

# 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

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**Legislative Document**

**No. 1181**

H. P. 2231

House of Representatives, April 13, 1939.

Reported by a majority of Committee on Labor and Judiciary jointly and printed under joint rules.

HARVEY R. PEASE, Clerk.

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S T A T E   O F   M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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**AN ACT to Protect the Industry of Packing of Fish and Fish Products  
and to Establish a Minimum Wage for Women and Minors Employed  
Therein.**

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

**Sec. 1. Classification.** The industry or business of packing of fish and fish products in oil, mustard or tomato sauce, in this state, and the occupation or employment of women and minors therein, constitute an industry, business, occupation and employment of a special, seasonal and unusual nature, in which women and minors predominantly are employed and in which the industry and the hours for work are dependent wholly on the seasonal run of a certain kind of fish, over which run no person has any control; therefore it is found by the legislature that public health, safety and welfare requires the protection of the industry or business and the regulation of the employment of women and minors therein.

**Sec. 2. 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 and state factory inspector.

II. "Wage board," a board created as provided in section 6 of this act.

III. "Women," a female of 21 years or over.

IV. "Minor," a person of either sex under the age of 21 years.

V. "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.

VI. "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 (1) shall take into account all relevant circumstances affecting the value of the service or class of service rendered in the seasonal industry, business, occupation and employment, (2) shall 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) shall consider the wages paid in the state for work of like or comparable character by employers who voluntarily maintain minimum fair-wage standards.

**Sec. 3. Prohibition.** By reason of the findings set forth in section 1 of this act, it is hereby declared unlawful, in the protection of the industry or business and in the enhancement of public interest, health, safety and welfare, for any employer to employ any woman or minor in the business or occupation of packing fish or fish products in oil, mustard or tomato sauce, at an oppressive or unreasonable wage or at less than a fair wage, as said terms are defined in section 2 of this act.

**Sec. 4. Administration.** The commissioner of labor and industry and state factory inspector shall have full power and authority:

I. To investigate and ascertain the wages of women and minors employed in the industry or occupation set forth in the classification and prohibition described in sections 1 and 3 of this act;

II. To enter the place of business or employment of any employer of women and minors in the industry or business described in section 1 of this act 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 employed by him in the industry, business, or occupation described in section 1 of this act.

**Sec. 5. Investigation 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 make an investigation of the wages being paid to women and minors in the industry, business, occupation or employment described in section 1 hereof, to ascertain whether any substantial number of women or minors so employed are receiving oppressive and unreasonable wages, or less than a fair wage, as defined in section 2 hereof. If, on the basis of such investigation, the commissioner is of the opinion that any substantial number of women or minors employed as aforesaid are receiving oppressive and unreasonable wages, or less than a fair wage, a wage board shall be appointed to report upon such protection as is necessary for the industry and for the establishment of minimum fair-wage rates for such women or minors employed therein.

**Sec. 6. Wage boards; membership.** A wage board shall be composed of not more than 3 representatives of the employers in the industry or business to which this act is applicable, an equal number of representatives of the employees employed in such industry or business and of not more than 3 disinterested persons representing the public; one of said 3 disinterested persons shall be designated as chairman. The commissioner shall appoint as the members of such wage board, representatives of the employers and of the employees, the same to be selected, in so far as practicable from nomination submitted by employers and employees, respectively, in the aforesaid industry, business, employment or occupation. The 3 disinterested persons representing the public shall be appointed, at request of the commissioner, by the chief justice of the supreme judicial court of this state. 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.

**Sec. 7. Wage boards; powers.** Any member of 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. 8. Wage boards; commissioner to assist.** The commissioner shall present to a wage board promptly upon its organization all the information in the possession of the commissioner relating to conditions in the industry and to the wages of women and minors working under the conditions in respect whereof the wage board was appointed.

**Sec. 9. Wage boards; report.** Within 60 days after the appointment of a wage board, it shall hold a public hearing and submit a report of its findings as to the conditions in the industry and as to minimum fair-wage standards for the women and minors employed in the industry, business or occupation described in section 1 hereof. A wage board may differentiate and classify employment and occupation in such industry or business according to the nature of the service rendered, and may determine appropriate minimum fair wage rates for each type of employment or occupation. A wage board also may determine fair-wage rates varying with localities, if in the judgment of the wage board conditions make such local differentiation proper and do not cause an unreasonable discrimination against any locality. A wage board further may determine a suitable scale of minimum fair-wage rates for learners and apprentices in any such industry or business which scale of learners' and apprentices' rates may be less than the regular minimum fair-wage rates determined for experienced women and minor workers in such industry or business.

**Sec. 10. Further proceedings.** The report, findings, and determinations of a wage board shall be filed with the commissioner, who, within 10 days, shall cause a copy thereof, certified to him to be a true copy, to be served on each employer in this state of whom he has information or record. Within 5 days after the commissioner has made such service, he shall file in his office as a public record, a certificate containing the report, findings and determinations of the wage board and a certificate of service, and thereupon the minimum fair-wage rates set forth and determined in the report of the wage board shall become the effective minimum fair-wage rates to be paid to women and minors employed in the industry or business described in section 1 hereof. And thereafter no employer in such industry or business shall pay to any woman or minor employed by him less than said minimum fair-wage rates unless and until another wage board, after public hearing, shall have filed with the commissioner its report, findings and determinations fixing lower minimum fair-wage rates.

**Sec. 11. Compliance by employers.** If the commissioner has reason to believe that any employer is not paying the minimum fair-wage rates found and determined by a wage board, and certified and made effective as provided in section 10 hereof, he may, on 15 days' notice, summon any such employer to appear before him to show cause why the name of any employer should not be published as having failed to observe the provisions of such report, findings and determinations. After such hearing, and after a finding by the commissioner of such failure, or of non-observance of the findings and determinations of the wage board, the commissioner shall cause to be published in not less than 3 daily and 3 weekly newspapers circulating within the state, the name or names of any such employer or employers who have failed to pay the said minimum fair-wage rates or to observe the findings and determinations of the wage board. Neither the commissioner nor any newspaper publisher, proprietor, editor, nor any employee thereof, shall be liable to an action for damages for publishing the name of any employer or employers, as provided for in this section, unless guilty of some wilful representation.

**Sec. 12. Court proceedings.** If at any time after a report of a wage board, containing findings and determinations as to minimum fair-wage rates, has been filed with the commissioner, and has been served by him as provided in section 10 hereof, and any employer or employers affected thereby, have failed for a period of 2 months to pay such minimum fair-wage rates, the commissioner shall thereupon take court action to enforce such minimum fair-wage rates. The commissioner shall file in the office of the clerk of the superior court for Kennebec county the record of hearing before the wage board, together with its report, findings and determinations as filed with the commissioner, and his certificate of service on employers. A justice of the superior court, unless application for stay of proceedings and for hearing shall have been filed in the office of said clerk of the superior court for Kennebec county and shall have been allowed by a justice of the superior court or the supreme judicial court, shall render, within 30 days after the filing of the papers with the said clerk of the superior court as aforesaid, his decision affirming or disaffirming the minimum fair-wage rates stated in the report, findings and determinations of the wage board, but he shall not dis-affirm such minimum fair-wage rates unless he shall find from the record, or after hearing before the court if such hearing be granted, that the same were fixed and determined by the wage board without any substantial evidence in justification thereof. Appeal may be had from the decision of the superior court only on questions of law.

**Sec. 13. Employers' records.** Every employer engaged in the industry or business described in section 1 hereof who employs or gives employment to women or minors in such industry or business, shall keep true and accurate record of the hours worked by each such employee and of the wages paid by him to them respectively, and shall furnish to the commissioner, upon demand by him, a sworn statement of the same; such records shall be open to inspection by the commissioner at any reasonable time. Every employer subject to minimum fair-wage rate findings and determinations posted in a conspicuous place in every room in which women or minors are employed in the said industry or business; employers shall be furnished by the commissioner, copies of such findings and determinations without charge therefor.

**Sec. 14. Penalties.** I. Any employer or any of his agents, 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 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 for each offense.

II. Any employer or any of his agents, or the officer or agent of any corporation, who pays, or permits to be paid, or agrees to pay, to any woman or minor employee engaged in the industry or occupation described in section 1 hereof, less than the minimum fair-wage rates applicable to such woman or minor under the report, findings and determinations of a wage board, shall be fined not less than \$50 nor more than \$100 or imprisoned for not less than 10 days nor more than 90 days, or both and each day in any week on which any such employee is paid less than the rate applicable under any such minimum fair-wage report, finding or determination shall constitute a separate offense.

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

**Sec. 15. Civil actions.** If any woman or minor worker employed or occupied in the industry or occupation described in section 1 hereof is paid

by an employer less than the minimum fair-wage rate set forth in a minimum fair-wage report, finding and determination by the wage board, duly certified and served as in section 10 hereof provided, such employee shall recover, in a civil action, the full amount of such minimum fair-wage less any amount actually paid to such employee by the employer, together with costs and such reasonable attorney fees as may be allowed by the court, and any agreement between an employer and an employee to work for less than the minimum fair-wage rates set forth in any such report, finding or determination shall be no defense to such action.

**Sec. 16. 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.