

MAINE STATE LEGISLATURE

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E I G H T Y - N I N T H L E G I S L A T U R E

Legislative Document

No. 599

H. P. 1426

House of Representatives, February 9, 1939.

On motion of Miss Fowles of Whitefield tabled pending reference and 750 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Pike of Lubec.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT for Minimum Wage for Women and Minors.

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

Sec. 1. Definitions. Terms used in this act shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

- I. "Commissioner," the commissioner of labor and industry.
- II. "Wage board," a board created as provided in section 5 of this act.
- III. "Woman," a female of 21 years or over.
- IV. "Minor," a person of either sex under the age of 21 years.
- V. "Occupation," an industry, trade or business or branch thereof or class of work therein in which women or minors are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm.
- VI. "An oppressive and unreasonable wage," a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health.
- VII. "A fair wage," a wage fairly and reasonably commensurate with the value of the service or class of service rendered. In establishing a minimum fair wage for any service or class of service under this act the commissioner and the wage board without being bound by any technical

rules of evidence or procedure (1) may take into account all relevant circumstances affecting the value of the service or class of service rendered, (2) may be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wages to be paid, and (3) may consider the wages paid in the state for work of like or comparable character by employers who voluntarily maintain minimum fair-wage standards.

Sec. 2. Prohibition. It is hereby declared to be against public policy for any employer to employ any woman or minor in the packing of food products in oil, mustard or tomato sauce in this state at an oppressive and unreasonable wage as herein defined and any contract, agreement or understanding for or in relation to such employment shall be null and void.

Sec. 3. Powers of commissioner. The commissioner or any representative duly authorized by him shall have full power and authority:

I. To investigate and ascertain the wages of women and minors employed in any occupation subject to the prohibition set forth in section 2 hereof;

II. To enter the place of business or employment of any employer of women and minors in any such occupation for the purpose of examining and inspecting any and all books, registers, payrolls, and other records of any employer of women or minors that in any way appertain to or have a bearing upon the question of wages of any such women or minors and for the purpose of ascertaining whether the orders of the commissioner have been and are being complied with; and

III. To require from such employer full and correct statements in writing of the wages paid to all women and minors in his employment.

Sec. 4. Investigations authorized. The commissioner shall have the power, and it shall be the duty of the commissioner on the petition of 50 or more residents of the state, to cause an investigation to be made by any authorized representative of the commissioner, of the wages being paid to women or minors in any such occupation to ascertain whether any substantial number of women or minors in such occupation are receiving oppressive and unreasonable wages as herein defined. If, on the basis of information in the possession of the commissioner, with or without a special investigation, the commissioner is of the opinion that any substantial number of women or minors in any such occupation are receiving such oppressive and unreasonable wages, he shall appoint a wage board to report upon

the establishment of minimum fair-wage rates for such women or minors in such occupation.

Sec. 5. Wage boards; membership. A wage board shall be composed of not more than 3 representatives of the employers in any occupation to which this act is applicable, an equal number of representatives of the employees in such occupation and of not more than 3 disinterested persons representing the public, one of whom shall be designated as chairman. The commissioner shall appoint the members of such wage board, the representatives of the employers and employees to be selected so far as practicable from nominations submitted by employers and employees in such occupation. Two-thirds of the members of such wage board shall constitute a quorum and the recommendations or report of such wage board shall require a vote of not less than a majority of all its members. Members of a wage board shall serve without pay, but may be reimbursed for all necessary traveling expenses. The commissioner shall make and establish from time to time rules and regulations governing the selection of a wage board and its mode of procedure not inconsistent herewith.

Sec. 6. Wage boards; powers. A wage board shall have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of all books, records, and other evidence relative to any matters under investigation. Such subpoenas shall be signed and issued by a member of the wage board and shall be served in the same manner as if issued out of the superior court. A wage board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the superior court.

Sec. 7. Wage boards; commissioner to assist. The commissioner shall present to a wage board promptly upon its organization all the evidence and information in the possession of the commissioner relating to the wages of women and minor workers in the occupation for which the wage board was appointed and all other information which the commissioner deems relevant to the establishment of a minimum fair wage for such women and minors, and shall cause to be brought before the committee any witnesses whom the commissioner deems material. A wage board may summon other witnesses or call upon the commissioner to furnish additional information to aid it in its deliberations.

Sec. 8. Wage boards; report; recommendations. Within 60 days of its organization a wage board shall submit a report including its recommendations as to minimum fair-wage standards for the women or minors

in the occupation the wage standards of which the wage board was appointed to investigate. If its report is not submitted within such time the commissioner may constitute a new wage board. A wage board may differentiate and classify employments in any occupation according to the nature of the service rendered and recommend appropriate minimum fair rates for different employments. A wage board may also recommend minimum fair-wage rates varying with localities if in the judgment of the wage board conditions make such local differentiation proper and do not effect an unreasonable discrimination against any locality. A wage board may recommend a suitable scale of rates for learners and apprentices in any occupation which scale of learners' and apprentices' rates may be less than the regular minimum fair-wage rates recommended for experienced women or minor workers in such occupation.

Sec. 9. Acceptance of report; hearing. A report from a wage board shall be submitted to the commissioner who shall within 10 days accept or reject such report. If the report is rejected the commissioner shall resubmit the matter to the same wage board or to a new wage board with a statement of the reasons for the resubmission. If the report is accepted it shall be published together with such proposed administrative regulations as the commissioner may deem appropriate to implement the report of the wage board and to safeguard the minimum fair-wage standards to be established, and notice shall be given by publication of a public hearing to be held by the commissioner at which all persons in favor of or opposed to the recommendations contained in such report or in such proposed regulations may be heard.

Sec. 10. Approval of report; order. Within 10 days after such hearing the commissioner shall approve or disapprove the report of the wage board. If the report is disapproved the commissioner may resubmit the matter to the same wage board or to a new wage board. If the report is approved the commissioner shall issue an order which shall define minimum fair-wage rates in the occupation as recommended in the report of the wage board and which shall include such proposed administrative regulations as the commissioner may deem appropriate to implement the report of the wage board and to safeguard the minimum fair-wage standards established. Such administrative regulations may include among other things, regulations defining and governing learners and apprentices, their rates, number, proportion or length of service, piece rates or their relations to time rates, overtime or part-time rates, bonuses or special pay for special or extra work, deductions for board, lodging, apparel or other items or services supplied by the employer, and other special conditions or circum-

stances; and in view of the diversities and complexities of different occupations and the dangers of evasion and nullification, the commissioner may provide in such regulations without departing from the basic minimum rates recommended by the wage board such modifications or reductions of or addition to such rates in or for such special cases or classes of cases as those herein enumerated as the commissioner may find appropriate to safeguard the basic minimum rates established.

Sec. 11. Special license in certain cases. For any occupation for which minimum fair-wage rates have been established the commissioner may cause to be issued to a woman or minor, including a learner or apprentice, whose earning capacity is impaired by age or physical or mental deficiency or injury, a special license authorizing employment at such wages less than such minimum fair-wage rates and for such period of time as shall be fixed by the commissioner and stated in the license.

Sec. 12. Non-observance of orders. If the commissioner or his authorized representative has reason to believe that any employer is not observing the provisions of any order made by him under section 10 hereof, the commissioner may, on 15 days' notice, summon such employer to appear before him or his authorized representative to show cause why the name of such employer should not be published as having failed to observe the provisions of such order. After such hearing and the finding by the commissioner of non-observance, the commissioner may cause to be published in a newspaper or newspapers circulating within the state or in such other manner as the commissioner may deem appropriate, the name of any such employer or employers as having failed in the respects stated to observe the provisions of the order of the commissioner. Neither the commissioner, nor any authorized representative of the commissioner, nor any newspaper publisher, proprietor, editor, nor employee thereof shall be liable to an action for damages for publishing the name of any employer as provided for in this act unless guilty of some wilful misrepresentation.

Sec. 13. Order; hearing. If at any time after an order defining minimum fair-wage rates has been in effect for 5 months the commissioner is of the opinion that the persistent non-observance of such order by one or more employers is a threat to the maintenance of fair minimum-wage standards in any occupation the commissioner may give notice by publication of his intention to make such order mandatory and of a public hearing to be held at which all persons in favor of or opposed to a mandatory order may be heard. After such hearing the commissioner, if he adheres to his opinion, may make the previous order or any part thereof mandatory and so publish it.

Sec. 14. Modification of wage order. At any time after a minimum fair-wage order has been in effect for 1 year or more, whether during such period it has been made mandatory, the commissioner may on his own motion and shall on petition of 50 or more residents of the state reconsider the minimum fair-wage rates set therein and reconvene the same wage board or appoint a new wage board to recommend whether or not the rate or rates contained in such order should be modified. The report of such wage board shall be dealt with in the manner prescribed in sections 9 and 10 provided that if the order under reconsideration has theretofore been made mandatory in whole or in part by the commissioner under section 13 then the commissioner in making any new order or confirming any old order shall have power to declare to what extent such order shall be mandatory.

Sec. 15. Modification of administrative regulations. The commissioner may at any time and from time to time propose such modifications of or additions to any administrative regulations included in any mandatory order of the commissioner without reference to a wage board, as he may deem appropriate to effectuate the purposes of this act, provided such proposed modifications or additions could legally have been included in the original order, and notice by publication shall be given of a public hearing to be held by the commissioner at which all persons in favor of or opposed to such proposed modifications or additions may be heard. After such hearing the commissioner may make an order putting into effect such proposed modifications of or additions to the administrative regulations as he deems appropriate, and if the order of which the administrative regulations form a part has theretofore been made mandatory in whole or in part by the commissioner under section 13, then the commissioner in making any new order shall have the power to declare to what extent such order shall be mandatory.

Sec. 16. Appeals to court. Any person aggrieved by any decision of the commissioner may apply to the superior court, within 30 days after the action complained of has been handed down, by a sworn petition, setting forth that such decision is illegal or unreasonable, in whole or in part, specifying the grounds upon which the same is claimed to be illegal or unreasonable.

Sec. 17. Appeals to court; procedure. The court shall direct the record in the matter appealed from to be laid before it, hear the evidence and make such order approving in whole or in part or setting aside in whole or in part the decision appealed from as justice may require, and may refer

any matter or issue arising in the proceedings to the commissioner for further consideration. The filing of the petition shall not stay proceedings upon the decision appealed from, but the court may, on application, notice to the commissioner and on cause shown, grant a restraining order.

Sec. 18. Appeals to court; certifying record. An order of court to send up the record may be complied with by filing either the original papers or duly certified copies thereof, or of such portions thereof as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.

Sec. 19. Appeals to court; hearing, etc. The court may take evidence without being bound by any technical rules of evidence or procedure, or may appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law.

Sec. 20. Appeals to court; costs. Costs shall not be allowed against the commissioner unless it shall appear to the court that he acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

Sec. 21. Employers' records. Every employer of women and minor workers shall keep a true and accurate record of the hours worked by each and the wages paid by him to each and shall furnish to the commissioner or his authorized representative upon demand a sworn statement of the same. Such records shall be open to inspection by the commissioner or his authorized representative at any reasonable time. Every employer subject to a minimum fair-wage order shall keep a copy of such order posted in a conspicuous place in every room in which women or minors are employed. Employers shall be furnished copies of orders on request without charge.

Sec. 22. Penalties. I. Any employer and his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on a wage board or has testified or is about to testify before any wage board or in any other investigation or proceeding under or related to this act or because such employer believes that said employee may serve on any wage board or may testify before any wage board or in any investigation of proceeding hereunder shall be fined not less than \$50 nor more than \$200.

II. Any employer or the officer or agent of any corporation who pays or agrees to pay to any woman or minor employee less than the rates applicable to such woman or minor under a mandatory minimum fair-wage

order shall be fined not less than \$50 nor more than \$200 or imprisoned not less than 10 nor more than 90 days, or both, and each week in any day of which such employee is paid less than the rate applicable to him under a mandatory minimum fair-wage order and each employee so paid less shall constitute a separate offense.

III. Any employer or the officer or agent of any corporation who fails to keep the records required hereunder, or refuses to permit the commissioner or his authorized representative to enter his place of business, or fails to furnish such records to the commissioner or his authorized representative upon request shall be fined not less than \$25 nor more than \$100, and each day of such failure to keep the records requested hereunder or to furnish same to the commissioner or his authorized representative shall constitute a separate offense.

Sec. 23. Civil actions. If any woman or minor worker is paid by his employer less than the minimum fair wage to which he is entitled under or by virtue of a mandatory minimum fair-wage order he may recover in a civil action the full amount of such minimum wage less any amount actually paid to him by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer to work for less than such mandatory minimum fair wage shall be no defense to such action. At the request of any woman or minor worker paid less than the minimum wage to which he was entitled under a mandatory order the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

Sec. 24. Saving clause. If any provision hereof, or the application thereof to any person or circumstance, is held invalid the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.