

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

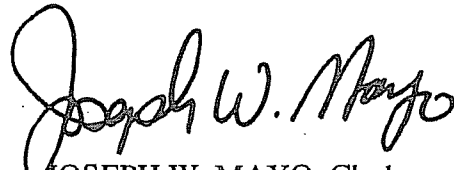
No. 1669

H.P. 1242

House of Representatives, January 10, 1994

An Act to Establish a Complaint Procedure under the Maine Human Rights Act When a Conflict of Interest Exists.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative TREAT of Gardiner.
Cosponsored by Senator CONLEY of Cumberland and
Representatives: ADAMS of Portland, CHASE of China, FAIRCLOTH of Bangor, HOGLUND
of Portland, PFEIFFER of Brunswick, RAND of Portland, Senator: ESTY of Cumberland.

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

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4 Sec. 1. 5 MRSA §4611, as amended by PL 1977, c. 259, §2, is
further amended to read:

6 **§4611. Complaint**

8 Any person who believes he has been subject to unlawful
10 discrimination, or any employee of the commission, may file a
12 complaint under oath with the commission stating the facts
14 concerning the alleged discrimination, provided that such
16 complaints shall be filed with the commission not more than 6
months after the alleged act of unlawful discrimination. In
addition, any person may file a complaint pursuant to section
4632. If the person alleges that a conflict of interest as
defined in section 4612-A, subsection 1 exists, section 4612-A
applies.

18 Sec. 2. 5 MRSA §4612, as amended by PL 1993, c. 327, §2, is
20 further amended by adding a new first paragraph to read:

22 Except as provided in section 4612-A, the following
24 procedures apply to all complaints of unlawful discrimination.

26 Sec. 3. 5 MRSA §4612-A is enacted to read:

28 **§4612-A. Procedure when conflict of interest alleged**

30 1. Conflict of interest. As used in this section,
"conflict of interest" means that:

32 A. A commissioner has direct or indirect authority to
34 promote, transfer or terminate the employment of the
complainant; or

36 B. A commissioner reports to or advises a person who has
38 direct or indirect authority to promote, transfer or
terminate the employment of the complainant.

40 2. Filing of complaint. If the complainant alleges in a
42 statement under oath that the complainant believes a conflict of
interest exists, the complainant may file the complaint and the
statement with the executive secretary of the commission.

44 3. Procedure on complaint when conflict of interest
46 alleged. When the executive secretary receives a complaint and
48 statement filed under subsection 2, the following procedures and
restrictions apply.

2 A. Except as provided in paragraph B, the executive
4 secretary, investigators and counsel shall keep the identity
6 of the complainant and the nature of the complaint
8 confidential from all members of the commission until the
10 investigation is complete.

12 B. If the complainant so directs, the investigator shall
14 provide an opportunity to resolve the matter by settlement
16 agreement as provided in section 4612, subsection 1,
18 paragraph A.

20 C. The investigator shall conduct a preliminary
22 investigation as provided in section 4612, subsection 1,
24 paragraph B.

26 D. When the investigation is completed, if the investigator
28 recommends that the complaint be placed on the commission's
30 agenda, the executive secretary shall direct the
32 commissioner alleged to have a conflict of interest with
34 regard to the complaint not to participate in any proceeding
36 on the complaint, and, except as provided in subsection 5,
38 to refrain from discussing the complaint or the complainant
40 with other commission members.

42 4. Recusal. If the executive secretary directs a
44 commission member regarding a conflict of interest as provided in
46 subsection 3, the commissioner may not participate in any
48 proceeding on the complaint, and, except as provided in
50 subsection 5, may not discuss the complaint or the complainant
52 with other commission members.

54 5. Subpoena and questioning. The remaining commission
56 members may subpoena and question under oath the recused
58 commissioner.

STATEMENT OF FACT

40 This bill addresses the situation in which a member of the
42 Maine Human Rights Commission may have a conflict of interest
44 with regard to a complaint of unlawful employment
46 discrimination. Because a commissioner may have many employees
or may work for and advise a person with authority over many
employees, there is always the possibility that a complaint may
directly or indirectly involve the commissioner. This bill lays
out the procedure for such a situation.

48 If the complainant alleges that a commissioner has a
50 conflict of interest, the complaint may be filed directly with
the executive secretary of the Maine Human Rights Commission.
The executive secretary and other employees of the commission

2 must keep the identity of the complainant and the nature of the
3 complaint confidential from all commissioners until the
4 investigation is complete. The complainant has the option to ask
5 the investigator to provide an opportunity for resolution through
6 a settlement agreement before the investigation begins. Once the
7 investigation is complete, if the investigator recommends that
8 the commission take up the complaint on its agenda, the executive
9 secretary must inform the affected commissioner that a conflict
10 of interest exists and direct the commissioner not to participate
11 in any proceedings on the complaint and not to discuss the
12 complaint or the complainant with any members of the commission.
13 The remaining commissioners may subpoena and question the recused
14 commissioner under oath.

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20 This document has not yet been reviewed to determine the
21 need for cross-reference, stylistic and other technical
22 amendments to conform existing law to current drafting standards.