

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2469

S.P. 936

In Senate, March 7, 1988

Approved for Introduction by a Majority of the Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Labor suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator ANDREWS of Cumberland.

Cosponsored by Senator DUTREMBLE of York, Representative MCHENRY of Madawaska, Representative RUHLIN of Brewer.

STATE OF MAINE

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

**AN ACT to Promote Greater Workplace
Safety.**

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

6 **Sec. 1.** 5 MRSA §4572, as amended by PL 1987, c.
7 559, Pt. B, §2, is further amended to read:

8 §4572. Unlawful employment discrimination

1 1. Unlawful employment. It shall be unlawful
2 employment discrimination, in violation of this Act,
3 except where based on a bona fide occupational
4 qualification:

5 A. For any employer to fail or refuse to hire or
6 otherwise discriminate against any applicant for
7 employment because of race or color, sex, physical
8 or mental handicap, religion, ancestry or national
9 origin or age, or because of the applicant's
10 previous assertion of a claim or right under Title
11 39, or because of previous actions taken by the
12 applicant which are protected under Title 26,
13 chapter 7, subchapter V-B, or because of any such
14 reason to discharge an employee or discriminate
15 with respect to hire, tenure, promotion, transfer,
16 compensation, terms, conditions or privileges of
17 employment, or any other matter directly or
18 indirectly related to employment, or in recruiting
19 of individuals for employment or in hiring them,
20 to utilize any employment agency which such
21 employer knows, or has reasonable cause to know,
22 discriminates against individuals because of their
23 race or color, sex, physical or mental handicap,
24 religion, age, ancestry or national origin, or
25 their previous assertion of a claim or right under
26 Title 39, or because of previous actions which are
27 protected under Title 26, chapter 7, subchapter
28 V-B;

29 (1) This paragraph does not apply to
30 discrimination against any individual after
31 hiring because of that individual's previous
32 or subsequent assertion of a claim or right
33 under Title 39. Such discrimination is
34 governed by Title 39, section 111;

35 B. For any employment agency to fail or refuse to
36 classify properly or refer for employment or
37 otherwise discriminate against any individual
38 because of race or color, sex, physical or mental
39 handicap, religion, age, ancestry or national
40 origin or the individual's previous assertion of a
41 claim or right under Title 39, or because of

1 previous actions taken by the individual which are
2 protected under Title 26, chapter 7, subchapter
3 V-B, or to comply with an employer's request for
4 the referral of job applicants, if such request
5 indicates either directly or indirectly that such
6 employer will not afford full and equal employment
7 opportunities to individuals regardless of their
8 race or color, sex, physical or mental handicap,
9 religion, age, ancestry or national origin or
10 previous assertion of a claim or right under Title
11 39, or previous actions which are protected under
12 Title 26, chapter 7, subchapter V-B;

13 C. For any labor organization to exclude from
14 apprenticeship or membership, or to deny full and
15 equal membership rights, to any applicant for
16 membership, because of race or color, sex,
17 physical or mental handicap, religion, age,
18 ancestry or national origin, or the applicant's
19 previous assertion of a claim or right under Title
20 39, or because of previous actions taken by the
21 applicant which are protected under Title 26,
22 chapter 7, subchapter V-B, or because of any such
23 reason to deny a member full and equal membership
24 rights, expel from membership, penalize or
25 otherwise discriminate in any manner with respect
26 to hire, tenure, promotion, transfer,
27 compensation, terms, conditions or privileges of
28 employment, representation, grievances or any
29 other matter directly or indirectly related to
30 membership or employment, whether or not
31 authorized or required by the constitution or
32 bylaws of such labor organization or by a
33 collective labor agreement or other contract, or
34 to fail or refuse to classify properly or refer
35 for employment, or otherwise to discriminate
36 against any member because of race or color, sex,
37 physical or mental handicap, religion, age,
38 ancestry or national origin, or because of the
39 member's previous assertion of a claim or right
40 under Title 39, or because of previous actions
41 taken by the member which are protected under
42 Title 26, chapter 7, subchapter V-B, or to cause
43 or attempt to cause an employer to discriminate
44 against an individual in violation of this

1 section, except that it shall be lawful for labor
2 organizations and employers to adopt a maximum age
3 limitation in apprenticeship programs, provided
4 that the employer or labor organization obtains
5 prior approval from the Maine Human Rights
6 Commission of any maximum age limitation employed
7 in an apprenticeship program. The commission
8 shall approve the age limitation if a reasonable
9 relationship exists between the maximum age
10 limitation employed and a legitimate expectation
11 of the employer in receiving a reasonable return
12 upon his investment in an apprenticeship program.
13 The employer or labor organization bears the
14 burden of demonstrating that such a relationship
15 exists;

16 D. For any employer or employment agency or labor
17 organization, prior to employment or admission to
18 membership of any individual, to:

19 (1) Elicit or attempt to elicit any
20 information directly or indirectly pertaining
21 to race or color, sex, physical or mental
22 handicap, religion, age, ancestry or national
23 origin, or any previous assertion of a claim
24 or right under Title 39, or any previous
25 actions which are protected under Title 26,
26 chapter 7, subchapter V-B, except where a
27 physical or mental handicap is determined by
28 the employer, employment agency or labor
29 organization to be job related; or where some
30 privileged information is necessary for an
31 employment agency or labor organization to
32 make a suitable job referral;

33 (2) Make or keep a record of race or color,
34 sex, physical or mental handicap, religion,
35 age, ancestry or national origin or any
36 previous assertion of a claim or right under
37 Title 39, or any previous actions which are
38 protected under Title 26, chapter 7,
39 subchapter V-B, except under physical or
40 mental handicap, when an employer requires a
41 physical or mental examination prior to
42 employment, a privileged record of such an
43 examination is permissible;

1 (3) Use any form of application for
2 employment, or personnel or membership blank
3 containing questions or entries directly or
4 indirectly pertaining to race or color, sex,
5 physical or mental handicap, religion, age,
6 ancestry or national origin or any previous
7 assertion of a claim or right under Title 39,
8 or any previous actions which are protected
9 under Title 26, chapter 7, subchapter V-B,
10 except under physical or mental handicap,
11 where it can be determined by the employer
12 that the job or jobs to be filled require
13 such information for the well-being and
14 safety of the individual; nor will this
15 section prohibit any officially recognized
16 agency from keeping necessary records in
17 order to provide free services to individuals
18 requiring rehabilitation or employment
19 assistance;

20 (4) Print or publish or cause to be printed
21 or published any notice or advertisement
22 relating to employment or membership
23 indicating any preference, limitation,
24 specification or discrimination based upon
25 race or color, sex, physical or mental
26 handicap, age, ancestry or national origin or
27 any previous assertion of a claim or right
28 under Title 39, or any previous actions which
29 are protected under Title 26, chapter 7,
30 subchapter V-B, except under physical or
31 mental handicap when the text of such printed
32 or published material strictly adheres to
33 this Act; or

34 (5) Establish, announce or follow a policy
35 of denying or limiting, through a quota
36 system or otherwise, employment or membership
37 opportunities of any group because of the
38 race or color, sex, physical or mental
39 handicap, religion, age, ancestry, national
40 origin or the previous assertion of a claim
41 or right under Title 39, or because of
42 previous actions which are protected under
43 Title 26, chapter 7, subchapter V-B, of such
44 group; or

1 E. For an employer or employment agency or labor
2 organization to discriminate in any manner against
3 any individual because they have opposed any
4 practice which would be a violation of this Act,
5 or because they have made a charge, testified or
6 assisted in any manner in any investigation,
7 proceeding or hearing under this Act.

8 **Sec.2.** 26 MRSA §42-A, sub-§2, ¶E, as enacted by
9 PL 1985, c. 372, Pt. A, §6, is amended to read:

10 E. The development and implementation of a
11 training and education program for department
12 staff engaged in the administration and
13 enforcement of this section; and

14 **Sec. 3.** 26 MRSA §42-A, sub-§2, ¶E-1 is enacted
15 to read:

16 E-1. Programs to educate employers and employees
17 regarding the Whistleblowers' Protection Act,
18 chapter 7, subchapter V-B; and

19 **Sec. 4.** 26 MRSA §833, as reallocated by PL
20 1983, c. 583, §15, is repealed and the following
21 enacted in its place:

22 §833. Discrimination against certain employees
23 prohibited

24 1. Discrimination prohibited. No employer may
25 discharge, threaten or otherwise discriminate against
26 an employee regarding the employee's compensation,
27 terms, conditions, location or privileges of
28 employment because:

29 A. The employee, acting in good faith, or a
30 person acting on behalf of the employee, reports
31 orally or in writing to the employer or a public
32 body what the employee has reasonable cause to
33 believe is a violation of a law or rule adopted
34 under the laws of this State, a political
35 subdivision of this State or the United States;

36 B. The employee, acting in good faith, or a
37 person acting on behalf of the employee, reports
38 to the employer or a public body, orally or in
39 writing, what the employee has reasonable cause to
40 believe is a condition or practice that would put
41 at risk the health or safety of that employee or
42 any other individual;

1 C. The employee is requested to participate in an
2 investigation, hearing or inquiry held by that
3 public body, or in a court action; or

4 D. The employee has refused to carry out a
5 directive that violates a law or rule adopted
6 under the laws of this State, a political
7 subdivision of this State or the United States,
8 when that violation would put at risk the health
9 or safety of that employee or any other individual.

10 2. Initial report to employer required;
11 exception. Subsection 1 does not apply to an employee
12 who has reported or caused to be reported a violation,
13 or unsafe condition or practice to a public body,
14 unless the employee has first brought the alleged
15 violation, condition or practice to the attention of a
16 person having supervisory authority with the employer
17 and has allowed the employer a reasonable opportunity
18 to correct that violation, condition or practice.

19 Prior notice to an employer is not required if the
20 employee has specific reason to believe that reports
21 to the employer will not result in promptly correcting
22 the violation, condition or practice.

23 3. Reports of suspected abuse. An employee
24 required to report suspected abuse, neglect or
25 exploitation under Title 22, section 3477 or 4011,
26 shall follow the requirements of those sections under
27 those circumstances. No employer may discharge,
28 threaten or otherwise discriminate against an employee
29 regarding the employee's compensation, terms,
30 conditions, location or privileges of employment
31 because the employee followed the requirements of
32 those sections.

33 Sec. 5. 26 MRSA §839, as reallocated by PL
34 1983, c. 583, §15, is repealed and the following
35 enacted in its place:

36 §839. Notices of employee protections and obligations

37 1. Notice provided; posting. The Department of
38 Labor shall provide each employer in the State with a
39 notice as provided in this section. Each employer

1 shall prominently post the notice in the employer's
2 place of business so that the employees are informed
3 of their protections and obligations under this
4 subchapter.

5 2. Contents of notice. The notice provided by
6 the department shall include:

7 A. A summary of this subchapter written in
8 concise and plain language;

9 B. A telephone number at the department that
10 employees may call if they have questions or wish
11 to report violations; and

12 C. A space where the employer shall write in the
13 name of the individual or department to which
14 employees may report violations, unsafe conditions
15 or practices as required by section 833.

16 STATEMENT OF FACT

17 This bill amends the Whistleblowers' Protection
18 Act to extend protection to employees who report
19 questionable work practices to their employer or a
20 public agency and to provide greater awareness of the
21 Act's provisions among employers and employees.

22 Section 1 of the bill gives the Maine Human Rights
23 Commission authority to enforce violations of the
24 Whistleblowers' Protection Act.

25 Sections 2 and 3 of the bill require the
26 Department of Labor to include programs in the
27 department's existing safety and education programs
28 that are designed to educate employers and employees
29 about the Whistleblowers' Protection Act.

30 Section 4 extends the protection against employer
31 retribution to employees who report work practices
32 which, although they may not be illegal, would create
33 safety risks to the employees or the public. This
34 provision will allow employees to report questionable,
35 although legal, practices which may pose safety risks

1 without fear of retribution from their employer. It
2 will also encourage the reporting of questionable work
3 practices to the Department of Labor which will
4 promote better monitoring of work practices and safety
5 conditions in Maine workplaces.

6 Section 5 requires the Department of Labor to
7 provide notices regarding the Whistleblowers'
8 Protection Act to all employers in the State and
9 specifies the content of the notice. This provision
10 will encourage greater awareness of the Act and the
11 procedures necessary to obtain the protections offered
12 under the Act.

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