

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)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1612

H. P. 1326

House of Representatives, April 12, 1977

Referred to Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Carrier of Westbrook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Transfer the Responsibility for Administering and Enforcing
the Human Rights Act to the Attorney General.**

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

Sec. 1. 5 MRSA § 4553, sub-§ 1, as enacted by PL 1971, c. 501, § 1, is repealed.

Sec. 2. 5 MRSA § 4553, sub-§ 1-A is enacted to read:

1-A. Attorney General. The term "Attorney General" includes any designee of the Attorney General who is employed by the Attorney General.

Sec. 3. 5 MRSA c. 337, sub-c. II, as amended by PL 1975, c. 771, § 88, is repealed.

Sec. 4. 5 MRSA c. 337, sub-c. II-A is enacted to read:

SUBCHAPTER II-A

ENFORCEMENT BY THE ATTORNEY GENERAL

§ 4567. Enforcement

The Attorney General has the duty of investigating all conditions and practices within the State which allegedly detract from the enjoyment of each inhabitant of the State of full human rights and personal dignity. Without limiting the generality of the foregoing, he 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 his investigations, he 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 Attorney General shall have the power:

1. **Personnel.** To appoint such personnel, including, but not limited to, investigators, attorneys and secretaries, as he shall deem necessary to effectuate the purposes of this Act and to determine their compensation;

2. **Hearings.** To hold hearings, administer oaths and to take the testimony of any person under oath. There shall be no executive privilege in such investigations and hearings, but law enforcement officers, prosecution officers and judges of this State and of the United States shall be privileged from compulsory testimony or production of documents before the Attorney General. 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 Attorney General may make rules as to the administration of oaths, and the holding of preliminary and general investigations;

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

4. **Advisory groups.** To create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this Act. The Attorney General may himself or 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, sex, physical or mental handicap, religion, age, ancestry or national 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 Attorney General for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the Attorney General shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

5. **Rules and regulations.** To adopt, amend and rescind rules and regulations to effectuate this Act, such adoption, amendment and rescission to be made in the manner provided by section 2351;

6. **Appearance.** To appear in court and before other administrative bodies by his own attorneys;

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

8. **Publications.** To issue such publications and such results of investigations and research as in his judgment will tend to promote good will, and minimize or eliminate discrimination based on race or color, sex, physical or mental handicap, religion, age, ancestry or national 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 Attorney General has conducted and their outcome and the other work performed by him, and make recommendations for such further legislation or executive action concerning abuses and discrimination based on race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or other infringements on human rights or personal dignity, as may be desirable; and

10. Other acts. To do such other things as are set out in the other subchapters and everything reasonably necessary to perform his duties under this Act.

Sec. 5. MRSA § 4598, as amended by PL 1975, c. 355, § 17, is repealed and the following enacted in its place:

§ 4598. Enforcement

The Superintendent of Banks and Banking shall cooperate with the Attorney General in his enforcement of this subchapter.

Sec. 6. 5 MRSA § 4611, as repealed and replaced by PL 1975, c. 770, § 42, is repealed and the following enacted in its place:

§ 4611. Complaint

Any person who believes he has been subject to unlawful discrimination, or any employee of the Attorney General, may file a complaint under oath with the Attorney General stating the facts concerning the alleged discrimination, provided that such complaints shall be filed with the Attorney General not more than 6 months after the alleged act of unlawful discrimination.

Sec. 7. 5 MRSA § 4612, sub-§ 1, as amended by PL 1973, c. 415, § 2, is repealed and the following enacted in its place:

1. Investigation. Upon receipt of such a complaint, the Attorney General or his investigator shall conduct such brief preliminary investigation as he deems necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the Attorney General or his designated representative shall have access at all times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The Attorney General may issue subpoenas to compel access to or production of such materials, or the appearance of such persons and may issue interrogatories to a respondent, to the same extent as subpoenas or interrogatories issued or served in aid of a civil action in the Superior Court. The Attorney General may administer oaths.

Sec. 8. 5 MRSA § 4612, sub-§§ 2 and 3, as enacted by PL 1971, c. 501, § 1, are amended to read:

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

3. **Informal methods, conciliation.** If the ~~commission~~ **Attorney General** finds reasonable grounds to believe that unlawful discrimination has occurred, but finds no emergency of the sort contemplated in subsection 4, paragraph B, ~~it~~ **he** 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. If the case is disposed of by such informal means in a manner satisfactory to ~~a majority of the commission~~ the **Attorney General**, ~~it~~ **he** shall dismiss the proceeding.

Sec. 9. 5 MRSA § 4612, sub-§ 4, 1st ¶, as enacted by PL 1971, c. 501, § 1, is amended to read:

4. **Civil action by ~~commission~~ Attorney General.**

Sec. 9-A. 5 MRSA § 4612, sub-§ 4, ¶ A, as last amended by PL 1975, c. 358, § 15, is further amended to read:

A. **Filing.** If the ~~commission~~ **Attorney General** 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, sex, physical or mental handicap, religious, nationality group or age group if relief is not immediately granted; or if conciliation efforts under subsection 3 have not succeeded, the ~~commission~~ **Attorney General** shall file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders.

Sec. 10. 5 MRSA § 4613, sub-§ 1, as enacted by PL 1971, c. 501, § 1, is repealed and the following enacted in its place:

1. **Actions filed by Attorney General.** Any such action filed by the **Attorney General** shall be heard by the Superior Court and may be advanced on the docket and receive priority over other civil cases when the court shall determine that the interests of justice so require. Except as otherwise provided in this chapter, 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 State or of the **Attorney General** for the use of the victim of the alleged discrimination or of a described class, and the **Attorney General** 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 **Attorney General** shall any injunction bond be required nor shall damages be assessed for the wrongful issuance of an injunction.

Sec. 11. 5 MRSA § 4613, sub-§ 2, 1st ¶, as enacted by PL 1971, c. 501, § 1, is amended to read:

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

Sec. 11-A. 5 MRSA § 4622, as amended by PL 1973, c. 347, §14, is further amended to read:

If the plaintiff alleges and establishes, to the satisfaction of the court, that he or she or someone acting on his or her behalf filed a complaint concerning the alleged unlawful discrimination with the ~~commission~~ **Attorney General** at least 30 days prior to the filing of the civil action, the action may 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 she or someone acting on his or her behalf filed a complaint with the ~~commission~~ **Attorney General** at least 30 days prior to the filing of his or her 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.

Sec. 11-B. 5 MRSA § 4623, as enacted by PL 1971, c. 501, § 1, is amended to read:

§ 4623. Consolidation of cases

If it appears during the pendency of such private action that the ~~commission~~ **Attorney General** 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.

Sec. 12. Revision clause. Wherever in the Maine Revised Statutes the words "Human Rights Commission" appear, they shall mean "Attorney General."

Sec. 13. Transitional provisions. The Attorney General shall be the successor in every way to the powers, duties and functions of the former Human Rights Commission or any of its administrative units, except as otherwise provided by this Act.

Sec. 14. Rules, regulations and procedures. All existing regulations in effect, in operation or promulgated in or by the Human Rights Commission, or in or by any administrative units or officers thereof, are hereby declared in effect and shall continue in effect until rescinded, revised or amended by the proper authority.

Sec. 15. Contracts; agreements; compacts. All existing contracts currently in effect in the Human Rights Commission shall continue in effect until rescinded, revised or amended by the proper authority.

Sec. 16. Personnel. Any positions authorized and allocated, subject to the Personnel Law, to the former Human Rights Commission shall be transferred to the Department of the Attorney General or his successors and may continue to be authorized. Initial appointments to such positions vacant as of the effective date of this Act shall be made on an open competitive basis. Any employee and official of such former agencies subject to the Personnel Law on the effective date of this Act may be transferred to such recon-

stituted bureau as replaces their former agency and continue their employment after the effective date of this Act, without interruption of their state service, unless personnel positions or such office is terminated or abolished or method of appointment or employment is altered or changed by the provisions of this or other Acts.

Sec. 17. Records, property and equipment. All records, property and equipment previously belonging to or allocated for the use of the former Human Rights Commission shall become, on the effective day of this Act, part of the property of the Department of the Attorney General.

Sec. 18. Funds and equipment transferred. Notwithstanding the Revised Statutes, Title 5, section 1585, all accrued expenditures, assets, liabilities, balances of appropriations, transfers, revenues or other available funds in any account, or subdivision of an account, or any agency to be reallocated to another administrative unit as a result of this Act, shall be transferred to the proper place in an account for the Attorney General by the State Controller, upon recommendation of the Attorney General, the State Budget Officer and upon approval by the Governor. A proper accounting shall be made by activity within the account.

Sec. 19. Effective date. This Act shall take effect June 30, 1978.

STATEMENT OF FACT

This bill transfers the responsibility for administering and enforcing the Human Rights Act to the Attorney General. This transfer will eliminate any potential for legal suits under the Act which are not based on good legal principles of law and which may serve only to harass.