is enacted to read:

§594-A. Nondisclosure agreements

1. Employer defined. As used in this section, unless the context otherwise indicates, "employer" means a person in this State that employs individuals and includes the State and political subdivisions of the State. "Employer" includes a person acting in the interest of an employer directly or indirectly.

2. Certain preemployment and employment agreements prohibited. An employer may not require an employee, intern or applicant for employment to enter into a contract or agreement that waives or limits any right to report or discuss discrimination, retaliation or harassment occurring in the workplace or at work-related events.

3. Certain settlement, separation and severance agreements prohibited. An employer may not require an employee, intern or applicant for employment to enter into a settlement, separation or severance agreement that includes a provision that:

- A. Limits an individual's right to report, testify or provide evidence to a federal or state agency that enforces employment or discrimination laws;
- B. Prevents an individual from testifying or providing evidence in federal and state court proceedings in response to legal process; or
- C. Prohibits an individual from reporting conduct to a law enforcement agency.

4. Mutuality of nondisclosure agreements. A settlement, separation or severance agreement may include a provision that prevents the subsequent disclosure of factual information relating to a claim of discrimination, retaliation or harassment, but only if:

- A. The employee, intern or applicant for employment initiates a request for such a provision;

COMMITTEE AMENDMENT

1 B. The provision applies to all parties to the agreement to the extent otherwise
2 permitted by law;

3 C. The agreement clearly states that the individual retains the right to report, testify or
4 provide evidence to federal and state agencies that enforce employment or
5 discrimination laws and to testify and provide evidence in federal and state court
6 proceedings; and

7 D. The employer retains a copy of the agreement for 6 years following the execution
8 of the agreement or the end of employment, whichever is later. Records required to be
9 kept by this paragraph must be accessible to any representative of the Department of
10 Labor at any reasonable hour.

11 **5. Enforcement.** The Department of Labor shall enforce this section.

12 **6. Penalties.** An employer that violates this section:

13 A. May be assessed a fine of up to \$1,000 for each violation of this section, which
14 must be paid to the Treasurer of State; and

15 B. Shall pay liquidated damages to the individual in an amount equal to 3 times the
16 amount of the total assessed fines, except that for an employer's discharge of or refusal
17 to hire an individual who declines to enter into a contract or agreement that waives or
18 limits any right to report or discuss discrimination, retaliation or harassment occurring
19 in the workplace or at work-related events, the individual may elect:

20 (1) To receive liquidated damages pursuant to this paragraph; or

21 (2) Employment or reinstatement with back wages.'

22 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
23 number to read consecutively.

24 SUMMARY

25 This amendment replaces the bill. It prohibits an employer from requiring an employee,
26 intern or applicant for employment to enter into a contract or agreement that waives or
27 limits any right to report or discuss discrimination, retaliation or harassment occurring in
28 the workplace or at work-related events.

29 It also prohibits an employer from requiring an employee, intern or applicant for
30 employment to enter into a settlement, separation or severance agreement that limits an
31 individual's right to report, testify or provide evidence to a federal or state agency that
32 enforces employment or discrimination laws, prevents an individual from testifying or
33 providing evidence in federal and state court proceedings in response to legal process or
34 prohibits an individual from reporting conduct to a law enforcement agency. This
35 amendment allows a settlement, separation or severance agreement, under certain
36 circumstances, to include a provision that prevents the subsequent disclosure of factual
37 information relating to a claim of discrimination, retaliation or harassment.

38 It provides the Department of Labor with the duty to enforce these provisions and
39 allows an individual to receive liquidated damages or to be employed or reinstated with
40 back wages when an employer discharges or refuses to hire an individual who declines to
41 enter into a contract or agreement that waives or limits any right to report or discuss
42 discrimination, retaliation or harassment occurring in the workplace or at work-related
43 events.



129th MAINE LEGISLATURE

LD 1529

LR 676(04)

An Act Concerning Nondisclosure Agreements in Employment

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Labor and Housing

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor revenue increase - General Fund

Minor revenue increase - Other Special Revenue Funds

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional filing fees and fine revenue may increase General Fund and other dedicated revenue by minor amounts.

Fiscal Detail and Notes

Additional costs to the Department of Labor to implement the requirements of this legislation can be absorbed within existing budgeted resources.