

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

NEW DRAFT "A" OF: H. P. 1050, L. D. 1384

ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1592

H. P. 1262

House of Representatives, June 12, 1969

Reported by Report "A" (3 members) of the Committee on State Government. Printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Establishing a Human Rights Commission.

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

Sec. 1. 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. Definitions

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

1. Commission. "Commission" means the Maine Human Rights Commission established by this Act.
2. Discriminate. "Discriminate" includes, without limitation, segregate or separate.
3. Employee. "Employee" does not include any individual employed by his parents, spouse or child.

4. 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; any person acting in the interest of any employer directly or indirectly; labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees; but does not include a religious or fraternal corporation or association, not organized for private profit and is in fact not conducted for private profit, with respect to employment of its members of the same religion, sect or fraternity.

5. 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 employees referral sources; and it includes any agent of such person.

6. Housing accommodation. "Housing accommodation" shall be any dwelling, structure or portion thereof offered for rent which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more persons, excepting;

A. Two-family dwellings. The rental of a one-family unit of a 2-family dwelling, one unit of which is occupied by the owner.

B. One-family dwellings. The rental of not more than 4 rooms of a one-family dwelling which is occupied by the owner.

7. Person. "Person" includes one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives.

8. 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, any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectioners, 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, shooting 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.

9. 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.

10. 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 any 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

§ 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. The Governor shall designate one member to be its chairman.

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

§ 4563. Quorum

Except as otherwise provided in this Act, 4 members of the full commission shall constitute a quorum of the commission. A vacancy shall not impair the power of the remaining members to exercise all the powers of the commission.

§ 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 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 limiting 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 Augusta;
2. Meetings. To meet and function at any place within the State;
3. Executive secretary. To appoint, subject to the Personnel Law, a full-time executive secretary and such other personnel including, but not limited to investigators and secretaries, as it shall deem necessary to effectuate the purposes of this Act;

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. Such hearings and testimony shall relate to the existence of practices of discrimination as well as to investigations of alleged infringements upon human rights and personal dignity. 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;

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

6. Advisory groups. To create such advisory agencies, local or state-wide, as will aid in effectuating the purposes of this Act. The commission may itself, or it may empower these agencies 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 may make recommendations to the commission for the development of policies and procedures in general. Advisory agencies created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

7. 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;

8. Reports. From time to time, but not less than biennially, 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;

9. Contributions. The commission is authorized to accept contributions from any person to assist in the effectuation of this chapter and may seek and enlist the cooperation of private, charitable, religious, civic and benevolent organizations.

SUBCHAPTER III FAIR EMPLOYMENT

§ 4571. Rights 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 related to employment, or in the recruiting of individuals for employment;

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 directly 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 by-laws 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.

§ 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 with the terms or conditions of any bona fide retirement or pension plan which have the effect of imposing a minimum service requirement;

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

D. Child labor laws. Comply with the state or federal laws relating to the employment of minors.

2. 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 accommodations 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 accommodation discrimination

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

For any owner, lessee, sublessee, assignee, managing agent or other person having the right to rent, lease or manage a housing accommodation, or any agent of these, to issue any advertisement relating to the 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 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 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;

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 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.

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:

1. Withholding. 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 accommodations, advantages, facilities and privileges may depend.

2. Advertising, etc. For any person to directly or indirectly publish, circulate, issue, display, post or mail any written, printed 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
COMMISSION 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 person, may file a complaint with the commission in such form as may be determined by the rules of the commission 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. Investigation. The commission shall conduct such preliminary investigation upon receipt of a complaint as it deems necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.

2. Order of dismissal. If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding and dismiss the complaint.

3. 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 commission;

C. The respondent shall not be required to file an answer; he shall have the right 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 commission may consider all evidence which possesses probative value commonly accepted by reasonable men in the conduct of their affairs;

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 commission;

G. The commission, upon conclusion of the hearing, may enter an order either dismissing the case, or finding that unlawful discrimination occurred;

H. If the order finds that unlawful discrimination occurred, the order shall specify an appropriate remedy or remedies therefor; such remedies are limited to:

(1) An order to cease and desist from the unlawful practices specified in the order;

(2) An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;

(3) An order to accept or reinstate such a person in a union;

(4) An order to rent a specified housing accommodation, or one substantially identical thereto if controlled by the respondent, to a victim of unlawful housing discrimination;

(5) An order requiring the posting of notices or publication of advertisements concerning the violation of this Act and the terms of the order entered.

4. Civil action.

A. **Filing.** If the commission finds reasonable grounds to believe that **unlawful discrimination** has occurred and great inconvenience will be caused the victim, or members of a racial, color, religious or nationality group, if relief is not granted the commission may file, in the Superior Court, a civil action seeking such relief as is appropriate.

§ 4603. Appeals

Orders of the commission may be appealed to the Superior Court by any party to the proceeding; such appeals shall be taken no more than 30 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.

Such appeals shall be governed by the Rules of Civil Procedure, Rule 80-B.

Such appeals shall be on the record of the evidence made at the commission hearings. In the absence of fraud, the findings of fact set out in the order shall be final unless they are unsupported by any substantial evidence. Errors of law in the proceedings before the commission 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 grant such temporary relief or enforcement of all or part of the order as is necessary to preserve the status quo, taking the commission's order into account in determining the propriety of such temporary relief or enforcement.

If an order of the commission 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 commission's order, or of that order as modified by the court's judgment. Any failure to comply with such a judgment shall constitute a civil contempt of the court and be punishable as are other civil contempts.

§ 4604. Contempt

If an order of the commission becomes final and binding without an appeal, any subsequent noncompliance therewith shall be a contempt. The commission, 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 require the respondent to show cause why he should not be punished for such contempt and hearing shall be had thereon.

§ 4605. Reopen case

At any time after the entry of an order, if no appeal is pending therefrom, the commission may reopen a case on the grounds of newly discovered evidence. If so reopened, the commission shall proceed with the hearing after notice and procedure as are provided for in the case of first hearings; and its order after such hearings shall have the same effect as other orders of the commission. A request to reopen a case shall not stay the operation of the

order theretofore entered in the case; and the decision of the commission to reopen or not to reopen the case shall not be appealable. If an appeal is pending from an order, the commission 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.

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 respondent alleges and establishes, to the satisfaction of the court, that the complainant or someone acting on his behalf filed a complaint concerning the alleged unlawful discrimination with the commission prior to filing the civil action, the action shall be continued on the docket until the complaint to the commission is terminated.

§ 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 commission could grant, as specified in section 4602, subsection 3, paragraph H, and such other relief as may be necessary to compensate for and prevent the illegal conduct proven in the case.

§ 4614. Bar to civil action

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

SUBCHAPTER VIII

CRIMES

§ 4621. Crimes

No person shall:

1. List.

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 to threaten to use force or violence, for the purpose of punishing or penalizing another for his compliance with this Act;

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; nor

E. Apply or attempt or threaten to apply economic sanctions or use or attempt or threaten to use force or violence, for the purpose of forcing another to comply with 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 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 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 \$23,300 for the fiscal year ending June 30, 1970 and the sum of \$41,200 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	(4) \$12,800	(4) \$26,000
All Other	8,000	15,000
Capital Expenditures	2,500	200
	<hr/>	<hr/>
	\$23,300	\$41,200

Sec. 5. Effective date. This Act shall become effective on January 1, 1970.