

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 736

6
7 H.P. 592

House of Representatives, February 14, 1983

8 Referred to the Committee on Judiciary, sent up for concurrence and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Andrews of Portland.

Cosponsors: Representative Gauvreau of Lewiston, Senator Hayes of
11 Penobscot and Representative Beaulieu of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Protect Employees from Reprisal
18 who Report or Refuse to Commit Illegal Acts.
19

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

22 26 MRSA c. 7, sub-c. V-A is enacted to read:

23 SUBCHAPTER V-A

24 PROTECTION OF EMPLOYEES WHO REPORT

25 OR REFUSE TO COMMIT ILLEGAL ACTS

26 §821. Short title

27 This subchapter may be cited as the
28 "Whistleblowers' Protection Act."

1 §822. Definitions

2 As used in this subchapter, unless the context
3 indicates otherwise, the following terms have the
4 following meanings.

5 1. Employee. "Employee" means a person who per-
6 forms a service for wages or other remuneration under
7 a contract of hire, written or oral, expressed or
8 implied. Employee includes a person employed by the
9 State or a political subdivision of the State, except
10 unclassified employees of State Government.

11 2. Employer. "Employer" means a person who has
12 one or more employees. Employer includes an agent of
13 an employer and the State, or a political subdivision
14 of the State.

15 3. Person. "Person" means an individual, sole
16 proprietorship, partnership, corporation, association
17 or any other legal entity.

18 4. Public body. "Public body" means all of the
19 following:

20 A. A state officer, employee, agency, depart-
21 ment, division, bureau, board, commission, coun-
22 cil, authority or other body in the executive
23 branch of State Government;

24 B. An agency, board, commission, council, member
25 or employee of the legislative branch of State
26 Government;

27 C. A county, municipal, village, intercounty,
28 intercity or regional governing body, a council,
29 school district or municipal corporation, or a
30 board, department, commission, council, agency or
31 any member or employee thereof;

32 D. Any other body which is created by state or
33 local authority or which is primarily funded by
34 or through state or local authority, or any
35 member or employee of that body;

36 E. A law enforcement agency or any member or
37 employee of a law enforcement agency; and

1 F. The judiciary and any member or employee of
2 the judiciary.

3 §823. Discharge of, threats to or discrimination
4 against employee for reporting violations of
5 law or refusing to carry out illegal direc-
6 tives

7 An employer shall not discharge, threaten or
8 otherwise discriminate against an employee regarding
9 the employee's compensation, terms, conditions, loca-
10 tion or privileges of employment because the
11 employee, or a person acting on behalf of the
12 employee, reports or is about to report, verbally or
13 in writing, a violation of a law or rule promulgated
14 pursuant to the laws of this State, a political sub-
15 division of this State or the United States to a
16 public body, unless the employee knows that the
17 report is false, or because an employee is requested
18 by a public body to participate in an investigation,
19 hearing or inquiry held by that public body, or a
20 court action.

21 An employer shall not discharge, threaten or
22 otherwise discriminate against an employee regarding
23 the employee's compensation, terms, conditions, loca-
24 tion or privileges of employment because the employee
25 has refused to carry out a directive that violates a
26 law or rule promulgated pursuant to the laws of this
27 State, a political subdivision of this State or the
28 United States.

29 §824. Civil actions for injunctive relief or damages

30 An employee who alleges a violation of his rights
31 under section 823 may bring a civil action for appro-
32 priate injunctive relieve or actual damages, or both,
33 within 90 days after the occurrence of that alleged
34 violation. The action may be brought in the Superior
35 Court for the county where the alleged violation
36 occurred, the county where the complainant resides or
37 the county where the person, against whom the civil
38 complaint is filed, resides or has his principal
39 place of business.

40 As used in this section, "damages" means damages
41 for injury or loss caused by each violation of this
42 subchapter, including reasonable attorneys' fees.

1 An employee shall show by clear and convincing
2 evidence that he or a person acting on his behalf
3 reported, verbally or in writing, a violation of a
4 law of this State, a political subdivision of this
5 State or the United States to a public body or that
6 he refused to engage in illegal conduct and that he
7 suffered a reprisal as a result of that refusal.

8 §825. Remedies ordered by court

9 A court, in rendering a judgment in an action
10 brought pursuant to this subchapter, shall order, as
11 the court considers appropriate, reinstatement of the
12 employee, the payment of back wages, full reinstatement
13 of fringe benefits and seniority rights, actual
14 damages or any combination of these remedies. A
15 court may also award the complainant all or a portion
16 of the costs of litigation, including reasonable
17 attorneys' fees and witness fees, if the court deter-
18 mines that the award is appropriate.

19 §826. Penalties for violations

20 A person who violates this subchapter shall be
21 liable for a civil fine of not less than \$500, which
22 shall not be suspended. Any civil fine imposed under
23 this subchapter shall be submitted to the Treasurer
24 of State for deposit to the General Fund.

25 §827. Collective bargaining rights

26 This subchapter shall not be construed to dimin-
27 ish or impair the rights of a person under any col-
28 lective bargaining agreement.

29 §828. Compensation for employee participation in
30 investigation, hearing or inquiry

31 This subchapter shall not be construed to require
32 an employer to compensate an employee for participa-
33 tion in an investigation, hearing or inquiry held by
34 a public body in accordance with section 823.

35 §829. Notices of employee protections and obli-
36 gations

1 An employer shall post notices and use other
2 appropriate means to keep his employees informed of
3 their protections and obligations under this subchap-
4 ter.

5 STATEMENT OF FACT

6 This bill protects employees from being fired for
7 reporting violations of law by their employers and
8 for refusing to follow a directive that violates a
9 law. The bill also creates a statutory cause of ac-
10 tion for an employee against an employer who dis-
11 charges him or alters his employment status because
12 he engaged in any of the activities referred to in
13 this paragraph.

14 Maine is not breaking new ground with the passage
15 of this bill. This bill is modeled on the Michigan
16 "Whistleblowers' Protection Act" which became effec-
17 tive in March, 1981. Moreover, the Revised Statutes,
18 Title 5, section 4572, subsection 1, paragraph E,
19 which deals with fair employment practices, already
20 makes it unlawful for an employer to discriminate
21 against an employee because that employee has
22 "opposed any practice which would be a violation of
23 this Act, or because they have made a charge, testi-
24 fied or assisted in any manner in any investigation,
25 proceeding or hearing under this Act." This bill
26 merely expands the protection Maine law already
27 affords employees who report unlawful discrimination
28 by protecting them when they report other legal
29 violations.

30 This bill provides employees who have been wrong-
31 fully fired or who have had their employment status
32 wrongfully affected the right to seek reinstatement
33 in their jobs with no loss of benefits and to recover
34 damages, court costs and attorneys' fees, when appro-
35 priate. The bill also exposes employers found guilty
36 of violating the law to a civil penalty.

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