

MAINE STATE LEGISLATURE

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L.D. 736

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(Filing No. H- 274)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
111TH LEGISLATURE
FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 592,
L.D. 736, Bill, "AN ACT to Protect Employees from
Reprisal who Report or Refuse to Commit Illegal
Acts."

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Amend the bill in that part designated "§822." in
subsection 1, in the 4th line (page 2, line 8 in
L.D.) by inserting after the underlined word
"implied" the following: ', but does not include an
independent contractor'

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Further amend the bill in that part designated
"§822." in subsection 1, in the 5th and 6th lines
(page 2, lines 9 and 10 in L.D.) by striking out the
underlined words and punctuation "except unclas-
sified employees of State Government"

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Further amend the bill in that part designated
"§823." by striking out all of the first paragraph
(page 3, lines 7 to 20 in L.D.) and inserting in its
place the following:

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'An employer shall not discharge, threaten or
otherwise discriminate against an employee regarding
the employee's compensation, terms, conditions, loca-
tion or privileges of employment because the
employee, acting in good faith, or a person acting on
behalf of the employee, reports verbally or in writ-
ing, what the employee has reasonable cause to
believe to be a violation of a law or rule promul-
gated pursuant to the laws of this State, a political
subdivision of this State or the United States to his
employer or a public body, or because an employee is
requested by a public body to participate in an
investigation, hearing or inquiry held by that public
body, or a court action. This paragraph does not

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1 apply to an employee who has reported or caused to be
2 reported what he has reasonable cause to believe to
3 be a violation to a public body, unless the employee
4 has first brought the alleged violation to the atten-
5 tion of a person having supervisory authority with
6 the employer, and has allowed the employer a reason-
7 able opportunity to correct that violation. The re-
8 quirements of this paragraph do not apply when the
9 employee has specific reason to believe that reports
10 of violation to his employer will not result in
11 promptly remedying the violation.

12 An employee mandated to report suspected abuse,
13 neglect or exploitation under Title 22, section 3477
14 or 4011 shall follow the requirements set forth in
15 those sections for those circumstances. An employer
16 shall not discharge, threaten or otherwise discrimi-
17 nate against an employee regarding the employee's
18 compensation, terms, conditions, location or privi-
19 leges of employment because the employee followed the
20 requirements of those sections.'

21 Further amend the bill in that part designated
22 "§823." in the 2nd paragraph, in line 5 (page 3, line
23 25 in L.D.) by striking out the underlined word
24 "that" and inserting in its place the following:
25 'which in fact'

26 Further amend the bill in that part designated
27 "§823." in the 2nd paragraph, in the last line (page
28 3, line 28 in L.D.) by inserting after the underlined
29 word "States" the following: ', when that violation
30 would put at risk the health or safety of that
31 employee or any other individual'

32 Further amend the bill by striking out all of
33 that part designated "§824" (page 3, lines 29 to 42
34 and page 4, lines 1 to 7 in L.D.) and inserting in
35 its place the following:

36 '§824. Civil actions for injunctive relief or other
37 remedies

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1 An employee who alleges a violation of his rights
2 under section 823 and who has first made a reasonable
3 effort to maintain or restore his rights through any
4 grievance procedure or similar process which may be
5 available at his place of employment may bring a
6 civil action for appropriate injunctive relief and
7 other remedies provided in section 825 within 90 days
8 after the occurrence of that alleged violation or, if
9 a grievance procedure or similar process is used,
10 within 60 days after the grievance procedure or simi-
11 lar process terminates without resolution. The ac-
12 tion may be brought in the Superior Court for the
13 county where the alleged violation occurred, the
14 county where the complainant resides or the county
15 where the person against whom the civil complaint is
16 filed resides or has his principal place of business.

17 An employee shall establish each and every ele-
18 ment of his case, as set out in section 823, by a
19 preponderance of the evidence.'

20 Further amend the bill in that part designated
21 "§825." in the 6th and 7th lines (page 4, lines 13
22 and 14 in L.D.) by striking out the underlined words
23 and punctuation ", actual damages'

24 Further amend the bill in that part designated
25 "§825." in the 8th line (page 4, line 15 in L.D.) by
26 striking out the underlined word "complainant" and
27 inserting in its place the following: "prevailing
28 party'

29 Further amend the bill in that part designated
30 "§826." by striking out all of the first paragraph
31 (page 4, lines 20 to 24 in L.D.) and inserting in its
32 place the following:

33 'A person who violates section 829 is liable for
34 a civil fine of \$10 for each day of willful violation
35 which shall not be suspended. Any civil fine imposed
36 under this section shall be submitted to the Treasur-

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1 er of State for deposit to the General Fund.'

2 Further amend the bill in that part designated
3 "§829." by striking out all of the first paragraph
4 (page 5, lines 1 to 4 in L.D.) and inserting in its
5 place the following:

6 'An employer shall post such notices as are pre-
7 scribed by the Department of Labor as a means of
8 keeping his employees informed of their protections
9 and obligations under this subchapter.'

10 Further amend the bill by inserting at the end
11 before the statement of fact the following:

12 '§830. Jury trial; common-law rights

13 Any action brought under this subchapter may be
14 heard by a jury. Nothing in this subchapter may be
15 construed to derogate any common-law rights of an
16 employee.'

17 STATEMENT OF FACT

18 This amendment changes the definition of
19 "employee" to exclude independent contractors and to
20 include unclassified state employees.

21 The amendment adds a requirement that an employee
22 reporting a suspected violation of law by his
23 employer must act in good faith. It also provides
24 that an employee is protected if he reports what he
25 has reasonable cause to believe is a violation,
26 rather than what is in fact a violation.

27 The amendment provides that an employee may
28 report a suspected violation to a public body or to
29 his employer. However, the employee, before report-
30 ing to a public body, generally must report to his
31 employer and give the employer a reasonable oppor-
32 tunity to correct the violation. The employee need

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1 not report first to the employer when the employee
2 has a specific reason to believe that such a report
3 would not result in a prompt remedy of the violation.

4 The amendment provides that employees mandated to
5 report suspected child abuse or suspected abuse of
6 incapacitated adults under Title 22 should follow the
7 requirements and standards of those mandatory report-
8 ing laws, but still receive the protection of the
9 Whistleblowers' Protection Act. Employees in these
10 circumstances must report suspected abuse to their
11 employers but must also see that a report is made
12 immediately to the Department of Human Services.
13 They may not, therefore, first give the employer a
14 reasonable opportunity to correct the abuse before
15 reporting to a public body.

16 The amendment provides that an employee is pro-
17 tected for refusal to carry out a directive only if
18 it in fact violates a law and the violation risks the
19 health or safety of the employee or another.

20 The amendment requires an employee to first make
21 a reasonable effort to maintain or restore his rights
22 through a grievance procedure or available similar
23 process before resorting to court. The statute of
24 limitations is tolled while a grievance procedure is
25 ongoing.

26 The amendment provides that an employee may not
27 recover actual damages in an action under this Act.

28 The amendment requires the employee to establish
29 his case by a preponderance of the evidence, rather
30 than by clear and convincing evidence.

31 The amendment deletes any civil fines other than
32 for willful failure to post required notices of the
33 Whistleblowers' Protection Act's protections. The
34 substance of these notices is to be prescribed by the
35 Department of Labor.

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1 Finally, the amendment provides for the possibil-
2 ity of a jury trial under that Act, and that the Act
3 is not to be construed to derogate the common-law
4 rights of an employee.

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