

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. 644

H. P. 1641

House of Representatives, February 14, 1939.

On motion of Miss Fowles of Whitefield tabled pending reference. 1000 copies ordered printed.

HARVEY R. PEASE, Clerk.

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

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT Relating to Minimum Fair Wages for Women and Minors.

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

Sec. 1. Definitions. The following words and phrases as used in this act shall have the following meanings, unless the context clearly requires otherwise :

“A directory order”, an order the violation of which is not subject to the penalties prescribed in subsection (2) of section 17.

“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 chapter the commissioner and the wage board without being bound by any technical rules of evidence or procedure (1) may take into account the cost of living and all other 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 in the absence of an express contract as to the amount of the wage 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.

“A mandatory order”, an order the violation of which is subject to the penalties prescribed in subsection (2) of section 17.

“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.

“Commissioner”, the commissioner of labor and industries.

“Department”, the department of labor and industries.

“Minor”, a person of either sex under the age of 21 years.

“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.

“Wage board”, a board created as provided in sections 4 and 5.

“Woman”, a female of 21 years or over.

Sec. 1-A. Declaration of policy. It is hereby declared to be against public policy of this state for any employer to employ any woman or minor in an occupation in this state at an oppressive and unreasonable wage, as defined in section 1, and any contract, agreement or understanding for or in relation to such employment shall be null and void.

Sec. 2. Powers of commissioner. The commissioner, or his authorized representative, shall have full power and authority:

1. To investigate and ascertain the wages of women and minors employed in any occupation in the state.

2. To enter the place of business or employment of any employer of women and minors in any occupation for the purpose of examining, inspecting and making a transcript of any and all books, registers, pay-rolls, 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

3. To require from such employer full and correct statements in writing when the commissioner, or his authorized representative, deem necessary, of the wages paid to all women and minors in his employ, such statements to be under oath or accompanied by a written declaration that they are made under the penalties of perjury.

4. To carry out the provisions of this act.

Sec. 3. Wage investigations. The commissioner shall have the power, and it shall be his duty on the petition of 30 or more citizens of the state, to cause an investigation to be made by any of his authorized representatives, of the wages paid to women or minors in any occupation in order to ascertain whether any substantial number of women or minors in such

occupation are receiving oppressive and unreasonable wages. If, on the basis of information in the possession of the commissioner, with or without special investigation, he is of the opinion that any substantial number of women or minors in any occupation or occupations are receiving 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 or occupations.

Sec. 4. Wage boards. A wage board shall be composed of not more than 3 persons to represent the employers in any occupation or occupations, an equal number of persons to represent the employees in such occupation or occupations, and of not more than 3 disinterested persons to represent the public, one of whom shall be designated by the commissioner as chairman of the board. 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 or occupations. 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 be entitled to compensation at the rate of \$5 per day for each meeting attended by them or each day actually spent in the work of the board. They shall also be paid their reasonable and necessary travelling and other expenses while engaged in the performance of their duties. The commissioner shall make and establish from time to time rules and regulations not inconsistent herewith governing the selection of a wage board and its mode of procedure.

Sec. 5. Information to be furnished to wage boards. The commissioner shall present to a wage board promptly upon its organization all the evidence and information in his possession relating to the wages of women and minors in the occupation or occupations for which the wage board was appointed and all other information which he deems relevant to the establishment of a minimum fair wage for such women and minors. The commissioner shall cause to be brought before the board any witnesses whom it 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. 6. Report of wage board. Within 60 days of its organization a wage board shall submit a report including its recommendations as to minimum fair wage rates for the women or minors in the occupation or

occupations the wage rates 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 recommended appropriate minimum fair wage rates for different classes of employment. A wage board may also recommend minimum fair wage rates varying with localities if in its judgment conditions make such local differentiation proper and will not cause unreasonable discrimination against any locality. A wage board may recommend a suitable scale of rates for learners and apprentices in any occupation or occupations, which scale of learners' and apprentices' rates may be less than the regular minimum fair wage rates recommended for experienced women or minors in such occupation or occupations. In addition to its report a wage board may separately recommend such administrative regulations as it may deem appropriate to safeguard the minimum fair wage rates recommended in its report.

Sec. 7. Acceptance or rejection of report. A wage board shall submit its report and any proposed administrative regulations to the commissioner, who shall within 10 days thereafter, accept or reject such report. During such 10 days the commissioner may confer with the wage board which may make such changes in the report or proposed administrative regulations as it may deem fit. If the report is rejected the commissioner shall resubmit the matter to the same wage board or to a new wage board. If the report is accepted it shall be published, together with such of the administrative regulations recommended by the board and such amendments and rescissions thereof as the commissioner may approve, and together with such additional administrative regulations as the commissioner may deem necessary or appropriate as a further safeguard to the minimum fair wage rates. Such administrative regulations may include among others regulations defining and governing learners and apprentices, their rates, number, proportion or length of service, piece rates or their relation 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 circumstances; 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 additions to rates in or for special cases or classes of cases herein enumerated as it may find appropriate to safeguard the basic minimum

rates established. The commissioner shall give notice of a public hearing, to be held by it not sooner than 15 nor later than 30 days after such publication, at which all persons in favor of or opposed to the recommendations contained in such report or to the proposed administrative regulations may be heard. 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 shall resubmit the matter to the same wage board or to a new wage board. If the report is approved the commissioner shall issue a directory order which shall define minimum fair wage rates in the occupation or occupations as recommended in the report of the wage board.

Sec. 8. Special employment certificate. 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 certificate 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 certificate.

Sec. 9. Mandatory orders. If at any time after a directory minimum fair wage order has been in effect for 3 months the commissioner is of the opinion, that persistent non-observance of such order by one or more employers is a threat to the maintenance of fair minimum wage rates in any occupation or occupations, the commissioner may make such order mandatory and after such order is made mandatory it shall be unlawful for any employer in said occupation to employ women or minors for less than the rate of wage specified in said order in the said occupation. The commissioner shall send by mail so far as is practicable to each employer in the occupation in question a copy of the order, and each employer shall be required to post a copy of said order in each room in which women or minors affected by the order are employed.

Sec. 10. Enforcement of orders. If the commissioner has reason to believe that any employer is not observing any directory or mandatory order, the commissioner may, on 15 days' notice, summon such employer to appear before the commissioner to show cause why the name of such employer should not be published as having failed to observe the provisions of such order. After a hearing and the finding of non-observance of such order by the commissioner, he may cause to be published in such newspaper or newspapers within this state or in such other manner as he may deem appropriate, the name of any such employer or employers as

having failed in the respects stated to observe the provisions of such order. Neither the commissioner nor any authorized representative of the commissioner nor any newspaper publisher, proprietor, editor, or employee thereof shall be liable to an action for damages for publishing the name of any employer as provided herein unless guilty of wilful misrepresentation.

Sec. 11. Reconsideration and modification of orders. At any time after a minimum fair wage order has been in effect for one year or more, whether during such period it has been directory or mandatory, the commissioner may on his own motion and shall on petition of 30 or more citizens of the state reconsider the minimum fair wage rates established therein and reconvene the same wage board or appoint a new wage board to consider and recommend whether and to what extent, if any, the rate or rates contained in such order should be modified. Such report of such wage board shall be dealt with in the manner prescribed in sections 7 and 8; provided, that if the order under reconsideration has theretofore been made mandatory in whole or in part by the commissioner under section 10 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 directory and to what extent mandatory.

Sec. 12. Appeal from decisions of commission. Any person aggrieved by any decision of the commissioner may bring a petition in the superior court praying that such decision of the commissioner may be reviewed by the court, and, after such notice to the commissioner as the court deems necessary, it shall review such decision, 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, after notice to the commissioner and for cause shown, grant a restraining order. Upon any such petition the court may take evidence without being bound by any technical rules of evidence or procedure, to the end that any evidence may be received which the court considers probative.

Sec. 13. Employers to keep records. Every employer of women and minors shall keep a true and accurate record of the name, address and occupation of each such employee, of the age of each minor, of the amount paid each pay period to each woman and minor, of the hours worked each day and each week by each woman and minor, and such other information as the commissioner in his discretion shall deem material and necessary.

Such records shall be kept on file for at least one year after the entry date of the record. Such records shall be open to the inspection of the commissioner or his authorized representatives at any reasonable time, and they shall have the right to make a transcript thereof. Every employer shall furnish to the commissioner, or his authorized representative, on demand, a sworn statement of such record, and, if the commissioner shall so require, upon forms prescribed or approved by him.

Sec. 14. Copies of orders to be posted. Every employer subject to a minimum fair wage order whether directory or mandatory 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. The commissioner may require each employer in any occupation subject to this chapter to post notices of hearings of, and nominations for, wage boards, or orders which apply to such employer's employees, in such reasonable way or ways and for such length of time as he may direct.

Sec. 15. Officers of the department not to be interfered with. Each employer shall permit any duly authorized officer or employee of the department to question any employee of such employer in the place of employment and during work hours in respect to the wages paid to and the hours worked by women and minors.

Sec. 16. Power to summon witnesses. In the discharge of the duties prescribed by this chapter, the commissioner or any member of a wage board shall have power to administer oaths, take depositions similar to those in civil actions, and to require by summons the attendance of witnesses, the production of books, papers, documents and records, necessary or convenient to be used in connection with the performance of his duties. Witnesses summoned shall be paid the same fees as witnesses summoned to appear before courts.

Sec. 17. Discrimination prohibited. (1) 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 chapter 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 or proceeding under this chapter shall be punished by a fine of not less than 50 nor more than \$200.

(2) 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 punished by a fine of not less than 50 nor more than \$200 or by imprisonment for not less than 10 nor more than 90 days or by both such fine and imprisonment, 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 offence.

(3) Any employer or the officer or agent of any corporation who fails to keep the records required under this chapter or to furnish such records to the commissioner, or any authorized representative of the commissioner upon request, or who falsifies such records, or who fails to comply with any requirement of the commissioner under the last sentence of section 16, or who hinders or delays the commissioner or any authorized representative of the commissioner in the performance of his duties, or who refuses to admit, or locks out, such commissioner, or such authorized representative from any place of employment which he is authorized to inspect, shall be punished by a fine of not less than \$25 nor more than \$100, and each day of such failure to keep such records or to furnish to the commissioner or any authorized representative of the commissioner such records or other information as may be required for the proper enforcement of this chapter shall constitute a separate offence.

Sec. 18. Recovery for failure to pay minimum wage. If any woman or minor is paid by an employer less than the minimum fair wage to which such woman or minor is entitled under or by virtue of a mandatory minimum fair wage order such woman or minor may recover in a civil action the full amount of such minimum wage less any amount actually paid to such woman or minor by the employer, together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such woman or minor and the employer to work for less than such mandatory minimum fair wage shall be no defence to such action. At the request of any woman or minor paid less than the minimum wage to which such woman or minor is entitled under a mandatory minimum fair wage 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. The commissioner shall not be required to pay a filing fee in connection with any such action.

Sec. 19. Law, how cited. This chapter shall be known and may be cited as the minimum fair wage for women and minors law.

Sec. 20. Saving clause. If any provision of this act 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.