

MAINE STATE LEGISLATURE

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Date: 4-27-2022

(Filing No. H-1050)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 711, L.D. 965, "An Act Concerning Nondisclosure Agreements in Employment"

Amend the bill in section 1 in §599-C by striking out all of subsection 1 (page 1, lines 4 to 7 in L.D.) and inserting the following:

'1. Employer defined. As used in this section, unless the context otherwise indicates, "employer" has the same meaning as in section 615, subsection 3.'

Amend the bill in section 1 in §599-C in subsection 2 in the last 2 lines (page 1, lines 10 and 11 in L.D.) by striking out the following: "discrimination, retaliation or harassment" and inserting the following: 'unlawful employment discrimination, as defined and limited by Title 5, chapter 337, subchapter 3.'

Amend the bill in section 1 in §599-C by striking out all of subsection 4 (page 1, lines 20 to 34 in L.D.) and inserting the following:

'4. Settlement, separation or severance agreement requirements. A settlement, separation or severance agreement may include a provision that prevents the subsequent disclosure of factual information relating to a claim of unlawful employment discrimination, as defined and limited by Title 5, chapter 337, subchapter 3, only if:

A. The agreement expressly provides for separate monetary consideration for the provision in addition to anything of value to which the employee, intern or applicant for employment is already entitled;

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

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

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

HOUSE AMENDMENT

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1 Nothing in this section may be construed as limiting the use of nondisclosure agreements
2 to protect the confidentiality of proprietary information, trade secrets or information that is
3 otherwise confidential by law, rule or regulation.'

4 Amend the bill in section 1 in §599-C by striking out all of subsection 5 (page 1, line
5 35 in L.D.) and inserting the following:

6 '5. Enforcement. The Department of Labor shall enforce this section. In addition,
7 the Attorney General may bring an action under this section to impose a fine or to enjoin
8 further violation. An employer that intentionally violates this section commits a civil
9 violation for which a fine of up to \$1,000 may be adjudged.'

10 Amend the bill in section 1 in §599-C by striking out all of subsection 6 (page 1, lines
11 36 to 40 and page 2, lines 1 to 5 in L.D.).

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

14 **SUMMARY**

15 This amendment replaces the definition of "employer" in the bill. The amendment
16 clarifies that the provisions of the bill apply to unlawful discrimination, imposes certain
17 requirements regarding settlement, separation or severance agreement nondisclosure
18 provisions, adds a statement regarding the construction of the provisions of the bill and
19 allows the Attorney General to bring an action to impose a fine or seek an injunction for a
20 violation of the provisions of the bill.

21 **SPONSORED BY:** 
22 **(Representative HARNETT, T.)**

23 **TOWN: Gardiner**

FISCAL NOTE REQUIRED
(See attached)



130th MAINE LEGISLATURE

LD 965

LR 1162(10)

An Act Concerning Nondisclosure Agreements in Employment

Fiscal Note for House Amendment "A" to Original Bill

Sponsor: Rep. Harnett of Gardiner

Fiscal Note Required: Yes

(H-1050)

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new civil violations

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 fines may increase General Fund or other dedicated revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of the Attorney General are assumed to be minor and can be absorbed within existing budgeted resources.