

## 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

**Legislative Document** 

No. 733

H.P. 538

House of Representatives, February 11, 2019

## An Act To Promote Keeping Workers in Maine

Reference to the Committee on Labor and Housing suggested and ordered printed.

ROBERT B. HUNT Clerk

R(+ B. Hunt

Presented by Representative SCHNECK of Bangor. Cosponsored by Senator BELLOWS of Kennebec and Representatives: CARDONE of Bangor, CUDDY of Winterport, KORNFIELD of Bangor, MARTIN of Sinclair, MASTRACCIO of Sanford, McCREA of Fort Fairfield, Senators: CHIPMAN of Cumberland, DIAMOND of Cumberland.

2	Sec. 1. 26 MRSA c. 7, sub-c. 13 is enacted to read:
3	SUBCHAPTER 13
4 5	NONCOMPETE AGREEMENTS AND RESTRICTIVE EMPLOYMENT AGREEMENTS
6	§880. Noncompete agreements
7 8	1. <b>Definitions.</b> As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
9 10 11 12	A. "Federal poverty level" means the nonfarm income official poverty line for an individual, as defined by the federal Office of Management and Budget and revised annually in accordance with the Omnibus Budget Reconciliation Act of 1981, Section 673(2).
13 14 15 16	B. "Noncompete agreement" means a contract or contract provision that prohibits an employee or prospective employee from working in the same or a similar profession or in a specified geographic area for a certain period of time following termination of employment.
17 18 19	2. Prohibited for certain workers. An employer may not require or permit an employee earning wages at or below 300% of the federal poverty level to enter into a noncompete agreement with the employer.
20 21 22	3. <b>Disclosure; notice.</b> An employer shall disclose in any advertisement for a position of employment with the employer that will require the acceptance of a noncompete agreement a statement that a noncompete agreement will be required.
23 24 25 26 27 28	An employer shall notify an employee or prospective employee of a noncompete agreement requirement and provide a copy of the noncompete agreement not less than 3 business days before the employer requires the agreement to be signed to allow time for the employee or prospective employee to review the agreement and negotiate the terms of the agreement or employment with the employer if the employee or prospective employee wishes to do so.
29 30 31 32 33 34	4. Effective date of a noncompete agreement. Except for a noncompete agreement between an employer and an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, the terms of a noncompete agreement do not take effect until after one year of the employee's employment with the employer or a period of 6 months from the date the agreement was signed, whichever is later.
35 36 37	5. Penalty; enforcement. A person that violates subsection 2 or 3 commits a civil violation for which a fine of not less than \$5,000 may be adjudged. The Department of Labor shall enforce this section.

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

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6. Application. This subchapter applies to all noncompete agreements entered into 1 or renewed after the effective date of this subchapter. 2 3 §880-A. Restrictive employment agreements 1. **Definition.** For purposes of this section, "restrictive employment agreement" 4 5 means an agreement that: A. Is between 2 or more employers, including through a franchise agreement or a 6 contractor and subcontractor agreement; and 7 8 B. Prohibits or restricts one employer from soliciting or hiring another employer's employees or former employees. 9 10 2. Restrictive employment agreements prohibited. An employer may not: A. Enter into a restrictive employment agreement; or 11 B. Enforce or threaten to enforce a restrictive employment agreement. 12 13 3. Penalty; enforcement. A person that violates subsection 2 commits a civil violation for which a fine of not less than \$5,000 may be adjudged. The Department of 14 Labor shall enforce this section. 15 16 Sec. 2. Appropriations and allocations. The following appropriations and allocations are made. 17 18 LABOR, DEPARTMENT OF 19 **Regulation and Enforcement 0159** 20 Initiative: Provides ongoing funds for one half-time Labor and Safety Inspector position 21 and related All Other costs associated with enforcing the laws related to noncompete agreements and restrictive employment agreements. 22 23 GENERAL FUND 2019-20 24 2020-21 POSITIONS - LEGISLATIVE COUNT 0.500 0.500 25 Personal Services \$25,869 \$34,492 26 All Other \$6,732 \$7,482 27 28 \$41,974

30 **SUMMARY** 

GENERAL FUND TOTAL

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This bill prohibits an employer from requiring or entering into a so-called noncompete agreement with an employee earning wages that are at or below 300% of the federal poverty level. A noncompete agreement is defined as a contract or contract provision that prohibits an employee or prospective employee from working in the same or a similar profession or in a specified geographic area for a certain period of time following termination of employment. If an employer requires a noncompete agreement

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for a position of employment, the employer must disclose that requirement in any advertisement for that position, and an employer must provide an employee or prospective employee with a copy of a noncompete agreement at least 3 business days before requiring that employee or prospective employee to sign the agreement. An employer that violates this law commits a civil violation for which a fine of not less than \$5,000 may be adjudged. The Department of Labor is responsible for enforcement of the law. The terms of a noncompete agreement, except for a noncompete agreement with a physician, are not in effect until after an employee has been employed with the employer for at least one year or a period of 6 months from the date the agreement was signed, whichever is later.

The bill also prohibits a restrictive employment agreement between 2 or more employers that prohibits or restricts one employer from soliciting or hiring another employer's employees or former employees.