

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 125

S.P. 69

In Senate, January 11, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator TWITCHELL of Oxford.

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STATE OF MAINE

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

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An Act to Expand the Duties of the Maine Human Rights Commission.

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

4 Sec. 1. 5 MRSA §4577 is enacted to read:

6 **§4577. Crimes against employees**

8 It is a violation of this Act for an employer to commit any violation of Title 17-A, chapter 9, 11 or 13 against an employee.

10 Sec. 2. 5 MRSA §4612, as amended by PL 1985, c. 585, §§1 and 2, is further amended to read:

12 **§4612. Procedure on complaints**

14 1. **Predetermination resolution; investigation.** Upon receipt  
16 of such a complaint, the commission or its delegated single  
18 commissioner or investigator shall take the following actions.

20 A. The commission or its delegated single commissioner or  
investigator shall provide an opportunity for the  
22 complainant and respondent to resolve the matter by  
settlement agreement prior to a determination of whether  
24 there are reasonable grounds to believe that either unlawful  
discrimination or a violation under section 4577 has  
occurred. Evidence of conduct or statements made in  
26 compromise settlement negotiations, offers of settlement and  
any final agreement may not be made public without the  
28 written consent of the parties to the proceeding nor used as  
evidence in any subsequent proceeding, civil or criminal,  
30 except in a civil action alleging a breach of agreement  
filed by the commission or a party.

32 B. The commission or its delegated single commissioner or  
34 investigator shall conduct ~~such preliminary~~ any necessary  
investigation as ~~it deems necessary~~ to determine whether  
36 there are reasonable grounds to believe that either unlawful  
discrimination or a violation under section 4577 has  
38 occurred. In conducting an investigation, the commission, or  
its designated representative, ~~shall~~ may have access at all  
40 reasonable times to premises, records, documents,  
individuals and other evidence or possible sources of  
42 evidence and may examine, record and copy those materials  
and take and record the testimony or statements of such  
44 those persons as are reasonably necessary for the  
~~furtherance of~~ the investigation. The commission may issue  
46 subpoenas to compel access to or production of those  
materials or the appearance of those persons, subject to  
48 section 4566, subsections 4-A and 4-B, and may serve  
interrogatories on a respondent to the same extent as  
50 interrogatories served in aid of a civil action in the  
Superior Court. The commission may administer oaths. The  
52 complaint and evidence collected during the investigation of  
the complaint, other than data identifying persons not

2 parties to the complaint, ~~shall become~~ becomes a matter of  
public record at the conclusion of the investigation of the  
4 complaint prior to a determination by the commission. An  
investigation is concluded upon issuance of a letter of  
6 dismissal or upon listing of the complaint on a published  
commission meeting agenda, whichever ~~first~~ occurs first.  
8 Notwithstanding any other provision of this section, the  
complaint and evidence collected during the investigation of  
10 the that complaint may be used as evidence in any subsequent  
proceeding, civil or criminal.

12 **2. Order of dismissal.** If the commission does not find  
reasonable grounds to believe that either unlawful discrimination  
14 or a violation under section 4577 has occurred, it shall enter an  
order ~~se-finding,~~ that reflects those findings and dismiss the  
16 proceeding.

18 **3. Informal methods, conciliation.** If the commission finds  
reasonable grounds to believe that either unlawful discrimination  
20 or a violation under section 4577 has occurred, but finds no  
emergency of the sort contemplated in subsection 4, paragraph B,  
22 ~~it~~ the commission shall endeavor to eliminate ~~sueh~~ that  
discrimination or reach a settlement concerning the violation by  
24 informal means such as conference, conciliation and persuasion.  
Nothing said or done as part of ~~sueh~~ those endeavors may be made  
26 public without the written consent of the parties to the  
proceeding, nor used as evidence in any subsequent proceeding,  
28 civil or criminal, except in a civil action alleging a breach of  
agreement filed by the commission or a party. If the case is  
30 disposed of by ~~sueh~~ informal means in a manner satisfactory to a  
majority of the commission, it shall dismiss the proceeding.

32 **4. Civil action by commission.** The commission may file a  
34 civil action seeking appropriate relief.

36 A. If the commission finds reasonable grounds to believe  
that either unlawful discrimination or a violation of  
38 section 4577 has occurred, and ~~further~~ believes that  
irreparable injury or great inconvenience will be caused to  
40 the victim of ~~sueh~~ the discrimination or violation or to  
members of a racial, color, sex, physical or mental  
42 handicap, religious, nationality ~~group~~ or age group if  
relief is not immediately granted~~ed~~, or if conciliation  
44 efforts under subsection 3 have not succeeded, the  
commission shall file in the Superior Court a civil action  
46 seeking ~~sueh~~ appropriate relief ~~as-is-appropriate~~, including  
temporary restraining orders.

48 B. Grounds for the filing of such an action before  
50 attempting conciliation include, but are not limited to:

52 (1) In unlawful housing discrimination, that the  
housing accommodation sought is likely to be sold or

2 rented to another during the pendency of proceedings,  
or that an unlawful eviction is about to occur;

4 (2) In unlawful employment discrimination, that the  
6 victim of the discrimination has lost or is threatened  
with the loss of job and income as a result of such  
that discrimination;

8 (3) In unlawful public accommodations discrimination,  
10 that such the discrimination is causing inconvenience  
to many persons;

12 (4) In any unlawful discrimination or violation under  
14 section 4577, that the victim ~~of the discrimination~~ is  
16 suffering or is in danger of suffering severe financial  
loss ~~in relation to his circumstances~~, severe hardship  
18 or personal danger as a result of such that  
discrimination or violation.

20 **5. Confidentiality of 3rd-party records.** The Legislature  
22 finds that persons who are not parties to a complaint under this  
chapter as a complainant or a person accused of discrimination or  
24 a violation under section 4577 have a right to privacy. Any  
records of the commission which that are open to the public under  
26 Title 1, chapter 13, shall must be kept in such a manner as to  
ensure that data identifying these 3rd parties is not reflected  
28 in the record. Only data reflecting the identity of these  
persons may be kept confidential.

30 **Sec. 3. 5 MRSA §4613**, as amended by PL 1989, c. 99, is  
32 further amended to read:

34 **§4613. Procedure in Superior Court**

36 **1. Actions filed by commission.** Any ~~such~~ The action filed  
by the commission shall must be heard by the Superior Court and  
38 may be advanced on the docket and receive priority over other  
civil cases where when the court shall ~~determine~~ determines that  
40 the interests of justice so require that action. Except as  
otherwise provided in this chapter, the court shall hear the case  
42 and grant relief as in other civil actions for injunctions. Any  
such The action shall must be brought in the name of the  
44 commission for the use of the victim of the alleged  
discrimination or violation or for the use of a described class,  
46 and the commission shall furnish counsel for the prosecution  
thereof of that action. Any person aggrieved by the alleged  
48 discrimination or violation may intervene in such an action. In  
no ~~such~~ an action brought by the commission shall ~~any~~ an  
50 injunction bond may not be required, nor shall may damages be  
assessed for the wrongful issuance of an injunction.

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

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A. ~~Where~~ When any person who has been the subject of alleged unlawful housing discrimination has not acquired substitute housing, temporary injunctions against the sale or rental ~~to others~~ of the housing accommodation as to which the violation allegedly occurred, and against the sale or rental of other housing accommodations controlled by the alleged violator shall may be liberally granted in the interests of furthering the purposes of this Act, when it appears probable that the plaintiff will succeed upon final disposition of the case; ~~i~~

B. If the court finds that either unlawful discrimination or a violation of section 4577 occurred, ~~its~~ the judgment shall must specify an appropriate remedy or remedies ~~therefor~~. The remedies may include, but are not limited to:

(1) An order to cease and desist from the unlawful practices specified in the order;

(2) An order to employ or reinstate a victim of unlawful employment discrimination or a violation under section 4577, with or without back pay;

(3) An order to accept or reinstate such a person in a union;

(4) An order to rent or sell a specified housing accommodation, or one substantially identical ~~thereto~~ if controlled by the respondent, to a victim of unlawful housing discrimination;

(5) An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease or manage; ~~and further~~, forbidding the sale, rental or lease of ~~any--such~~ those housing accommodations until the violator has given security to assure compliance with any order entered against the violator and with all provisions of this Act. Such an order may continue the court's jurisdiction until the violator has demonstrated compliance, and may defer decision on some or all relief until after a probationary period and a further hearing on the violator's conduct during that period;

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

2 (7) An order to pay to the complainant, including the  
3 commission when the commission is the complainant,  
4 civil penal damages not in excess of \$5,000 in the case  
5 of the first order under this Act against the  
6 respondent, not in excess of \$7,500 in the case of a  
7 2nd such order against the respondent, and not in  
8 excess of \$10,000 in the case of a 3rd or subsequent  
such order against the respondent; and

10 C. The action shall must be commenced not more than 2 years  
11 after the act of unlawful discrimination ~~complained-of~~ or  
12 the violation under section 4577.

14 Sec. 4. 5 MRSA §4621, as amended by PL 1979, c. 541, Pt. A,  
15 §41, is further amended to read:

16 **§4621. Civil action**

18 Within the time limited, a person who has been subject to  
19 either unlawful discrimination or a violation under section 4577  
20 may file a civil action in the Superior Court against the person  
21 or persons who committed the unlawful discrimination or violation.

24 Sec. 5. 5 MRSA §4622, sub-§1, ¶B, as enacted by PL 1981, c.  
25 255, §4, is amended to read:

26 B. Failed, within 90 days after finding reasonable grounds  
27 to believe that either unlawful discrimination or a  
28 violation under section 4577 occurred, to enter into a  
29 conciliation agreement to which the plaintiff was a party.

32 Sec. 6. 5 MRSA §4631, as enacted by PL 1971, c. 501, §1, is  
33 amended to read:

34 **§4631. Burden of proof**

36 In any civil action under this Act, the burden shall ~~be~~ is  
37 on the person seeking relief to prove, by a fair preponderance of  
38 the evidence, that the alleged unlawful discrimination or  
39 violation under section 4577 occurred.

42 Sec. 7. 39 MRSA §28-A is enacted to read:

44 **§28-A. Crimes against employees**

46 Notwithstanding section 28, a claim based on the allegation  
47 of a crime committed by an employer against an employee is not  
48 limited to the remedies available under this Act.

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## STATEMENT OF FACT

4           This bill provides an avenue of recourse for employees who  
6 are victims of certain crimes perpetrated by their employers. If  
8 an employee is the victim of a crime committed by the employer,  
10 the employee finds it difficult, if not impossible, to continue  
working for that employer. Criminal charges and civil tort suits  
are often difficult to pursue or provide little help to the  
employee.

12           This bill makes committing certain crimes against an  
14 employee a violation of the Maine Human Rights Act. Committing  
16 any crime against the person, as contained in the Maine Criminal  
18 Code, chapter 9, any sexual assault pursuant to the Maine  
Criminal Code, chapter 11, or kidnapping or criminal restraint as  
described in the Maine Criminal Code, chapter 13, against an  
employee will be treated as any other violation under the Maine  
Human Rights Act. The Maine Human Rights Commission will have  
20 the authority to investigate, try to reconcile the parties and  
22 file suit for remedial action. One of the possible remedies is  
back wages. This bill specifically states that the Workers'  
24 Compensation Act does not preclude an employee's rights as  
provided in this bill.