1	L.D. 1529
2	Date: (Filing No. H- )
3	LABOR AND HOUSING
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5	STATE OF MAINE
6	HOUSE OF REPRESENTATIVES
7	129TH LEGISLATURE
8	FIRST REGULAR SESSION
9 10	COMMITTEE AMENDMENT "" to H.P. 1112, L.D. 1529, Bill, "An Act Concerning Nondisclosure Agreements in Employment"
11 12	Amend the bill by striking out everything after the enacting clause and inserting the following:
13	'Sec. 1. 26 MRSA §594-A is enacted to read:
14	§594-A. Nondisclosure agreements
15 16 17 18 19 20 21 22 23 24	<ol> <li>Certain preemployment and employment agreements prohibited. An employer may not require an employee, intern, applicant for employment or applicant for internship to enter into a contract with the employer that contains a nondisclosure agreement, nondisparagement agreement, waiver or other provision that prevents the employee, intern or applicant from disclosing or discussing discrimination, including harassment, occurring in the workplace or at work-related events coordinated by or through the employer.</li> <li>Certain settlement, separation and severance agreements prohibited. An employer may not require an employee, intern, applicant for employment or applicant for internship to enter into a settlement, separation or severance agreement that includes a</li> </ol>
25 26 27	provision that prevents the disclosure of factual information relating to a claim of discrimination, including harassment, unless the employee, intern or applicant requests such a provision.
28 29	A. A nondisclosure provision in a settlement, separation or severance agreement may not explicitly or implicitly:
30 31 32 33	(1) Limit an individual's ability to provide testimony or evidence or make reports to any federal or state agency that enforces employment or discrimination laws, including, but not limited to, the Maine Human Rights Commission and the Department of Labor; or
34 35	(2) Prevent an individual from providing testimony or evidence in a federal or state court proceeding.

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1 2 3	B. An employer shall include in a settlement, separation or severance agreement containing a nondisclosure provision additional language that clearly states the individual retains the right:
4 5 6 7	(1) To provide testimony or evidence, or make reports to any federal or state agency that enforces employment or discrimination laws, including, but not limited to, the Maine Human Rights Commission and the Department of Labor; and
8	(2) To provide testimony or evidence in a federal or state court proceeding.
9 10 11 12	C. An employer shall give the individual 21 days to consider a settlement, separation or severance agreement containing a nondisclosure provision and at least 7 days following the execution of the agreement to revoke the agreement. The agreement is not effective or enforceable until the revocation period has expired.
13 14 15 16 17 18	D. An employer shall retain a copy of any settlement, separation or severance agreement that prevents the disclosure of factual information relating to a claim of discrimination, including harassment, in the individual's personnel file for 6 years following the execution of the agreement or the end of employment, whichever is later. Records required to be kept by this paragraph must be accessible to any representative of the Department of Labor at any reasonable hour.
19	3. Retaliation and interference prohibited. An employer may not:
20 21 22	A. Refuse to hire, discharge, threaten or otherwise discriminate against any individual based solely on that individual's objection to any act or practice by that employer in violation of this section; or
23 24	B. Coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this section.
25	4. Enforcement. The Department of Labor shall enforce this section.
26	5. Penalties. An employer that violates this section:
27 28	A. May be assessed a fine of up to \$1,000 for each violation of this section, which must be paid to the Treasurer of State; and
29 30 31	B. Shall pay liquidated damages to the individual in an amount equal to 3 times the amount of the total assessed fines, except that for an employer's discharge of or refusal to hire an individual in violation of subsection 3, the individual may elect:
32	(1) To receive liquidated damages pursuant to this paragraph; or
33	(2) Employment or reinstatement with back wages.'
34	SUMMARY
35 36 37 38	This amendment replaces the bill. It prohibits an employer from requiring an employee, intern, applicant for employment or applicant for internship to enter into a contract with the employer that contains a nondisclosure agreement, nondisparagement agreement, waiver or other provision that prevents the employee, intern or applicant from

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disclosing or discussing discrimination, including harassment, occurring in the workplace
 or at work-related events coordinated by or through the employer.

It also prevents an employer from requiring an employee, intern, applicant for 3 employment or applicant for internship to enter into a settlement, separation or severance 4 agreement that includes a provision that prevents the disclosure of factual information 5 relating to a claim of discrimination, including harassment, unless the employee, intern or 6 applicant requests such a provision. Agreements may not explicitly or implicitly limit an 7 individual's ability to provide testimony or evidence or make reports to any federal or 8 state agency that enforces employment or discrimination laws, including, but not limited 9 to, the Maine Human Rights Commission and the Department of Labor, and any 10 agreement must make it clear that an individual retains the right to provide testimony or 11 12 evidence or make reports to any federal or state agency that enforces employment or discrimination laws, including, but not limited to, the Maine Human Rights Commission 13 and the Department of Labor. 14

15 It specifies that an individual must be given 21 days to consider any agreement 16 containing nondisclosure provisions and be provided at least 7 days following the 17 execution of the agreement to revoke the agreement. The bill states that an agreement is 18 not effective or enforceable until the revocation period has expired.

19 It requires that an employer retain a copy of any settlement, separation or severance 20 agreement that prevents the disclosure of factual information relating to a claim of 21 discrimination, including harassment, in the individual's personnel file for 6 years.

It prohibits an employer from retaliating against an individual who opposes any act or practice that is unlawful under these provisions or interfering with an individual in the exercise or enjoyment of the rights granted or protected by these provisions. It provides the Department of Labor with the duty to enforce these provisions.

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