

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

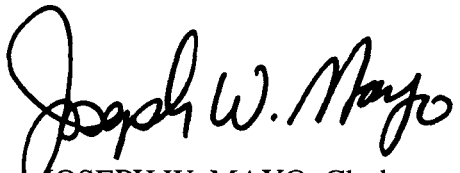
No. 1758

H.P. 1279

House of Representatives, February 6, 1996

An Act to Amend the Protection from Abuse and Protection from Harassment Statutes.

Reported by Representative TREAT for the Joint Standing Committee on Judiciary pursuant to Joint Order H.P. 1258.


JOSEPH W. MAYO, Clerk

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

2
4 **Sec. 1. 5 MRSA §4651, sub-§2**, as amended by PL 1995, c. 265,
§1, is repealed and the following enacted in its place:

6 **2. Harassment.** "Harassment" means:

8 A. Three or more acts of intimidation, confrontation,
10 physical force or the threat of physical force directed
12 against any person, family or business that are made with
14 the intention of causing fear, intimidation or damage to
16 property and that do in fact cause fear, intimidation or
18 damage to property;

20 B. Three or more acts that are made with the intent to
22 deter the free exercise or enjoyment of any rights or
24 privileges secured by the Constitution of Maine or the
26 United States Constitution; or

28 C. A single act constituting a violation of section 4681;
30 Title 17, section 2931; or Title 17-A, sections 201, 202,
32 203, 204, 207, 208, 209, 210, 211, 253, 301, 302, 303,
34 506-A, 556, 802, 805 or 806.

36 This definition does not include any act protected by the
38 constitutional guarantee of free speech or by labor relations
40 laws.

42 **Sec. 2. 5 MRSA §4652**, as amended by PL 1991, c. 760, §2, is
44 further amended by inserting at the end a new paragraph to read:

46 A juvenile may be a party to an action under this chapter
48 only when the juvenile has a representative through whom the
50 action is brought or defended pursuant to the Maine Rules of
52 Civil Procedure, Rule 17(b). The Department of Human Services
54 may act as a representative of the juvenile. If any notice or
56 service is required by this chapter, the notice or service must
58 be provided to both the juvenile and the juvenile's
60 representative.

62 **Sec. 3. 5 MRSA §4653, sub-§1**, as amended by PL 1995, c. 265,
64 §3, is further amended to read:

66 **1. Filing.** Any person who has been a victim of harassment,
68 ~~including a business or a landlord acting on behalf of an~~
70 ~~aggrieved tenant,~~ may seek relief by filing a sworn petition in
72 an appropriate court alleging that harassment.

74 **Sec. 4. 5 MRSA §4654, sub-§2, ¶A**, as amended by PL 1995, c.
76 265, §4, is further amended to read:

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A. It appears clearly from a verified petition or an affidavit accompanying the petition that:

(1) Before the defendant or the defendant's attorney can be heard, the plaintiff or the plaintiff's employees may be in immediate and present danger of physical abuse from the defendant or ~~is in immediate and present danger of suffering extreme emotional distress as a result of the defendant's conduct or the plaintiff's business or rental property is in immediate and present danger of suffering substantial damage as a result of the defendant's actions;~~

(2) Either the plaintiff has or has not contacted any law enforcement officials concerning the alleged harassment; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment;

Sec. 5. 5 MRSA §4654, sub-§4, ¶E, as repealed and replaced by PL 1993, c. 680, Pt. A, §12, is repealed.

Sec. 6. 5 MRSA §4654, sub-§4, ¶F, as enacted by PL 1993, c. 680, Pt. A, §13, is amended to read:

F. Repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; or

Sec. 7. 5 MRSA §4654, sub-§4, ¶G is enacted to read:

G. Having any direct or indirect contact with the plaintiff.

Sec. 8. 14 MRSA §6030-A is enacted to read:

§6030-A. Protection of rental property or tenants

1. Commencing action. A landlord may file a petition for protection of rental property or tenants when the landlord, the landlord's employee or agent, the landlord's rental property or persons who are tenants of the landlord have experienced harm or have been threatened with harm by a tenant of the landlord. The landlord may file the petition in the landlord's own name or, when the landlord has written authority from a tenant to do so, may file the action on behalf of the aggrieved tenant, or both.

2 **2. Procedures and relief.** Actions under this section are
3 governed by the procedural provisions of Title 5, chapter 337-A.
4 In addition, a temporary order may be sought if the landlord's
5 rental property is in an immediate and present danger of
6 suffering substantial damage as a result of the defendant's
7 actions, and additional injunctive relief may be granted
8 enjoining the defendant from damaging the landlord's or aggrieved
9 tenant's property or from threatening, assaulting, molesting,
10 confronting or otherwise disturbing the peace of the landlord,
11 the landlord's employee or agent or of any aggrieved tenant.

12 **Sec. 9. 19 MRSA §762, sub-§4,** as amended by PL 1995, c. 469,
13 §3, is further amended to read:

14 **4. Family or household members.** "Family or household
15 members" means spouses or former spouses, individuals presently
16 or formerly living together as spouses, natural parents of the
17 same child, adult household members related by consanguinity or
18 affinity or minor children of any household member when the
19 defendant is an adult household member, and, for the purposes of
20 this chapter only, includes individuals ~~presently--or--formerly~~
21 ~~living--together--as~~ who are or were sexual partners. Holding
22 oneself out to be a spouse is not necessary to constitute "living
23 as spouses."

24 **Sec. 10. 19 MRSA §763,** as amended by PL 1991, c. 760, §5, is
25 further amended by inserting at the end a new paragraph to read:

26 A juvenile may be a party to an action under this chapter
27 only when the juvenile has a representative through whom the
28 action is brought or defended pursuant to the Maine Rules of
29 Civil Procedure, Rule 17(b). The Department of Human Services
30 may act as a representative of the juvenile. If any notice or
31 service is required by this chapter, the notice or service must
32 be provided to both the juvenile and the juvenile's
33 representative.

34 **Sec. 11. 19 MRSA §765, sub-§4, ¶C-1,** as enacted by PL 1993, c.
35 475, §9, is amended to read:

- 36 C-1. Repeatedly and without reasonable cause:
- 37 (1) Following the plaintiff; or
- 38 (2) Being at or in the vicinity of the plaintiff's
39 home, school, business or place of employment; ~~or~~

40 **Sec. 12. 19 MRSA §765, sub-§4, ¶D,** as enacted by PL 1979, c.
41 578, §§5 and 7, is amended to read:

2 D. Taking, converting or damaging property in which the
3 plaintiff may have a legal interest, ; or

4 **Sec. 13. 19 MRSA §765, sub-§4, ¶E** is enacted to read:

6 E. Having any direct or indirect contact with the plaintiff.

8 **Sec. 14. 19 MRSA §766, sub-§B-3** is enacted to read:

10 B-3. Directing the defendant to refrain from having any
12 direct or indirect contact with the plaintiff.

14
16 **STATEMENT OF FACT**

18 This bill makes a number of language and allocation changes
19 necessary to clarify and harmonize the statutes that govern
20 protection from abuse and protection from harassment actions.

22 The definition of "harassment" is repealed and replaced to
23 clarify that harassment means 3 or more acts of intimidation,
24 confrontation, physical force or the threat of physical force
25 directed against any person, family or business that are made
26 with the intention of causing, and do in fact cause, fear,
27 intimidation or damage to property. "Harassment" also means 3 or
28 more events that are intended to interfere with a person's
29 constitutional rights, consistent with the current interpretation
30 of existing law. The new definition further provides that a
31 single serious act, defined by reference to certain criminal acts
32 and to civil provisions governing "hate crimes," may also serve
33 as the basis for protection from harassment actions.

34 Jurisdiction over a juvenile, either a plaintiff or
35 defendant, is clarified in the jurisdiction sections of both
36 types of actions. A juvenile may be a party in either type of
37 action, and as either plaintiff or defendant, but the juvenile
38 must have a guardian, next friend, guardian ad litem or other
39 representative, as provided in the Maine Rules of Civil
40 Procedure, Rule 17(b). In order to ensure both legal notice and
41 functional notice, both the juvenile and the juvenile's
42 representative must be noticed or served with process.

44 The relief sections for both types of actions are amended to
45 clarify that a judge may order a defendant to refrain from direct
46 or indirect contact with a plaintiff.

48 The definition of household members in protection from abuse
49 actions is amended to provide coverage to sexual partners,
50 whether or not the partners have actually lived together in a
51 household.

2 Landlords and their property and tenants are removed from
the protection from harassment law. Equivalent protection is
4 provided by creating a new section in the landlord and tenant
laws giving landlords the right to commence an action for the
6 protection of rental property or tenants.