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(Filing No. S- )

**LABOR AND HOUSING**

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**STATE OF MAINE  
SENATE  
129TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 90, L.D. 278, Bill, “An Act Regarding Pay Equality”

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

**'Sec. 1. 5 MRSA §4577** is enacted to read:

**§4577. Compensation history inquiry as evidence of unlawful discrimination**

**1. Legislative findings and intent.** The Legislature finds that despite requirements regarding equal pay having been a part of the laws of Maine since 1965, wage inequality is an ongoing issue in the State. Wage inequality causes substantial harm to the citizens and to the economy of the State. The Legislature finds that when employers base compensation decisions on compensation history of a prospective employee, it directly perpetuates this wage inequality. An employer's knowledge of a prospective employee's compensation history is directly related to the practice of basing compensation decisions on compensation history. It is the intent of the Legislature to promote the payment of equal compensation for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility and to prevent unlawful employment discrimination with respect to compensation.

**2. Evidence of unlawful employment discrimination.** Evidence of unlawful employment discrimination under section 4572 and Title 26, section 628 includes, but is not limited to, an employer's inquiring, either directly or indirectly, about the compensation history of a prospective employee from the prospective employee or a current or former employer of the prospective employee or otherwise seeking the compensation history of a prospective employee.

**3. Exceptions.** Notwithstanding subsection 2, an employer or employment agency may inquire about or seek compensation history of an employee or prospective employee after an offer of employment that includes all terms of compensation has been negotiated and made to the prospective employee. If an employee or prospective employee has voluntarily disclosed compensation history information, without prompting by the

**COMMITTEE AMENDMENT**

1 employer or employment agency, the employer or employment agency may seek to  
2 confirm or permit a prospective employee to confirm such information prior to an offer of  
3 employment. This section does not apply to an employer who inquires about  
4 compensation history pursuant to any federal or state law that specifically requires the  
5 disclosure or verification of compensation history for employment purposes.

6 **Sec. 2. 26 MRSA §626-A, first ¶**, as amended by PL 1999, c. 465, §5, is further  
7 amended to read:

8 Whoever violates any of the provisions of sections 621-A to 623 or section 626, 628,  
9 628-A, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500  
10 for each violation.

11 **Sec. 3. 26 MRSA §628, first ¶**, as amended by PL 2009, c. 29, §1, is further  
12 amended to read:

13 An employer may not discriminate between employees in the same establishment on  
14 the basis of sex by paying wages to any employee in any occupation in this State at a rate  
15 less than the rate at which the employer pays any employee of the opposite sex for  
16 comparable work on jobs that have comparable requirements relating to skill, effort and  
17 responsibility. Differentials that are paid pursuant to established seniority systems or  
18 merit increase systems or difference in the shift or time of the day worked that do not  
19 discriminate on the basis of sex are not within this prohibition. An employer may not  
20 discharge or discriminate against any employee by reason of any action taken by such  
21 employee to invoke or assist in any manner the enforcement of this section. An employer  
22 may not prohibit an employee from disclosing the employee's own wages or from  
23 inquiring about or disclosing another employee's wages if the purpose of the disclosure or  
24 inquiry is to enforce the rights granted by this section. Nothing in this section creates an  
25 obligation to disclose wages.

26 **Sec. 4. 26 MRSA §628-A** is enacted to read:

27 **§628-A. Compensation history inquiry prohibited**

28 **1. Legislative findings and intent.** The Legislature finds that despite requirements  
29 regarding equal pay having been a part of the laws of Maine since 1965, wage inequality  
30 is an ongoing issue in the State. Wage inequality causes substantial harm to the citizens  
31 and to the economy of the State. The Legislature finds that when employers base  
32 compensation decisions on compensation history of a prospective employee, it directly  
33 perpetuates this wage inequality. An employer's knowledge of a prospective employee's  
34 compensation history is directly related to the practice of basing compensation decisions  
35 on compensation history. It is the intent of the Legislature to promote the payment of  
36 equal compensation for comparable work on jobs that have comparable requirements  
37 relating to skill, effort and responsibility and to prevent unlawful employment  
38 discrimination with respect to compensation.

39 **2. Prohibition.** An employer may not use or inquire about the compensation history  
40 of a prospective employee from the prospective employee or a current or former  
41 employer of the prospective employee unless an offer of employment that includes all  
42 terms of compensation has been negotiated and made to the prospective employee, after

1 which the employer may inquire about or confirm the prospective employee's  
2 compensation history.

3 **3. Exception.** This section does not apply to an employer who inquires about  
4 compensation history pursuant to any federal or state law that specifically requires the  
5 disclosure or verification of compensation history for employment purposes.

6 **4. Penalty.** This section may be enforced pursuant to section 626-A. The civil action  
7 provided pursuant to section 626-A may be brought to enforce this section by or on  
8 behalf of a person affected by a violation of subsection 2 or by the Department of Labor  
9 on behalf of a person affected by a violation of subsection 2, and the plaintiff or plaintiffs  
10 may also seek judgment for compensatory damages.'

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

### 13 SUMMARY

14 This amendment strikes and replaces the bill. The amendment prohibits an employer  
15 from inquiring about a prospective employee's compensation history until after an offer of  
16 employment that includes all terms of compensation has been negotiated and made to the  
17 prospective employee. It creates an exception for compensation history sought pursuant  
18 to any federal or state law that specifically requires the disclosure or verification of  
19 compensation history for employment purposes, for example, when such information is  
20 related to economic development programs that specifically create employment  
21 opportunities for persons with low incomes. An employer that violates this provision is  
22 subject to a fine of not less than \$100 and not more than \$500 per violation and is also  
23 subject to a civil action that may be brought by or on behalf of an affected employee or  
24 applicant by the Department of Labor or the affected employee or applicant.

25 This amendment also amends the Maine Human Rights Act to provide that evidence  
26 of unlawful employment discrimination includes an employer's seeking information about  
27 a prospective employee's compensation history before an offer of employment, including  
28 all terms of compensation, to the applicant has been made. It also creates an exception  
29 for compensation history sought pursuant to any federal or state law that specifically  
30 requires the disclosure or verification of compensation history for employment purposes.

### 31 FISCAL NOTE REQUIRED

32 (See attached)