

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 728

S.P. 235

In Senate, March 2, 1993

**An Act to Make Provisions of the Maine Human Rights Act Consistent
with Federal Law.**

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 CONLEY of Cumberland.

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

2
3 Sec. 1. 5 MRSA §4566, sub-§4-B, as enacted by PL 1977, c. 648,
4 §1, is amended to read:

6 4-B. Subpoenas; contest of validity. ~~Subpoenas shall be~~
7 ~~issued only upon application to and approval of the Superior~~
8 ~~Court.~~ The person upon whom the subpoena is served ~~may~~ may
9 contest its validity. A judicial review of the subpoenas ~~shall~~
10 ~~be-permissible~~ is permissible in any Superior Court.

12 Sec. 2. 5 MRSA §4612, sub-§4, ¶A, as amended by PL 1991, c.
13 99, §29, is further amended to read:

14 A. If the commission finds reasonable grounds to believe
15 that unlawful discrimination has occurred, and further
16 believes that irreparable injury or great inconvenience will
17 be caused the victim of such discrimination or to members of
18 a racial, color, sex, physical or mental disability,
19 religious, nationality group or age group if relief is not
20 immediately granted, or if conciliation efforts under
21 subsection 3 have not succeeded, the commission shall may
22 file in the Superior Court a civil action seeking such
23 relief as is appropriate, including temporary restraining
24 orders.

26 Sec. 3. 5 MRSA §4613, sub-§2, ¶B, as amended by PL 1991, c.
27 474, §1 and affected by §3, is further amended to read:

28 B. If the court finds that unlawful discrimination
29 occurred, its judgment must specify an appropriate remedy or
30 remedies for that discrimination. The remedies may include,
31 but are not limited to:

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

34 (2) An order to employ or reinstate a victim of
35 unlawful employment discrimination, with or without
36 back pay;

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

39 (4) An order to rent or sell a specified housing
40 accommodation, or one substantially identical to that
41 accommodation if controlled by the respondent, to a
42 victim of unlawful housing discrimination;

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

14 (6) An order to pay the victim, in cases of unlawful
16 price discrimination, 3 times the amount of any
excessive price demanded and paid by reason of that
18 unlawful discrimination; and

20 ~~(7)---An--order--to--pay--to--the--victim--of--unlawful~~
~~discrimination--or--if--the--commission--brings--action--on~~
~~22 behalf--of--the--victim--an--order--to--pay--to--the--victim,~~
~~the--commission--or--both--civil--penal--damages--not--in~~
~~24 excess--of--\$10,000--in--the--case--of--the--first--order--under~~
~~this--Act--against--the--respondent--not--in--excess--of~~
~~26 \$25,000--in--the--case--of--a--2nd--order--against--the~~
~~respondent--arising--under--the--same--subchapter--of--this~~
~~28 Act--and--not--in--excess--of--\$50,000--in--the--case--of--a--3rd~~
~~er--subsequent--order--against--the--respondent--arising~~
~~30 under--the--same--subchapter--of--this--Act--except--that--the~~
~~32 total--amount--of--civil--penal--damages--awarded--in--any~~
~~action--filed--under--this--Act--may--not--exceed--the--limits~~
~~34 contained--in--this--subparagraph;--and~~

36 Sec. 4. 5 MRSA §4613-A is enacted to read:

38 §4613-A. Intentional discrimination

40 1. Right of recovery. In an action brought by a
complaining party under sections 4612 and 4613 against a
respondent who engaged in unlawful intentional discrimination
42 prohibited under sections 4571 to 4602 that does not include a
practice that is unlawful because of its disparate impact, if the
44 complaining party can not recover under 42 United States Code,
Section 1981, the complaining party may recover compensatory and
46 punitive damages as allowed in subsection 3, in addition to any
relief authorized by section 4613, subsection 2, from the
48 respondent.

2 2. Reasonable accommodation; good faith effort. When a
4 discriminatory practice involves the provision of a reasonable
6 accommodation, the damages may not be awarded under this section
8 when the covered entity, in consultation with the person with the
10 disability who has informed the covered entity that accommodation
 is needed, demonstrates good faith efforts to identify and make a
 reasonable accommodation that would provide the individual with
 an equally effective opportunity and would not cause undue
 hardship on the operation of the business.

12 3. Compensatory and punitive damages. Recovery of
 compensatory and punitive damages is governed by the following.

14 A. A complaining party may recover punitive damages under
16 this section against a respondent if the complaining party
18 demonstrates that the respondent engaged in a discriminatory
 practice or discriminatory practices with malice or with
 reckless indifference to the rights of an aggrieved
 individual protected by this Act.

20 B. Compensatory damages awarded under this section may not
22 include back pay, interest on back pay or any type of relief
 authorized under section 4613, subsection 2.

24 C. The sum of the amount of compensatory damages awarded
26 under this section for future pecuniary losses, emotional
28 pain, suffering, inconvenience, mental anguish, loss of
30 enjoyment of life and other nonpecuniary losses and the
 amount of punitive damages awarded under this section may
 not exceed, for each complaining party:

32 (1) In the case of a respondent who has fewer than 15
34 employees in each of 20 or more calendar weeks in the
 current or preceding calendar year, \$10,000;

36 (2) In the case of a respondent who has more than 14
38 and fewer than 101 employees in each of 20 or more
 calendar weeks in the current or preceding calendar
 year, \$50,000;

40 (3) In the case of a respondent who has more than 100
42 and fewer than 201 employees in each of 20 or more
44 calendar weeks in the current or preceding calendar
 year, \$100,000; and

46 (4) In the case of a respondent who has more than 200
48 and fewer than 501 employees in each of 20 or more
 calendar weeks in the current or preceding calendar
 year, \$200,000; and

2 2. The bill eliminates the requirement that the Maine Human
Rights Commission apply to the Superior Court every time it needs
4 to subpoena a document or a person as it conducts its
investigations pursuant to the Maine Human Rights Act. The bill
6 does not affect the right of the person upon whom a subpoena is
served to contest its validity by requesting judicial review in
8 any Superior Court. This change responds to a statement of
concern about undue delay caused by the current statutory
10 language filed with the Human Rights Commission by the Office of
the General Counsel of the United States Department of Housing
and Urban Development.

12
14 3. The bill acknowledges the fact that the Maine Human
Rights Commission must exercise prosecutorial discretion in
16 determining the cases in which conciliation has failed that are
appropriate for litigation in Superior Court by the commission.
18 The bill also makes the Maine Human Rights Act consistent with
the analogous provisions of the federal Civil Rights Act of 1964,
20 as amended, which establishes the litigation responsibilities of
the federal Equal Employment Opportunity Commission.

22 4. The bill makes the remedies available in proven cases of
unlawful discrimination under the Maine Human Rights Act the same
24 as those now available under the federal Civil Rights Act of 1991
and the Americans with Disabilities Act of 1990.

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