

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1735

6  
7 H.P. 1228

House of Representatives, December 26, 1985

8 Submitted by the Human Rights Commission pursuant to Joint Rule 24.  
9 Received by the Clerk of the House on December 26, 1985. Referred to  
10 the Committee on Judiciary and 1,600 ordered printed pursuant to Joint Rule  
11 14.

EDWIN H. PERT, Clerk

Presented by Representative Priest of Brunswick.

12 Cosponsored by Senator Trafton of Androscoggin, Representative  
13 Dillenback of Cumberland and Senator Carpenter of Aroostook.

14 STATE OF MAINE  
15

16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-SIX

18 AN ACT Relating to Settlement Negotiations  
19 and Investigation of Facts by the  
20 Maine Human Rights Commission.

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

23 Sec. 1. 5 MRSA §4612, sub-§1, as amended by PL  
24 1983, c. 281, §1, is repealed and the following en-  
25 acted in its place:

26 1. Predetermination resolution; investigation.  
27 Upon receipt of such a complaint, the commission or  
28 its delegated single commissioner or investigator  
29 shall take the following actions.

30 A. The commission or its delegated single com-  
31 missioner or investigator shall provide an oppor-  
32 tunity for the complainant and respondent to re-  
33 solve the matter by settlement agreement prior to  
34 a determination of whether there are reasonable  
35 grounds to believe that unlawful discrimination

1 has occurred. Evidence of conduct or statements  
2 made in compromise settlement negotiations, of-  
3 fers of settlement and any final agreement may  
4 not be made public without the written consent of  
5 the parties to the proceeding nor used as evi-  
6 dence in any subsequent proceeding, civil or  
7 criminal, except in a civil action filed by a  
8 party alleging a breach of agreement.

9 B. The commission or its delegated commissioner  
10 or investigator shall conduct such preliminary  
11 investigation as it deems necessary to determine  
12 whether there are reasonable grounds to believe  
13 that unlawful discrimination has occurred. In  
14 conducting an investigation, the commission, or  
15 its designated representative, shall have access  
16 at all reasonable times to premises, records,  
17 documents, individuals and other evidence or pos-  
18 sible sources of evidence and may examine, record  
19 and copy those materials and take and record the  
20 testimony or statements of such persons as are  
21 reasonably necessary for the furtherance of the  
22 investigation. The commission may issue subpoenas  
23 to compel access to or production of those mate-  
24 rials or the appearance of those persons, subject  
25 to section 4566, subsections 4-A and 4-B, and may  
26 serve interrogatories on a respondent to the same  
27 extent as interrogatories served in aid of a civ-  
28 il action in the Superior Court. The commission  
29 may administer oaths. The complaint and evidence  
30 collected during the investigation of the com-  
31 plaint, other than evidence of conduct or state-  
32 ments made in compromise settlement negotiations,  
33 offers of settlement, settlement agreements and  
34 data identifying persons not parties to the com-  
35 plaint, become a matter of public record at the  
36 conclusion of the investigation of the complaint  
37 prior to a determination by the commission and  
38 may be used as evidence in any subsequent pro-  
39 ceeding, civil or criminal.

40 Sec. 2. 5 MRSA §4612, sub-§3, as enacted by PL  
41 1971, c. 501, §1, is amended to read:

42 3. Informal methods, conciliation. If the com-  
43 mission finds reasonable grounds to believe that un-  
44 lawful discrimination has occurred, but finds no

1 emergency of the sort contemplated in subsection 4,  
2 paragraph B, it shall endeavor to eliminate such dis-  
3 crimination by informal means such as conference,  
4 conciliation and persuasion. Nothing said or done as  
5 part of such endeavors may be made public without the  
6 written consent of the parties to the proceeding, nor  
7 used as evidence in any subsequent proceeding, civil  
8 or criminal, except in a civil action filed by the  
9 commission or a party alleging a breach of agreement.  
10 If the case is disposed of by such informal means in  
11 a manner satisfactory to a majority of the commis-  
12 sion, it shall dismiss the proceeding.

13

#### STATEMENT OF FACT

14 A recent decision of the Law Court noted that the  
15 existing statutory language is unclear as to whether  
16 any period exists during an investigation when things  
17 said or done in response to that investigation are  
18 not protected by confidentiality. The Law Court deci-  
19 sion also notes that the existing language may pre-  
20 clude the commission from using any of the evidence  
21 gathered during its investigation of the complaint in  
22 any subsequent civil court action the commission may  
23 be required to bring.

24 The purpose of this bill in section one is to  
25 make clear that evidence gathered during the course  
26 of an investigation of a complaint of discrimination  
27 filed with the commission is not confidential and may  
28 be used as evidence in any subsequent civil or crimi-  
29 nal proceeding, unless the evidence is of conduct or  
30 statements made in compromise settlement negotia-  
31 tions, offers of settlement, a final settlement  
32 agreement or data identifying persons not parties to  
33 the complaint. The action also makes the complaint  
34 and evidence gathered during the course of the inves-  
35 tigation a matter of public record at the conclusion  
36 of the investigation, but prior to a commission de-  
37 termination of whether there are reasonable grounds  
38 to believe discrimination has occurred.

39 Section 2 permits the commission or a party to  
40 introduce into evidence, in a civil action alleging a

1 breach of settlement agreement, evidence of otherwise  
2 confidential settlement negotiations.

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