

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
104th LEGISLATURE

HOUSE AMENDMENT "A" to Report B, H.P. 1263, L.D. 1593, Bill, "AN ACT
Creating a Human Rights Act for Maine."

Amend said Bill in that part designated "§4554" of section 1
by striking out all of subsection 4 (same in L. D.) and inserting in
place thereof the following:

'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 in-
directly; 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 in fact not
conducted for private profit, with respect to employment of its
members of the same religion, sect or fraternity.'

Further amend said Bill in that part designated "§4554" of
section 1 by striking out in the last 2 lines of subsection 9 (same
in L. D.) the underlined punctuation and words "from the operation of
the last paragraph of Title 32, section 4001" and inserting in place

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thereof the following 'or required to be licensed'

Further amend said Bill by inserting after that part designated "§4554" of section 1 the following new section:

'§4555. Racial data'

Nothing in this chapter shall prohibit the Employment Security Commission from recording racial data for nondiscriminatory purposes in accordance with directive of the United States Labor Department.'

Further amend said Bill in that part designated "§4572" of section 1 by inserting after the underlined word "religion" in the 3rd and 7th lines of paragraph B of subsection 1 (same in L.D.) the underlined punctuation and word ','age'; and by inserting after the underlined word "religion" in the 3rd and 13th lines of paragraph C of subsection 1 (same in L. D.) the underlined punctuation and word ','age'

Further amend said Bill by striking out all of that part designated "§4573" of section 1 (same in L. D.) and inserting in place thereof the following:

'§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.'

Further amend said Bill by striking out before that part designated "§4607" of section 1 the following "LISTS" and inserting in place thereof the following 'STATE CONTRACTS'

Further amend said Bill by striking out all of "SUBCHAPTER VII" of section 1 and inserting in place thereof the following:

'SUBCHAPTER VII

COMMISSION ACTION

§4611. 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, may file a complaint with the commission stating the facts concerning the alleged discrimination.

§4612. Procedure on complaints

1. Notification. Upon receipt of such a complaint or upon initiating an investigation on its own motion, the commission shall notify the respondent person or persons of the fact that proceedings have been instituted against him. If proceedings were commenced by

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filing of a complaint, the commission shall deliver a copy thereof
to the respondent; if on the commission's own motion, it shall
deliver to the respondent a summary of the facts upon which the
proceeding is based. In either case, the commission may withhold
the name of the complainant or the names of the alleged victims of
the unlawful discrimination if, in the commission's sole discretion,
disclosure thereof would create a risk of personal or financial
embarrassment to the persons so named.

2. Investigation. The commission or its delegated single
commissioner or 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 commission does not find reasonable
grounds to believe that unlawful discrimination has occurred, it
shall enter an order so finding, and dismiss the proceeding.

4. Informal methods, conciliation. If the commission finds
reasonable grounds to believe that unlawful discrimination has occurred,
but finds no emergency of the sort contemplated in subsection 5,
paragraph B, it shall endeavor to eliminate such discrimination by
informal means 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 any subsequent proceeding, civil or criminal,
This privilege against subsequent use as evidence shall not apply

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to anything said or furnished or secured by or in response to a subpoena. If the case is disposed of by such informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding.

5. Civil action by commission.

A. Filing. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that 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 4 have not succeeded, the commission 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.

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§4613. Procedure in Superior Court

1. Actions filed by commission. Any such action filed by the commission shall be heard by the Superior Court and shall be advanced on the docket and receive priority over other civil cases. Except as otherwise provided herein, the court shall hear the case and grant relief as in other civil actions for injunctions. Any such action shall be brought in the name of the commission for the use of the victim of the alleged discrimination or of a described class, and the commission shall furnish counsel for the prosecution thereof. Any person aggrieved by the alleged discrimination may intervene in such an action. In no such action brought by the commission shall any injunction bond be required, nor shall damages be assessed for the wrongful issuance of an injunction.

2. All actions under this Act. In any action filed under this Act by the commission or by any other person:

A. The formal rules of evidence shall not apply, and the court 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 tends to prove the existence of a predetermined pattern of employment, employment referrals, union membership, housing sales or rentals, or analogous facts.

B. Certificate. In any 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 plaintiff 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 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.

C. Remedy. If the court finds that unlawful discrimination occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not 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;

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(4) 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;

(5) 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;

(6) 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 court'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;

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

(8) An order to pay the legal and other expenses of the complainant, of the commission, or both; and in cases of unlawful price discrimination to pay the victim thereof 3

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times the amount of any excessive price demanded and paid
by reason of such unlawful discrimination;

(9) 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.

D. The action shall be commenced not more than one year after
the act of unlawful discrimination complained of.

SUBCHAPTER VIII

CIVIL ACTIONS BY AGGRIEVED PERSONS

§4621. Civil action

Within the time limited above, a person claiming to be the victim
of unlawful discrimination may file a civil action in the Superior
Court against the person or persons who committed the alleged unlawful
discrimination.

§4622. 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
commission at least 30 days prior to the filing of his civil action,
the action shall be advanced on the docket and given priority over
other civil actions, and the plaintiff may, in the court's sound
discretion be entitled to any of the relief provided for in this
Act. If the plaintiff fails to allege and establish, to the
satisfaction of the court, that he or someone acting on his behalf

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filed a complaint with the commission at least 30 days prior to the filing of his civil action, then except in extraordinary cases, to prevent irreparable injury or where good cause is shown, the action shall be heard in its ordinary course on the docket, and the plaintiff should not be granted attorneys' fees nor exemplary damages.

§4623. Consolidation of cases

If it appears during the pendency of such private action that the commission 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.'

Further amend said Bill by striking out before that part designated "§4621" of section 1 the caption "SUBCHAPTER VIII" and inserting in place thereof the caption 'SUBCHAPTER IX'

Further amend said Bill by renumbering those sections designated "§4621" and "§4622" to be sections '§4631' and '§4632'

Further amend said Bill by striking out in that part designated "§4622" of section 1, in the 2nd and 8th lines. (same in L. D.) the underlined figure "4621" and inserting in place thereof the underlined figure '4631'

Further amend said Bill by striking out before that part designated "§4631" of section 1 the caption "SUBCHAPTER IX" and inserting in place thereof the caption 'SUBCHAPTER X'

Further amend said Bill by renumbering that part designated "§4631" to be '§4641'

Further amend said Bill by striking out all of section 4 and inserting in place thereof the following:

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'Sec. 4. Effect of repeal. No civil or criminal action or penalty accrued prior to the effective date of this Act shall be barred, abated or otherwise affected by the passage of this Act.

Sec. 5. 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:

		<u>1969-70</u>		<u>1970-71</u>
MAINE HUMAN RIGHTS COMMISSION				
Personal Services	(4)	\$12,800	(4)	\$26,000
All Other		8,000		15,000
Capital Expenditures		<u>2,500</u>		<u>200</u>
		\$23,300		\$41,200

Sec. 6. Effective date. This Act shall become effective January 1, 1970.'

Filed by Mr. McTeague of Brunswick.

Reproduced and distributed under the direction of the Clerk of the House.

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6/19/69