

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND SPECIAL SESSION-2004

Legislative Document

No. 1906

H.P. 1410

House of Representatives, March 4, 2004

An Act To Amend the Protection from Harassment Laws

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLS of Farmington.
Cosponsored by Senator PENDLETON of Cumberland and
Representatives: NORBERT of Portland, SHERMAN of Hodgdon.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, the procedures for protection from harassment
6 hearings need to be altered to protect both the plaintiff and
defendant; and

8 Whereas, in the judgment of the Legislature, these facts
10 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
12 necessary for the preservation of the public peace, health and
safety; now, therefore,

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

16 **Sec. 1. 5 MRSA §4652**, as amended by PL 1995, c. 650, §2, is
18 further amended to read:

20 **§4652. Filing of complaint; jurisdiction**

22 Proceedings under this chapter must be filed, heard and
determined in the District Court of the division in which either
24 the plaintiff or the defendant resides. If the plaintiff has
left the plaintiff's residence to avoid harassment, the plaintiff
26 may bring an action in the division of the plaintiff's previous
residence or new residence.

28 The District Court has jurisdiction over protection from
harassment ~~petitions~~ complaints. If a District Court judge is
30 not available in the division in which a complaint requesting a
temporary order is to be filed, the complaint may be presented to
32 any other District Court judge or to any Superior Court justice
who has the same authority as a District Court judge to grant or
34 deny the temporary order.

36 A juvenile may be a party to an action under this chapter
38 only when the juvenile has a representative through whom the
action is brought or defended pursuant to the Maine Rules of
40 Civil Procedure, Rule 17(b). The Department of Human Services
may act as a representative of the juvenile. If any notice or
42 service is required by this chapter, the notice or service must
be provided to both the juvenile and the juvenile's
44 representative.

46 **Sec. 2. 5 MRSA §4653, sub-§1**, as amended by PL 1995, c. 560,
§3, is further amended to read:

48 **1. Filing; police report.** Any A person who has been a
50 victim of harassment, including a business, may seek relief by

2 filing a sworn petition complaint in an appropriate court
alleging that harassment. Prior to filing the complaint, the
4 person must file a report with the law enforcement agency having
jurisdiction over that person. The person shall present evidence
6 of that report when filing the complaint.

8 **Sec. 3. 5 MRSA §4653, sub-§2**, as enacted by PL 1987, c. 515,
§1, is amended to read:

10 **2. Assistance.** The court shall provide separate forms with
a summons and clerical assistance to assist either party to
12 proceed under this chapter in completing and filing a petition
complaint or other necessary documents. This assistance shall
14 may not include legal advice or assistance in drafting legal
documents.

16 **Sec. 4. 5 MRSA §4654, sub-§1**, as enacted by PL 1987, c. 515,
18 §1, is amended to read:

20 **1. Full hearing; alternative dispute resolution.** ~~Within 21~~
~~days of the filing of a petition, a~~ A hearing shall must be held
22 at which the plaintiff shall prove the allegation of harassment
by a preponderance of the evidence.

24 The court may conduct a case management conference to identify
26 witnesses and exhibits, determine the settlement status and enter
a pretrial order governing the conduct and scheduling of the
28 trial. Any temporary order remains in effect pending the final
hearing. The court may require the parties to engage in
30 alternative dispute resolution to attempt to resolve the dispute
prior to the scheduled trial date.

32 **Sec. 5. 5 MRSA §4654, sub-§2**, as amended by PL 1995, c. 650,
34 §4, is further amended to read:

36 **2. Temporary orders.** The court may enter any temporary
orders, authorized under subsection 4, without written or oral
38 notice to the defendant or the defendant's attorney if:

40 A. It appears clearly from a verified petition complaint or
an affidavit accompanying the petition complaint that:

42 (1) Before the defendant or the defendant's attorney
44 can be heard, the plaintiff or the plaintiff's
employees may be in immediate and present danger of
46 physical abuse from the defendant or in immediate and
present danger of suffering extreme emotional distress
48 as a result of the defendant's conduct, or the
plaintiff's business property is in immediate and

2 present danger of suffering substantial damage as a
result of the defendant's actions;

4 (2) Either the plaintiff has or has not contacted any
6 law enforcement officials concerning the alleged
harassment; and

8 (3) The plaintiff has provided sufficient information
10 to substantiate the alleged harassment;

12 B. When reasonable, the plaintiff or the court has made
reasonable efforts to give written or oral notice to the
14 defendant or the defendant's attorney that the plaintiff is
seeking a temporary order; and

16 C. The court provides written reasons for entering a
18 temporary order.

20 **Sec. 6. 5 MRSA §4654, sub-§3**, as amended by PL 1991, c. 760,
§3, is further amended to read:

22 **3. Emergency relief.** Emergency relief ~~shall--be~~ is
24 available as follows.

26 A. When there is no judge available in the District Court
having venue or the District Court courthouse is closed and
no other provision can be made for protection of a victim of
28 harassment, a petition complaint may be presented to any
judge of the District Court or Justice of the Superior
30 Court. Upon a meeting of the requirements of subsection 2,
the court may enter any temporary orders, authorized under
32 subsection 4, as the court considers necessary to protect
the plaintiff from harassment.

34 B. If a petition complaint is presented under this
36 subsection, the petition complaint and any order issued
pursuant to the petition complaint must be immediately
38 certified to the clerk of the District Court having venue
for filing. This certification to the court has the effect
40 of commencing proceedings and invoking the other provisions
of this chapter.

42 C. An order ~~shall--remain~~ remains in effect pending a
44 hearing pursuant to subsection 1.

46 **Sec. 7. 5 MRSA §4654, sub-§5**, as amended by PL 2001, c. 134,
48 §2, is further amended to read:

50 **5. Service of order.** If the court issues a temporary order
or orders emergency or interim relief, the court shall order a

2 law enforcement agency or, if the defendant is present in the
3 courthouse, a court security officer qualified pursuant to Title
4 4, section 17, subsection 15 to serve the defendant personally
5 with the order, the petition complaint and the summons.

6 **Sec. 8. 5 MRSA §4655, sub-§1, ¶D,** as amended by PL 1995, c.
7 265, §9, is further amended to read:

8
9 D. Ordering payment of monetary compensation to the
10 plaintiff for losses suffered as a direct result of the
11 harassment. Compensatory losses are limited to loss of
12 earnings or support; reasonable expenses incurred for safety
13 protection; reasonable expenses incurred for personal
14 injuries or property damage; and reasonable moving
15 expenses. Upon the motion of either party, for sufficient
16 cause, the court may set a later hearing on the issue of the
17 amount of damages, if any, to be awarded. If it appears
18 from the petition complaint that an order under this
19 paragraph may be granted, the plaintiff or defendant may
20 remove the issue of monetary compensation to the Superior
21 Court where a jury trial may be had. Removal must be
22 requested by motion prior to a hearing under section 4654;

23 **Sec. 9. 5 MRSA §4655, sub-§1, ¶E,** as amended by PL 1993, c.
24 475, §2, is further amended to read:

25 E. Ordering the defendant or, if the complaint is
26 dismissed, the plaintiff to pay court costs or reasonable
27 attorney's fees; and

28
29 **Emergency clause.** In view of the emergency cited in the
30 preamble, this Act takes effect when approved.
31

32 33 34 SUMMARY

35
36 This bill renames the instrument used to obtain protection
37 from harassment a "complaint" to properly reflect the process.
38 The bill also amends the procedure for a protection from
39 harassment complaint by requiring the plaintiff to file a report
40 with the appropriate law enforcement agency and to present
41 evidence of that report when filing a complaint for protection
42 from harassment.
43

44
45 This bill also removes the requirement that the hearing on
46 the complaint for protection from harassment be held within 21
47 days of the filing of the complaint and allows the judge to
48 require the parties to engage in alternative dispute resolution.

2 Finally, this bill allows a court to require a plaintiff to
pay court costs and attorney's fees if the complaint is
dismissed. The court currently has this power regarding a
4 defendant. This change conforms to the current law under a
protection from abuse order.