

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 278

S.P. 90

In Senate, January 22, 2019

### An Act Regarding Pay Equality

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BREEN of Cumberland.

Cosponsored by Senator CHIPMAN of Cumberland, Representative MOONEN of Portland  
and

Senators: President JACKSON of Aroostook, MILLETT of Cumberland, ROSEN of Hancock,  
SANBORN, L. of Cumberland, VITELLI of Sagadahoc, WOODSOME of York,  
Representatives: BRYANT of Windham, McCREIGHT of Harpswell.

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

2 **Sec. 1. 5 MRSA §4572, sub-§1, ¶A**, as amended by PL 2005, c. 10, §11, is  
3 further amended to read:

4 A. For any employer to fail or refuse to hire or otherwise discriminate against any  
5 applicant for employment because of race or color, sex, sexual orientation, physical  
6 or mental disability, religion, age, ancestry or national origin, because of the  
7 applicant's previous assertion of a claim or right under former Title 39 or Title 39-A  
8 or because of previous actions taken by the applicant that are protected under Title  
9 26, chapter 7, subchapter 5-B; or, because of those reasons, to discharge an employee  
10 or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms,  
11 conditions or privileges of employment or any other matter directly or indirectly  
12 related to employment; or, in recruiting of individuals for employment or in hiring  
13 them, to utilize any employment agency that the employer knows or has reasonable  
14 cause to know discriminates against individuals because of their race or color, sex,  
15 sexual orientation, physical or mental disability, religion, age, ancestry or national  
16 origin, because of their previous assertion of a claim or right under former Title 39 or  
17 Title 39-A or because of previous actions that are protected under Title 26, chapter 7,  
18 subchapter 5-B;

19 (1) This paragraph does not apply to discrimination governed by Title 39-A,  
20 section 353; and

21 (2) Evidence of discrimination with respect to compensation includes, but is not  
22 limited to:

23 (a) An employer, either directly or indirectly through an employment agency  
24 working on behalf of the employer, inquiring about or seeking the wage  
25 history of a prospective employee from the prospective employee or a current  
26 or former employer or requiring that a prospective employee's prior wage  
27 history meet certain criteria unless an offer of employment that includes all  
28 terms of compensation has been negotiated and made to the prospective  
29 employee, after which the employer or employment agency may inquire  
30 about or confirm the prospective employee's wage history. If a prospective  
31 employee has voluntarily disclosed wage history information, without  
32 prompting by the employer or employment agency, the employer or  
33 employment agency may seek to confirm or permit a prospective employee  
34 to confirm such information prior to an offer of employment; or

35 (b) An employer prohibiting an employee from disclosing the employee's  
36 own wages or from inquiring about or disclosing another employee's wages;

37 **Sec. 2. 26 MRSA §628, first ¶**, as amended by PL 2009, c. 29, §1, is further  
38 amended to read:

39 An employer may not discriminate between employees in the same establishment on  
40 the basis of sex by paying wages to any employee in any occupation in this State at a rate  
41 less than the rate at which the employer pays any employee of the opposite sex for  
42 comparable work on jobs that have comparable requirements relating to skill, effort and

1 responsibility. Differentials that are paid pursuant to established seniority systems or  
2 merit increase systems or difference in the shift or time of the day worked that do not  
3 discriminate on the basis of sex are not within this prohibition. An employer may not  
4 discharge or discriminate against any employee by reason of any action taken by such  
5 employee to invoke or assist in any manner the enforcement of this section. An employer  
6 may not prohibit an employee from disclosing the employee's own wages or from  
7 inquiring about or disclosing another employee's wages ~~if the purpose of the disclosure or~~  
8 ~~inquiry is to enforce the rights granted by this section.~~ Nothing in this section creates an  
9 obligation to disclose wages.

10

## SUMMARY

11 This bill amends the Maine Human Rights Act to provide that evidence of  
12 discrimination with respect to compensation includes an employer seeking information  
13 about a prospective employee's prior wage history before an offer of employment,  
14 including all compensation, to the prospective employee has been made. It provides that  
15 this discrimination is also evidenced by an employer requiring that a prospective  
16 employee's prior compensation history meet certain criteria. The bill broadens a  
17 provision in the current equal pay law to prohibit an employer from preventing  
18 employees from discussing or disclosing other employees' wages and makes the practice  
19 a violation of the Maine Human Rights Act as well.