

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1280

S. P. 367

In Senate, March 1, 1969

Referred to Committee on State Government. Sent down for concurrence and 1,000 ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Mr. Mills of Franklin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Creating a Human Rights Act for Maine.

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

R. S., T. 5, part 9, additional. Title 5 of the Revised Statutes is amended by adding a new part 9, to read as follows:

PART 9

HUMAN RIGHTS

CHAPTER 313

HUMAN RIGHTS ACT

SUBCHAPTER I

GENERAL PROVISIONS

§ 4551. Title

This Act may be known and cited as the Maine Human Rights Act.

§ 4552. Purpose

The people of the State of Maine recognize that the inherent dignity and the equal inalienable rights of all members of the human family are the foundation of freedom, justice and peace in our State. Disregard and contempt for human rights in our time resulted in barbarous and violent acts which have outraged the conscience of mankind, and the advent of a world in which human rights and dignity are protected is a major aspiration of our people.

The practice or policy of discrimination against individuals or groups, by reason of their race, color, religion, ancestry or national origin, is contrary

to the history and traditions of the State of Maine. When it occurs, such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the State and undermines the foundation upon which a free democratic state rests. The denial of equal opportunity for housing because of such discrimination compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, tending to result in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the State. The denial of equal access to public accommodations, by reason of such discrimination, is contrary to the tradition of public accommodations, implies the superiority of some groups and the inferiority of others, thus setting group against group and fomenting domestic unrest and strife, thereby threatening the peace, health and welfare of the State. The denial of equal opportunities for employment, because of such discrimination and because of age discrimination, and the consequent failure to use the productive capacities of individuals to the fullest extent, deprives the victims of such discrimination of the earnings necessary to maintain a decent standard of living, necessitates their resort to public relief, and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare.

The experience of our sister states establishes that once patterns of discrimination in employment, housing or public accommodations become established in a community, they are difficult to reverse and break down. Legislation is required to prevent the establishment of such patterns of discrimination and to eliminate such discrimination where it now exists.

It is also apparent that there are numerous practices which infringe on the basic human right to a life with dignity, but which do not take the form of overt acts of discrimination. Such practices similarly threaten the peace and welfare of the State. It is essential that all people in our State know that human rights are protected by the rule of law, so that no persons or groups may feel called upon to resort to violence for the protection of such rights.

§ 4553. Policy

To protect the public health, safety and welfare, it is therefore declared to be the policy of this State to keep continually in review all practices infringing on the basic human rights to a life with dignity, and the causes of such practices so that corrective measures may, where possible, be promptly recommended and implemented and to prevent discrimination in employment, housing or access to public accommodations, on account of race, color, religion, ancestry or national origin, and in employment, discrimination on account of age.

§ 4554. Definitions

As used in this Act, unless the context otherwise indicates, the following words shall have the following meanings:

I. Commission. "Commission" means the Maine Human Rights Commission established by this Act.

2. Discriminate. "Discriminate" includes, without limitation, segregate or separate.

3. Division. "Division" means the commission's Division Against Discrimination established by this Act.

4. Employee. "Employee" does not include any individual employed by his parents, spouse or child.

5. Employer. "Employer" includes any person in this State employing any number of employees, whatever the place of employment of such employees, and any person outside this State employing any number of employees whose usual place of employment is in this State, and includes any person acting in the interest of an employer directly or indirectly, does not include a religious, fraternal or sectarian corporation or association, not organized for private profit and is in fact not conducted for private profit, with its respect to employment of members of the same religion, sect or fraternity membership; but includes labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees;

6. Employment agency. "Employment agency" includes any person undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees; it includes, without limitation, placement services, training schools and centers, and labor organizations, to the extent that they act as employee referral sources; and it includes any agent of such person.

7. Housing accommodation. "Housing accommodation" includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, which is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes.

8. Person. "Person" includes one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, and includes the State and all agencies thereof.

9. Place of public accommodation. "Place of public accommodation" means any establishment which in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public; and it includes, but is not limited to: Inns, taverns, road houses, hotels, whether conducted for the entertainment or accommodation of transient guests or of those seeking health, recreation or rest, restaurants, eating houses or any place where food is sold for consumption on the premises; buffets, saloons, bar rooms or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectioneries, soda fountains, and all stores where beverages of any kind are retailed for consumption on the premises; retail stores and establishments; dispensaries, clinics, hospitals, rest rooms, bath houses, barber shops, beauty parlors, theatres, motion picture houses, music halls, airdromes, roof gardens, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, golf courses, gymnasiums, shoot-

ing galleries, billiard and pool parlors, swimming pools, seashore accommodations and boardwalks, public libraries; garages and gasoline stations; all public conveyances operated on land, water or in the air as well as the stations and terminals thereof; public halls and public elevators of buildings occupied by 2 or more tenants or by the owner and one or more tenants; and public housing projects.

10. Real estate broker and salesman. "Real estate broker" and "real estate salesman" have the same definitions as are given respectively in Title 32, section 4001, subsections 2 and 3; but include all persons meeting those definitions, whether or not they are licensed from the operation of the last paragraph of Title 32, section 4001.

11. Unlawful discrimination. "Unlawful discrimination" includes:

A. Unlawful employment discrimination as defined and limited by subchapter III;

B. Unlawful housing discrimination as defined and limited by subchapter IV;

C. Unlawful public accommodations discrimination as defined by subchapter V.

D. Aiding, abetting, inciting, compelling or coercing another to do any of such types of unlawful discrimination; obstructing or preventing any person from complying with this Act or any order issued hereunder; attempting to do any act of unlawful discrimination; and punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act or for complaining of a violation of this Act or for testifying in any proceeding brought hereunder; and

E. Any of the types of unlawful discrimination enumerated in paragraphs A to D, if committed by an agent or employee in the apparent or colorable scope of his duties, shall also constitute unlawful discrimination by his principal or employer, unless such principal or employer affirmatively proves that he did not know of and could not reasonably be expected to know of such conduct by the agent or employee, and further proves that before such discrimination occurred he in good faith issued instructions against such conduct, and that since learning of it he has taken or will take appropriate disciplinary measures for violation of such instructions.

SUBCHAPTER II

COMMISSION AND DIVISION

§ 4561. Members

There is established an independent commission to be known as the "Maine Human Rights Commission." It shall consist of a total of 7 members appointed by the Governor, including the 3 members of the division and 4 additional members. The Governor shall designate one member to be its Chairman.

There is further established a Division Against Discrimination of the commission. The division shall consist of 3 members, appointed by the Governor. The members of the division shall be ex-officio members of the commission.

In appointing members of the commission and of the division, the Governor shall take into account the desirability of securing broad representation from the geographic areas and ethnic and economic groups which comprise the population of the State.

§ 4562. Terms of office

The members of the division shall be appointed for terms of 6 years each, except that of those first appointed to the division, the Governor shall designate one commissioner whose term shall be only 2 years and one whose term shall be only 4 years;

The other members of the commission shall be appointed for terms of 4 years each, except that of those first appointed, the Governor shall designate one whose term shall be only one year, one whose term shall be only 2 years, and one whose term shall be only 3 years.

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term shall be appointed only for the unexpired term of the member whom he shall succeed.

§ 4563. Quorum

Except as otherwise provided in this Act, 2 members of the division shall constitute a quorum of the division, and 3 members of the full commission shall constitute a quorum of the full commission. A vacancy in either body shall not impair the power of the remaining members to exercise all the powers of the division or of the commission, as the case may be.

§ 4564. Compensation; reappointment

Each member of the commission shall receive compensation of \$25 for each day or part thereof necessarily spent in the discharge of his official duties, with a maximum of \$1,000 a year, and shall be entitled to his expenses actually and necessarily incurred by him in the performance of his duties. All members of the commission shall be eligible for reappointment.

§ 4565. Removal from office

Any member of the commission may be removed by the Governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard publicly thereon, with right of cross-examination, before the Executive Council. Such removal shall be effective only if $\frac{2}{3}$ of the Executive Council concurs therein after such hearing.

§ 4566. Powers and duties of the full commission:

The commission has the duty of investigating all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity. Without limit-

ing the generality of the foregoing, it has the duty of investigating all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons. Based on its investigations, it has the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State.

To carry out these duties, the commission shall have the power:

1. Office. To establish and maintain a principal office in the City of Bangor or Portland, and such other offices within the State as it may deem necessary;

2. Meetings. To meet and function at any place within the State;

3. Executive secretary. To appoint a full-time executive secretary to the commission and determine his remuneration; and to appoint such other personnel including, but not limited to investigators, attorneys and secretaries, as it shall deem necessary to effectuate the purposes of this Act, and to determine their compensation;

4. Hearings. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and, in connection therewith, to require the production for examination of any books and papers relating to any matter under investigation or in question before the commission; there shall be no executive privilege in such investigations and hearings. Such hearings and testimony may relate to general investigations concerning the effectiveness of this Act and the existence of practices of discrimination not prohibited by it, as well as to investigations of other alleged infringements upon human rights and personal dignity. The commission may make rules as to the issuance of subpoenas, the administration of oaths, and the holding of preliminary and general investigations by panels of commissioners and by the executive secretary. Contumacy or refusal to obey a subpoena or subpoena duces tecum issued pursuant to this section shall constitute a contempt punishable, upon the application of the commission, by the Superior Court in the county in which the hearing is held or in which the witness resides or transacts business;

5. Appearance. To appear in court and before other administrative bodies by its own attorneys;

6. Services. To utilize voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

7. Advisory groups. To create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this Act. The commission may itself, or it may empower these agencies and councils to study the problems of discrimination in all or specific fields of human relationships when based on race or color, religion or country of ancestral origin, and foster, through community effort or otherwise, good will among the groups and elements of the population of the State. Such

agencies and councils may make recommendations to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

8. Publications. To issue such publications and such results of investigations and research as in its judgment will tend to promote good will, and minimize or eliminate discrimination based on race or color, religion or country of ancestral origin;

9. Reports. From time to time, but not less than once a year, to report to the Legislature and the Governor, describing the investigations, proceedings and hearings the commission has conducted and their outcome, and the other work performed by it, and make recommendations for such further legislation or executive action concerning abuses and discrimination based on race or color, religion or country of ancestral origin, or other infringements on human rights or personal dignity, as may be desirable;

10. Educational program. In order to eliminate prejudice among the various ethnic groups in this State and to further good will among such groups and to advance the realization of human rights and personal dignity, the commission and the Department of Education are jointly directed to prepare a comprehensive educational program designed for the students of the public schools of this State and all other residents thereof, calculated to emphasize the contributions of minority groups to American history and development, and to explain the nature and origin of prejudice and its incompatibility with American principles of equality and fair play.

11. Contributions. The commission is authorized to accept contributions from any person to assist in the effectuation of subsection 10 and may seek and enlist the cooperation of private charitable, religious, civic and benevolent organizations for the purposes of subsection 10.

§ 4567. Powers and duties of the division against discrimination

The division has the duty of enforcing subchapters III, IV, and V by investigating alleged or potential violations thereof, and by taking such action with reference thereto as is provided in this Act; and it shall have the duty of enforcing any anti-discrimination or analogous laws which may hereafter be enacted, and which designate it as the enforcing agency. To carry out these duties, the division shall have the power:

1. Office. To maintain its principal office at the principal office of the commission, and to establish and maintain other offices within the State, as it may deem necessary, whether or not they coincide with offices of the commission;

2. Meetings. To meet and function at any place within the State;

3. Chief investigator. To appoint a full-time chief investigator and determine his remuneration. The chief investigator shall be selected on the basis of being exceptionally well qualified by education, training and experience

impartially to enforce this Act so as to reduce and eliminate unlawful discrimination. The division is empowered to appoint such other personnel including, but not limited to attorneys, investigators and secretaries, as it shall deem necessary to effectuate the purposes of this Act, and to determine their compensation;

4. Rules and regulations. To adopt, promulgate, amend and rescind rules and regulations to effectuate this Act, and the policies and practices of the division in connection herewith;

5. Policies. To formulate policies to effectuate the purposes of this Act;

6. Charges. To receive, investigate, and pass upon charges of unlawful discrimination, as defined in this Act;

7. Hearings. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and, in connection therewith, to require the production for examination of any books and papers relating to any matter under investigation or in question before the division; there shall be no executive privilege. Such hearings and testimony may relate to general investigations concerning the effectiveness of this Act as well as to investigations of alleged or potential violations of this Act. The division may make rules as to the issuance of subpoenas, the administration of oaths, and the holding of preliminary and general investigations by individual commissioners and by the chief investigator. Contumacy or refusal to obey a subpoena or subpoena duces tecum issued pursuant to this section shall constitute a contempt punishable, upon the application of the division, by the Superior Court in the county in which the hearing is held or in which the witness resides or transacts business;

8. Appearance. To appear in court and before other administrative bodies by its own attorneys;

9. Notices. To require the posting of notices or the adoption of forms by businesses subject to this Act, to effectuate the purposes of this Act.

10. Services of others. To utilize voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed.

11. Reports. From time to time, but not less than once a year, to report to the Legislature and the Governor, describing the investigations, proceedings and hearings the division has conducted and their outcome, the decisions it has rendered, and the other work performed by it, and make recommendations for such further legislation, concerning abuses and discrimination based on race or color, religion, or country of ancestral origin, as may be desirable.

12. Opinions. To issue advisory orders and opinions, with the same effect as other orders;

13. Other acts. To do such other things as are set out in the other sub-chapters, and everything reasonably necessary to perform its duties under this Act.

§ 4568. Budgets differentiated

Funds appropriated for the commission and the division shall be differentiated, and personnel employed by the commission shall be differentiated from personnel employed by the division. It shall be permissible for personnel of each to assist in the work of the other, without a transfer of funds.

SUBCHAPTER III**FAIR EMPLOYMENT****§ 4571. Right to freedom from discrimination in employment**

The opportunity for an individual to secure employment without discrimination because of race, color, religious creed, age, ancestry or national origin is recognized as and declared to be a civil right.

§ 4572. Unlawful employment discrimination

1. Unlawful employment. It shall be unlawful employment discrimination, in violation of this Act:

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of his race or color, religion, country of ancestral origin or age, or because of any such reason, to discharge an employee or discriminate against him with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, or in the recruiting of individuals for employment or in hiring them, to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their race or color, religion, country of ancestral origin, or age;

B. For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of his race or color, religion, country of ancestral origin or age, or to comply with an employer's request for the referral of job applicants if such request indicates either directly or indirectly that such employer will not afford full and equal employment opportunities to individuals regardless of their race or color, religion, country of ancestral origin or age;

C. For any labor organization to exclude from apprenticeship or membership, or to deny full and equal membership rights, to any applicant for membership, because of his race or color, religion, country of ancestral origin or age, or because of any such reason, to deny a member full and equal membership rights, expel him from membership, penalize him or otherwise discriminate in any manner against him with respect to his hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organization or by a collective labor agreement or other contract, or to fail or refuse to classify properly or refer for employment, or otherwise to

discriminate against any member because of his race or color, religion, country of ancestral origin, or age, or to cause or attempt to cause an employer to discriminate against an individual in violation of this section;

D. Except where based on a bona fide occupational qualification certified by the division or as permitted by section 4573, for any employer or employment agency or labor organization prior to employment or admission to membership of any individual, to

(1) Elicit or attempt to elicit any information directly or indirectly pertaining to his race or color, religion, age or country of ancestral origin;

(2) Make or keep a record of his race or color, religion, age or country of ancestral origin;

(3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, religion, age, or country of ancestral origin;

(4) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, religion, country of ancestral origin or age;

(5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, religion, country of ancestral origin or age of such group;

E. For an employer or employment agency or labor organization to discriminate in any manner against any individual because he has opposed any practice which would be a violation of this Act, or because he has made a charge, testified or assisted in any manner in any investigation, proceeding, or hearing under this Act.

§ 4573. Not unlawful employment discrimination

It shall not be unlawful employment discrimination:

1. Age. To discriminate on account of age, so as to:

A. Termination. Terminate employment in compliance with the terms or conditions of any bona fide retirement or pension plan; or

B. Retirement plan. Comply, in operation, with the terms or conditions of any bona fide retirement or pension plan which have the effect of imposing a minimum service requirement; or

C. Insurance plan. Comply, in operation, with the terms or conditions of any bona fide group or employee insurance plan.

2. Preference. To prefer, in employment and promotion opportunities, individuals who are members of any racial, color, religious, nationality or age group which has heretofore had less than an equal opportunity for edu-

cation or employment. Any person intending such preference, for the good faith purpose of compensating for such group's denial of opportunities, may, but is not required to, apply to the division for an advisory order on the validity of such plan; and such order, if issued and unrevoked, shall be a defense to actions and proceedings for alleged employment discrimination against groups not so preferred. If no such order was in effect, the facts of such a plan to prefer, in good faith, a group in compensation for its prior denial of opportunities shall, if proved, be a defense in any action or proceeding for alleged employment discrimination against groups not so preferred. Nothing in this Act shall be construed as requiring such compensatory preference.

3. Records. After employment or admission to membership, to make a record of such physical features of an individual as are needed in good faith for the purpose of identifying him, provided such record is intended and used in good faith solely for such identification, and not for the purpose of discrimination in violation of this Act.

SUBCHAPTER IV

FAIR HOUSING

§ 4581. Decent housing

The opportunity for an individual to secure decent housing in accordance with his ability to pay, and without discrimination because of race, color, religious creed, ancestry or national origin is hereby recognized as and declared to be a civil right.

§ 4582. Unlawful housing discrimination

It shall be unlawful housing discrimination, in violation of this Act:

For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the race or color, religion or country of ancestral origin of any prospective, purchaser, occupant or tenant of such housing accommodation; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual such housing accommodation because of the race or color, religion or country of ancestral origin of such individual; or to issue any advertisement relating to the sale, rental or lease of such housing accommodation which indicates any preference, limitation, specification or discrimination based upon race or color, religion or country of ancestral origin; or to discriminate against any individual because of his race or color, religion, or country of ancestral origin in the price, terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith, or to evict or attempt to evict any tenant of any housing accommodation because of the race or color, religion, or country of ancestral origin of such tenant.

For any real estate broker or real estate salesman, or agent of one of them, to fail or refuse to show any applicant for a housing accommodation any

such accommodation listed with him for sale, lease or rental, because of the race or color, religion or country of ancestral origin of such applicant or of any intended occupant of such accommodation, or to misrepresent, for the purpose of discriminating on account of the race or color, religion or country of ancestral origin of such applicant or intended occupant, the availability or asking price of a housing accommodation listed with him for sale, lease or rental; or for such a reason to fail to communicate to the person having the right to sell or lease such housing accommodation any offer for the same made by any applicant thereof; or in any other manner to discriminate against any applicant for housing because of race or color, religion or country of ancestral origin of such applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the race or color, religion or country of ancestral origin of any such applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their race or color, religion or country of ancestral origin, or when he knows or has reason to know that the person having the right to sell or lease such housing accommodation has made a practice of such discrimination since the effective date of this Act.

For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of such person, to make or cause to be made any oral or written inquiry concerning the race or color, religion or country of ancestral origin of any individual seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodations; or to discriminate in the granting of such financial assistance, or in the terms, conditions, or privileges relating to the obtaining or use of any such financial assistance, against any applicant because of the race or color, religion or country of ancestral origin of such applicant or of the existing or prospective occupants or tenants.

§ 4583. Application

Nothing in this Act shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to establish standards and preferences and set terms, conditions, limitations or specifications in the selling, renting, leasing or letting thereof or in the furnishing of facilities or services in connection therewith which are not based on the race, color, religion or country of ancestral origin of any prospective purchaser, lessee, tenant or occupant thereof. Nothing in this Act contained shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations, to set standards and preferences, terms, conditions, limitations or specifications for the granting

of such loans or financial assistance which are not based on the race, color, religion or country of origin of the applicant for such loan or financial assistance or, of any existing or prospective owner, lessee, tenant or occupant of such housing accommodation.

SUBCHAPTER V PUBLIC ACCOMMODATIONS

§ 4591. Equal access to public accommodations

The opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, religious creed, ancestry or national origin is recognized as and declared to be a civil right.

§ 4592. Unlawful public accommodations

It shall be unlawful public accommodations discrimination, in violation of this Act:

For any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, to directly or indirectly refuse, withhold from or deny to any person, on account of race or color, religion or country of ancestral origin, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, or for such reason in any manner discriminate against any person in the price, terms or conditions upon which access to such accommodation, advantages, facilities and privileges may depend.

For any person to directly or indirectly publish, circulate, issue, display, post or mail any written, printed, painted or broadcast communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of race or color, religion or country of ancestral origin, or that the patronage or custom thereof of any person belonging to or purporting to be of any particular race or color, religion or country of ancestral origin is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele thereof is restricted to members of particular races or colors, religions or countries of ancestral origin. The production of any such written, printed, painted or broadcast communication, notice or advertisement, purporting to relate to any such place shall be presumptive evidence in any action that the same was authorized by its owner, manager or proprietor.

SUBCHAPTER VI DIVISION ACTION

§ 4601. Complaint

Any person who claims to have been the victim of unlawful discrimination, or any group, organization or association claiming to represent such persons, or any employee of the commission or the division, may file a com-

plaint with the Division Against Discrimination, in such form as may be determined by the rules of the division, stating the facts concerning the alleged discrimination. Such complaint must be filed no more than 6 months after the alleged act of discrimination.

§ 4602. Procedure

1. Notification. Upon receipt of such a complaint, or on its own motion, the division shall notify the respondent person or persons alleged or believed to have engaged in unlawful discrimination of the fact that proceedings have been instituted against him. If proceedings were commenced by the filing of a complaint, the division shall deliver a copy thereof to the respondent; if on the division's own motion, it shall deliver to the respondent a summary of the facts upon which the proceeding is based. In either case, the division may withhold the name of the complainant or the names of the alleged victims of the unlawful discrimination until the giving of notice of a formal hearing pursuant to subsections 6 and 7, if in the division's sole discretion disclosure thereof would create a risk of personal or financial embarrassment to the persons so named.

2. Investigation. The division or its delegated single commissioner or chief investigator shall conduct such brief preliminary investigation as it deems necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred; such investigation may include the subpoenaing of witnesses, and of books and records, and may be ex parte.

3. Order of dismissal. If the division does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding and dismiss the proceeding. Such an order of dismissal after preliminary investigation, must be by vote of the majority of the division.

4. Civil action.

A. Filing. If the division, or a member thereof, or its chief investigator if so delegated by the division, finds reasonable grounds to believe both that unlawful discrimination has occurred, and irreparable injury or great inconvenience will be caused the victim of such discrimination, or to members of a racial, color, religious or nationality group, if relief is not immediately granted; or if conciliation efforts under subsection 5 have not succeeded and a hearing by the division is not deemed by the division to be appropriate, the division shall file, in the Superior Court, a civil action seeking such relief as is appropriate, including temporary restraining orders.

B. Grounds. Grounds for the filing of such an action before attempting conciliation include, but are not limited to:

(1) In unlawful housing discrimination, that the housing accommodation sought is likely to be sold or rented to another during the pendency of proceedings, or that an unlawful eviction is about to occur;

(2) In unlawful employment discrimination, that the victim of the discrimination has lost or is threatened with the loss of his job and income as a result of such discrimination;

(3) In unlawful public accommodations discrimination, that such discrimination is causing inconvenience to many persons;

(4) In any unlawful discrimination, that the victim of the discrimination is suffering or is in danger of suffering severe financial loss in relation to his circumstances, severe hardship or personal danger as a result of such discrimination.

C. **Hearing.** Any such action filed by the division shall be heard by the Superior Court and shall be advanced on the docket and receive priority over other civil cases. The court shall hear the case and grant relief as in other civil actions for injunctions; it may grant temporary relief pending full handling of the case by the division pursuant to the balance of this section; or, on motion of the division or on its own motion, it may assume full jurisdiction of the case. Any such action shall be brought in the name of the division for the use of the victim of the alleged discrimination, or of a described class, and the division shall furnish counsel for the prosecution thereof; any person aggrieved by the alleged discrimination may intervene in such an action. The court may grant any or all of the forms of relief which are specified in subsection 9, either as temporary or as permanent relief; and the court may award attorneys' fees to the division as part of the costs.

D. **Certificate.** In any such action based on alleged unlawful housing discrimination by a failure or refusal to sell real estate or a failure or refusal to show real estate which is for sale, at any time after the commencement thereof the clerk of the court, at the request of the division or of any intervenor, shall issue his certificate concerning the pendency of the action and describing the real estate involved therein; such certificate shall be recorded by the register of deeds of the county where such real estate is located; and after the recording thereof, every purchaser or encumbrancer of such real estate shall take his interest subject to the rights, if any, of the victim of the alleged unlawful housing discrimination, as they may be finally determined by the division or the courts. Where the victim of alleged unlawful housing discrimination has not acquired substitute housing, temporary injunctions against the sale or rental to others of the housing accommodation as to which the violation allegedly occurred, and against the sale or rental of other housing accommodations controlled by the alleged violator, shall be liberally granted in the interests of furthering the purposes of this Act, when it appears probable that the plaintiff will succeed upon final disposition of the case.

E. **Limitations.** In no such action brought by the division shall any injunction bond be required, nor shall damages be assessed for the wrongful issuance of an injunction.

5. **Informal methods.** If the division finds reasonable grounds to believe that unlawful discrimination has occurred, but finds no emergency of

the sort contemplated in subsection 4, paragraph B, it shall endeavor to eliminate such discrimination by informal methods such as conference, conciliation and persuasion. Nothing said or done as part of such endeavors may be made public without the written consent of the parties to the proceeding, nor used as evidence in a subsequent proceeding. If the case is conciliated in a manner satisfactory to a majority of the division, it may dismiss the proceeding.

6. Public hearing. In the event such informal methods fail to conciliate the case to the satisfaction of the division, the division shall hold a public hearing at which the facts pertaining to the alleged unlawful discrimination are proved, or file a civil action pursuant to subsection 4; and if the proceedings before the division were commenced on the division's own motion, it shall file a civil action in lieu of holding a hearing.

7. Procedure at hearing. In such a hearing:

A. The respondent shall be notified in writing at least 10 days in advance, of the date and place of the hearing, and of the acts of unlawful discrimination alleged;

B. All testimony shall be under oath and shall be reduced to writing and filed with the division;

C. The respondent shall not be required to file an answer; he shall have the rights to appear at the hearing in person and by counsel, to cross examine witnesses, and to call witnesses in his behalf;

D. The formal rules of evidence shall not apply, and the division may consider all evidence which possesses probative value commonly accepted by reasonable men in the conduct of their affairs. Such evidence may include evidence, statistical or otherwise, which may tend to prove the existence of a predetermined pattern of employment, employment referrals, or union membership, of housing sales or rentals, or analogous facts;

E. The notice specifying the alleged acts may be amended to conform to the evidence; and additional evidence may be accepted, after either side has rested, and after such continuances as are necessary, all as a full and fair hearing may require;

F. The hearing shall be before the full division, a panel thereof, or a single commissioner, as the division may determine either by general rule or by assignment of particular cases.

8. Orders. The division, or the panel or single commissioner, upon conclusion of the hearing, may enter an order either dismissing the case, or finding that unlawful discrimination occurred. In either event, the order shall set forth its findings of fact and conclusions of law; whether the hearing was before a panel of the division or a single commissioner or the full division, such order shall, when filed in the principal office of the division, become the order of the full division; and unless reopened for the hearing of additional evidence, it shall be final to the extent provided herein.

9. Remedy. If the order finds that unlawful discrimination occurred, the order shall specify an appropriate remedy or remedies therefor; such remedies may include, but are not limited to:

- A. An order to cease and desist from the unlawful practices specified in the order;
- B. An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
- C. An order to accept or reinstate such a person in a union;
- D. An order to rent or sell a specified housing accommodation, or one substantially identical thereto if controlled by the respondent, to a victim of unlawful housing discrimination;
- E. An order to pay, as compensation to a victim of unlawful housing discrimination, the difference between the sale or rental price of the housing accommodation as to which there was unlawful discrimination, and the price that the victim of such discrimination actually and reasonably paid to secure temporary or permanent housing elsewhere;
- F. An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease or manage; and further, forbidding the sale, rental or lease of any such housing accommodations until the violator has given security to assure his compliance with any order entered against him and with all provisions of this Act; such an order may continue the division's jurisdiction, until the violator has demonstrated compliance, and may defer decision on some or all relief until after a probationary period and a further hearing on the violator's conduct during such period;
- G. An order requiring the posting of notices or publication of advertisements concerning the violation of this Act and the terms of the order entered;
- H. An order to pay the legal and other expenses of the complainant, of the division, or both; and in cases of unlawful price discrimination to pay the victim thereof 3 times the amount of any excessive price demanded and paid by reason of such unlawful discrimination;
- I. An order to pay to the complainant civil penal damages not in excess of \$100 if this is the first order under this Act against the respondent, not in excess of \$250 if this is the 2nd such order against the respondent, and not in excess of \$1,000 if this is the 3rd or subsequent such order against the respondent.

§ 4603. Appeals

Orders of the division may be appealed to the Superior Court by any party to the proceeding, including the complainant; such appeals shall be taken no more than 15 days after the date of mailing to the appellant of the order to be appealed from, or after the appellant received notice of the order,

whichever is earlier. If not appealed within such time, its orders are final and binding upon the parties before the commission.

Such appeals shall be governed by the Rules of Civil Procedure, Rule 80B, or by such amendment thereto as may hereafter be adopted by the Supreme Judicial Court.

Such appeals shall be on the record of the evidence made at the division hearings held pursuant to section 4602, subsection 7. In the absence of actual fraud, the findings of fact set out in the order shall be final unless they are wholly unsupported by any substantial evidence. Errors of law in the proceedings before the division shall not be a ground for reversal of its order unless it appears that the appellant was in fact prejudiced thereby.

During the pendency of such an appeal, the court may, and ordinarily should, grant such temporary relief or enforcement of all or part of the order as is necessary to preserve the status quo, taking the division's order into account in determining the propriety of such temporary relief or enforcement.

If an order of the division finding a violation of this Act is affirmed or modified on such appeal, the judgment of the Superior Court shall, in addition to so affirming or modifying, order the enforcement of the division's order, or of that order as modified by the court's judgment. Any failure to comply with such a judgment shall be a civil contempt of the court, and punishable as are other civil contempts.

§ 4604. Contempt

If an order of the division becomes final and binding without the filing of an appeal, any subsequent noncompliance therewith shall be a contempt. The division, the complainant or any person aggrieved by such noncompliance may file in the Superior Court a complaint for the punishment of the violator of the order, whereupon the court shall forthwith issue its rule requiring the respondent to show cause why he should not be punished for such contempt; and hearing shall be had thereon as are other rules to show cause in contempt proceedings.

§ 4605. Reopen case

At any time after the entry of an order, if no appeal is pending therefrom, the division at its sole discretion may reopen a case on the grounds of newly discovered evidence or changed circumstances. If so reopened, the division shall proceed with the hearing on the same notice and procedure as are provided for in the case of other hearings; and its order after such hearings shall have the same effect as other orders of the division. A request to reopen a case shall not stay the operation of the order theretofore entered in the case; and the decision of the division to reopen or not to reopen the case shall not be appealable. If an appeal is pending from an order, the division may reopen the case only by leave of the Court wherein the appeal is pending, and subject to such conditions and terms as the court may specify in granting such leave.

§ 4606. Further complaints

When any order of the division finding that there was unlawful discrimination becomes final and binding, either by the passage of time or by affirmance or modification on appeal, and when any judgment of the Superior Court in a civil action brought by the division or by an individual finds such unlawful discrimination and becomes final and binding, the division shall ascertain whether the person or persons found to have done acts of unlawful discrimination hold any occupational, business or professional license from this State or an agency thereof.

If any person so finally found to have violated this Act holds any occupational, business or professional license from this State or an agency thereof, and the unlawful discrimination occurred in the conduct of or was otherwise related to the business, occupation or profession so licensed, the division shall file a complaint with the Administrative Hearing Commissioner if he has by statute the power to adjudicate proceedings to suspend or revoke such a license, or if the Administrative Hearing Commissioner does not have such power, with the agency or person having the power to suspend or revoke such a license.

Upon proof that a final and binding order of the division or of the Superior Court has found that the person complained of committed an act of unlawful discrimination in the conduct of or otherwise related to the business, occupation or profession so licensed, the Administrative Hearing Commissioner or other agency or person having power over occupational, business or professional licenses shall: If this is the first such order against the licensee, direct that the licensee be placed on probation for a period of one year, during which time the case may be reopened on motion of the division, and proof of another violation of this Act, even though not finally adjudicated, shall be ground for license revocation or suspension as in cases of repeated violation; or if this was the 2nd such order against the licensee, his occupational, business or professional license shall be suspended for not less than 3 nor more than 6 months; or if this was the 3rd such order against the licensee, his occupational, business or professional license shall be suspended for any period not less than 6 months or permanently revoked.

§ 4607. Lists

When any order of the division finding that there was unlawful employment discrimination becomes final and binding, either by passage of time or by affirmance or modification on appeal, and when any judgment of the Superior Court in a civil action brought by the division or by an individual finds such unlawful discrimination and becomes final and binding, the division shall forthwith certify such fact, giving the date and tribunal of such findings of unlawful employment discrimination, and of any prior such finding with reference to the same employer, to:

- 1 - The State Purchasing Agent
- 2 - The State Controller

- 3 - The State Director of Public Improvements
- 4 - The State Highway Commission

In addition, once each year during the period from January 1st through March 31st, the division shall send each of the above-listed officers and agencies of the State an alphabetical list of all persons found to have engaged in unlawful employment discrimination; but such lists shall exclude persons as to whom the most recent such finding was more than 5 calendar years in the past.

It shall be unlawful to grant any contract permitting or requiring the payment of state funds, or funds over which the State has control, to any person who has within the preceding 5 years been finally found to have engaged in unlawful employment discrimination. Any such contract shall be illegal and void. This paragraph shall not apply if the State Purchasing Agent certifies that there is no other person, within or without the State, who can supply the needed goods or services, and if the contract is approved by the Governor and Council.

As to any contract granted by the State or any agency thereof after the effective date of this Act, if the other party thereto is finally found to have engaged in unlawful employment discrimination: Such contract shall forthwith terminate and be null and void, and no further payments shall be made on account thereof, either for goods or services already rendered or for goods or services thereafter rendered.

This paragraph shall not apply if and to the extent that the State Purchasing Agent certifies that the contract cannot be completed by some other person, or that the State would incur great additional expense in having the contract completed by another person, and if and to the extent that the Governor and Council approve the completion of all or a part of the contract by the original contracting party.

No person holding a contract with the State or any agency thereof may directly or indirectly employ, as a subcontractor, a person who has within the preceding 5 years been finally found to have engaged in unlawful employment discrimination, or who, to the actual knowledge of the contractor, is then engaging in unlawful employment discrimination.

Upon proof establishing that a contractor knowingly employed such a person, directly or indirectly, or that he knowingly caused or permitted payment to such a person of any funds traceable to the State or over which the State had control, the State may recover the sum or sums so paid to such persons by deduction from the balance of the contract price or, if there be no such balance of the contract price, in an action in debt, which may be upon the contractor's bond, if any. The state officers and agencies listed in the first paragraph shall deliver to contractors a current list of persons against whom there have been findings of unlawful employment discrimination; and proof of receipt by a contractor of such a list showing the ineligibility of a person to receive state contracts shall establish that any sub-

sequent contract with or payment to him, direct or indirect, was made with knowledge of such person's ineligibility to receive the same.

SUBCHAPTER VII

CIVIL ACTIONS BY AGGRIEVED PERSONS

§ 4611. Civil action

At any time within 6 months after an alleged act of unlawful discrimination, a person claiming to be the victim of such discrimination may file a civil action in the Superior Court against the person or persons who committed such act of unlawful discrimination.

§ 4612. Procedure

If the plaintiff alleges and establishes, to the satisfaction of the court, that he or someone acting on his behalf filed a complaint concerning the alleged unlawful discrimination with the division at least 30 days prior to filing his civil action, the action shall be advanced on the docket and given priority over other civil cases; if the plaintiff fails to establish that such a complaint was filed with the division at least 30 days prior to filing his civil action, the action shall be heard and determined in its ordinary order on the docket unless the plaintiff establishes, to the satisfaction of the court, that irreparable injury would result if the case were not expedited.

§ 4613. Orders and relief

In such a civil action, the court may enter any orders and grant any relief as justice and equity may require, including the issuance of temporary restraining orders and temporary injunctions. Its final order may include any or all of the relief which the division could grant, as specified in section 4602, subsection 9, and such other relief as may be necessary to compensate for and prevent the illegal conduct proven in the case; but except in unusual circumstances, neither attorneys' fees nor civil penal damages should be granted to a plaintiff who did not cause a complaint of the discrimination to be filed with the division at least 30 days prior to filing his civil action. The clerk of the court shall, on request, issue the certificate concerning real estate involved in the action, and such certificate shall be recorded, all as provided in section 4602, subsection 4, paragraph D.

§ 4614. Consolidation of cases

If it appears during the pendency of such private action that the division has commenced an action against the same defendant, based on the same facts, the court shall, except for good cause shown, order consolidation of the cases, on such terms as justice may require.

§ 4615. Bar to civil action

It shall be a bar to any such private civil action that the division, after a full formal hearing concerning the same events as are complained of in the civil action, entered an order which has become final and binding upon the plaintiff either by the passage of time or by affirmance or modification on

appeal; but the plaintiff shall not be so barred unless he was a complainant or intervenor in the proceedings before the division.

SUBCHAPTER VIII CRIMES

§ 4621. Crimes

1. List. No person shall:

A. Apply or attempt or threaten to apply economic sanctions, or use or attempt or threaten to use force or violence, for the purpose of inducing another to violate this Act; nor

B. Apply or attempt or threaten to apply economic sanctions, or use or attempt or threaten to use force or violence, for the purpose of inducing another not to exercise any of the civil rights declared and recognized by this Act; nor

C. Apply or attempt or threaten to apply economic sanctions, or use or attempt or threaten to use force or violence, for the purpose of punishing or penalizing another for his compliance with this Act; nor

D. Apply or attempt or threaten to apply economic sanctions, or use or attempt or threaten to use force or violence, for the purpose of punishing or penalizing another for his exercise of any of the civil rights declared and recognized by this Act.

§ 4622. Penalty

Any person found guilty of violating any of the provisions of section 4621 shall be punished by imprisonment for not less than 10 days nor more than 6 months.

Any person found guilty of making a threat of deadly force or serious bodily injury, with an apparent ability to carry out such threat, or, using or attempting to use such force as to create a risk of death or serious bodily injury, in violation of any of the provisions of section 4621 shall be imprisoned for not less than one year nor more than 10 years.

SUBCHAPTER IX MISCELLANEOUS

§ 4631. Burden of proof

In any proceeding before the division and in any civil action under this Act, the burden shall be on the person seeking relief to prove, by a fair preponderance of the evidence, that the alleged unlawful discrimination occurred.

Sec. 2. R. S., T. 17, § 1301, repealed. Section 1301 of Title 17 of the Revised Statutes, as amended, is repealed.

Sec. 3. R. S., T. 26, §§ 861 - 864, repealed. Sections 861 to 864 of Title 26 of the Revised Statutes, as enacted by section 47 of chapter 513 of the public laws of 1965, are repealed.

Sec. 4. Appropriation. There is appropriated from the General Fund the sum of \$123,000 for the fiscal year ending June 30, 1970 and the sum of \$164,000 for the fiscal year ending June 30, 1971 to carry out the purposes of this Act. The breakdown shall be as follows:

	1969-70		1970-71
MAINE HUMAN RIGHTS COMMISSION			
Personal Services	(9) \$33,750	(9)	\$45,000
All Other	18,500		27,000
Capital Expenditures	4,000		3,000
	<hr/>		<hr/>
	\$56,250		\$75,000
 DIVISION AGAINST DISCRIMINATION			
Personal Services	(9) \$42,000	(9)	\$56,000
All Other	20,750		30,000
Capital Expenditures	4,000		3,000
	<hr/>		<hr/>
	\$66,750		\$89,000