

MAINE STATE LEGISLATURE

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New Draft of S. P. 221, L. D. 608
(New Title)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1555

S. P. 579

In Senate, April 22, 1981

Reported by Senator Devoe of Penobscot from the Committee on Judiciary
and printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend the Maine Human Rights Act.

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

Sec. 1. 5 MRSA § 4613, sub-§ 2, ¶ B, sub-¶ (6), as enacted by PL 1971, c. 501, § 1, is amended to read:

(6) An order to pay in cases of unlawful price discrimination the victim thereof 3 times the amount of any excessive price demanded and paid by reason of such unlawful discrimination; **and**

Sec. 2. 5 MRSA § 4613, sub-§ 2, ¶ B, sub-¶ (7), as enacted by PL 1971, c. 501, § 1, is amended to read:

(7) An order to pay to the complainant civil penal damages not in excess of ~~\$100~~ \$500 in the case of the first order under this Act against the respondent, not in excess of ~~\$250~~ \$1,000 in the case of a 2nd such order against the respondent, and not in excess of ~~\$1,000~~ \$2,000 in the case of a 3rd or subsequent such order against the respondent; **and**

Sec. 3. 5 MRSA § 4614 is enacted to read:

§ 4614. **Attorneys' fees and costs**

In any civil action under this Act, the court, in its discretion, may allow the

prevailing party, other than the commission, reasonable attorneys' fees and costs, and the commission shall be liable for attorneys' fees and costs the same as a private person.

Sec. 4. 5 MRSA § 4622, as amended by PL 1973, c. 347, § 14, is repealed and the following enacted in its place:

§ 4622. Limitations on attorneys' fees and damages; procedures

1. Limitation. No attorneys' fees under section 4614 and no civil penal damages under section 4613 may be awarded to a plaintiff in a civil action under this Act unless the plaintiff alleges and establishes that, prior to the filing of the civil action, the plaintiff first filed a complaint with the commission and the commission either:

A. Dismissed the case under section 4612, subsection 2; or

B. Failed, within 90 days after finding reasonable grounds to believe that unlawful discrimination occurred, to enter into a conciliation agreement to which the plaintiff was a party.

2. Advancement on docket; priority. If the plaintiff alleges and establishes that the conditions of subsection 1 have been met, the action may also be advanced on the docket and given priority over other civil actions.

STATEMENT OF FACT

This new draft has 3 purposes. First, it changes the amount of civil penalties which were provided in the original bill. Second, it provides for the awarding of attorneys' fees and costs, in the court's discretion, to the prevailing party. The commission is not included as a possible recipient of attorneys' fees and costs. Finally, this new draft prevents complainants from recovering either damages or attorneys' fees in a civil action unless they can show that they have first exhausted the administrative remedies available to them before the commission. The other remedies provided in the Act would remain available even if administrative remedies are not exhausted. This change is necessary in order to reduce the incentive to bypass the commission in the courts, which is created by the prospects of recovering higher damage awards and attorneys' fees.