

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1748

S.P. 631

In Senate, January 20, 1994

An Act to Limit the Jurisdiction of the Maine Human Rights Act.

Submitted by the Maine Human Rights Commission pursuant to Joint Rule 24.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CONLEY of Cumberland.
Cosponsored by Representative: COTE of Auburn.

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

2
4 **Sec. 1. 5 MRSA §4552**, as amended by PL 1993, c. 327, §1, is further amended to read:

6 **§4552. Policy**

8 To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing or access to public accommodations on account of race, color, sex, physical or mental disability, religion, ancestry or national origin; and in employment, discrimination on account of age ~~or because of the previous assertion of a claim or right under former Title 39 or Title 39-A~~ and in housing because of familial status; and to prevent discrimination in the extension of credit on account of age, race, color, sex, marital status, religion, ancestry or national origin; and to prevent discrimination in education on account of sex or physical or mental disability.

24 **Sec. 2. 5 MRSA §4572, sub-§1**, as amended by PL 1991, c. 885, Pt. E, §7 and affected by §47, is further amended to read:

28 **1. Unlawful employment.** It is unlawful employment discrimination, in violation of this Act, except when based on a bona fide occupational qualification:

32 A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, physical or mental disability, religion, age, ancestry or national origin, ~~because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter V-B;~~ or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment; or, in recruiting of individuals for employment or in hiring them, to utilize any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their race or color, sex, physical or mental disability, religion, age, ancestry or national origin, ~~because of their previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter V-B;~~

2 ~~(1) This paragraph does not apply to discrimination~~
 ~~governed by Title 39-A, section 353;~~

4 B. For any employment agency to fail or refuse to classify
6 properly, refer for employment or otherwise discriminate
 against any individual because of race or color, sex,
8 physical or mental disability, religion, age, ancestry or
 national origin, ~~because of the individual's previous~~
10 ~~assertion of a claim or right under former Title 39 or Title~~
 ~~39-A or because of previous actions taken by the individual~~
12 ~~that are protected under Title 26, chapter 7, subchapter~~
 V-B; or to comply with an employer's request for the
14 referral of job applicants if a request indicates either
 directly or indirectly that the employer will not afford
16 full and equal employment opportunities to individuals
 regardless of their race or color, sex, physical or mental
18 disability, religion, age, ancestry or national origin,
 ~~because of previous assertion of a claim or right under~~
20 ~~former Title 39 or Title 39-A or because of previous actions~~
 ~~that are protected under Title 26, chapter 7, subchapter V-B;~~

22 C. For any labor organization to exclude from
24 apprenticeship or membership or to deny full and equal
 membership rights to any applicant for membership because of
26 race or color, sex, physical or mental disability, religion,
 age, ancestry or national origin, ~~because of the applicant's~~
28 ~~previous assertion of a claim or right under former Title 39~~
 ~~or Title 39-A or because of previous actions taken by the~~
30 ~~applicant that are protected under Title 26, chapter 7,~~
 subchapter V-B; or, because of those reasons, to deny a
32 member full and equal membership rights, expel from
 membership, penalize or otherwise discriminate with respect
34 to hire, tenure, promotion, transfer, compensation, terms,
 conditions or privileges of employment, representation,
36 grievances or any other matter directly or indirectly
 related to membership or employment, whether or not
38 authorized or required by the constitution or bylaws of that
 labor organization or by a collective labor agreement or
40 other contract; to fail or refuse to classify properly or
 refer for employment or otherwise discriminate against any
42 member because of race or color, sex, physical or mental
 disability, religion, age, ancestry or national origin,
44 ~~because of the member's previous assertion of a claim or~~
 ~~right under former Title 39 or Title 39-A or because of~~
 ~~previous actions taken by the member that are protected~~
46 ~~under Title 26, chapter 7, subchapter V-B;~~ or to cause or
 attempt to cause an employer to discriminate against an
48 individual in violation of this section, except that it is
50 lawful for labor organizations and employers to adopt a
 maximum age limitation in apprenticeship programs, if the
52 employer or labor organization obtains prior approval from
 the Maine Human Rights Commission of any maximum age

2 limitation employed in an apprenticeship program. The
3 commission shall approve the age limitation if a reasonable
4 relationship exists between the maximum age limitation
5 employed and a legitimate expectation of the employer in
6 receiving a reasonable return upon the employer's investment
7 in an apprenticeship program. The employer or labor
8 organization bears the burden of demonstrating that such a
9 relationship exists;

10 D. For any employer, employment agency or labor
11 organization, prior to employment or admission to membership
12 of any individual, to:

14 (1) Elicit or attempt to elicit information directly
15 or indirectly pertaining to race or color, sex,
16 physical or mental disability, religion, age, ancestry
17 or national origin, ~~any previous assertion of a claim~~
18 ~~er right under former Title 39 or Title 39-A or any~~
19 ~~previous actions that are protected under Title 26,~~
20 ~~chapter 7, subchapter V-B,~~ except when a physical or
21 mental disability is determined by the employer,
22 employment agency or labor organization to be job
23 related or when some privileged information is
24 necessary for an employment agency or labor
25 organization to make a suitable job referral;

26 (2) Make or keep a record of race or color, sex,
27 physical or mental disability, religion, age, ancestry
28 or national origin, ~~any previous assertion of a claim~~
29 ~~er right under former Title 39 or Title 39-A or any~~
30 ~~previous actions that are protected under Title 26,~~
31 ~~chapter 7, subchapter V-B,~~ except under physical or
32 mental disability when an employer requires a physical
33 or mental examination prior to employment, a privileged
34 record of that examination is permissible;

35 (3) Use any form of application for employment, or
36 personnel or membership blank containing questions or
37 entries directly or indirectly pertaining to race or
38 color, sex, physical or mental disability, religion,
39 age, ancestry or national origin, ~~any previous~~
40 ~~assertion of a claim or right under former Title 39 or~~
41 ~~Title 39-A or any previous actions that are protected~~
42 ~~under Title 26, chapter 7, subchapter V-B,~~ except under
43 physical or mental disability when it can be determined
44 by the employer that the job or jobs to be filled
45 require that information for the well-being and safety
46 of the individual. This section does not prohibit any
47 officially recognized agency from keeping necessary
48 records in order to provide free services to
49 individuals requiring rehabilitation or employment
50 assistance;
51
52

2 (4) Print, publish or cause to be printed or published
4 any notice or advertisement relating to employment or
6 membership indicating any preference, limitation,
8 specification or discrimination based upon race or
10 color, sex, physical or mental disability, religion,
12 age, ancestry or national origin, ~~any previous
assertion of a claim or right under former Title 39 or
Title 39-A or any previous actions that are protected~~
under Title 26, chapter 7, subchapter V-B, except under
physical or mental disability when the text of printed
or published material strictly adheres to this Act; or

14 (5) Establish, announce or follow a policy of denying
16 or limiting, through a quota system or otherwise,
18 employment or membership opportunities of any group
20 because of the race or color, sex, physical or mental
22 disability, religion, age, ancestry or national origin,
~~the previous assertion of a claim or right under former
Title 39 or Title 39-A or because of previous actions
that are protected under Title 26, chapter 7,~~
subchapter V-B, of that group; or

24 E. For an employer, employment agency or labor organization
26 to discriminate in any manner against individuals because
28 they have opposed a practice that would be a violation of
30 this Act or because they have made a charge, testified or
assisted in any investigation, proceeding or hearing under
this Act.

32 **STATEMENT OF FACT**

34 This bill removes references to the Whistleblower's
36 Protection Act and the workers' compensation laws from the Maine
Human Rights Act. This action is necessary because the resources
38 allocated to enforce these provisions have been eliminated.

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