

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 944

H.P. 688

House of Representatives, February 3, 1999

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### An Act to Protect Victims of Crimes in the Workplace.

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SAXL of Portland.  
Cosponsored by Senator CATHCART of Penobscot and  
Representatives: DAVIS of Falmouth, HATCH of Skowhegan, MURPHY of Kennebunk,  
MUSE of South Portland, Senators: AMERO of Cumberland, DOUGLASS of Androscoggin,  
LAWRENCE of York.

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

4 **Sec. 1. 5 MRSA §4571, as amended by PL 1991, c. 99, §6, is**  
4 further amended to read:

6 **§4571. Right to freedom from discrimination in**  
8 **employment**

10 The opportunity for an individual to secure employment  
12 without discrimination because of race, color, sex, physical or  
14 mental disability, religion, age, status as a victim of crime as  
12 defined in section 4572-B, subsection 1, paragraph D, ancestry or  
14 national origin is recognized as and declared to be a civil right.

16 **Sec. 2. 5 MRSA §4572-B is enacted to read:**

18 **§4572-B. Unlawful employment discrimination against victims**  
18 **of certain crimes**

20 **1. Definitions. As used in this section, unless the context**  
22 **otherwise indicates, the following terms have the following**  
22 **meanings.**

24 **A. "Adverse job action" means any action adversely**  
26 **affecting the employment status, wages or benefits payable**  
26 **to a victim of crime, including:**

28 **(1) Demotion or suspension;**

30 **(2) Dismissal from employment;**

32 **(3) Refusal to hire;**

34 **(4) Involuntary transfer;**

36 **(5) Failure to make reasonable accommodation of the**  
38 **victim's health and safety needs arising from the**  
38 **offense, as requested by the employee;**

40 **(6) Loss of pay or benefits; and**

42 **(7) Disciplinary procedure or action.**

44 **B. "Reasonable accommodation" includes:**

46 **(1) Engaging in job restructuring and part-time or**  
48 **modified work schedules or reassigning the victim of**  
48 **crime to a vacant position or to another department or**  
50 **facility with equivalent wages and benefits or**  
50 **reassigning the perpetrator if the perpetrator is also**

2 an employee and it is necessary to protect the health  
or safety of the victim of crime;

4 (2) Making adjustments to existing facilities, such as  
installing locks or alarms that are necessary to  
6 protect the safety of the victim of crime and others in  
the workplace;

8  
10 (3) Delaying any disciplinary action of an employee  
who is a victim of crime for a reasonable period of  
12 time while the employee seeks assistance; and

14 (4) Authorizing reasonable leave from work for the  
victim of crime to seek medical help, legal assistance,  
16 counseling, safety planning and any other activity  
necessitated by the crime and that must be undertaken  
18 during hours of employment.

20 C. "Undue hardship" means an action requiring significant  
difficulty or expense for an employer or any action that  
22 would be unduly costly, extensive, substantial or disruptive  
or that would fundamentally alter the nature of the  
24 operation of the business, when considered in light of the  
following factors:

26 (1) The nature and cost of the accommodation;

28 (2) The financial resources of the employer;

30 (3) The number of persons employed at the facility or  
32 business;

34 (4) The impact of the accommodation on the facility or  
business, including expenses and resources; and

36 (5) The relationship between the seriousness of the  
38 crime, injuries or threats to the employee who is a  
victim of crime and the accommodation requested, taking  
40 into account that incidents of domestic violence  
frequently escalate in seriousness and that threats may  
42 result in violence.

44 D. "Victim of crime" means a person who an employer knows  
or has reason to know has been the target of an act or  
46 series of acts that would come within the meaning of state  
or federal offenses described in 18 United States Code,  
48 Section 16 or that would constitute a crime of domestic  
violence, assault, battery, sexual assault or stalking under  
50 state or federal law or that would form the basis for  
obtaining an order of protection as defined in 18 United

2 States Code, Section 2266 under applicable civil or criminal  
4 state law. "Victim of crime" also includes a person against  
6 whom a threat to commit such a criminal offense has been  
8 made if the employer knows or has reason to know that such a  
threat has been made. A person is a "victim of crime"  
regardless of the location of commission of the crime or  
threat and regardless of whether the alleged crime results  
in criminal prosecution or conviction of the perpetrator.

10 2. Unlawful employment discrimination. It is unlawful  
12 employment discrimination in violation of this Act for an  
14 employer to take or threaten to take adverse job action against  
an employee who is or has been a victim of crime:

16 A. Based upon that employee's status, experience or  
18 condition as a victim of crime. An adverse job action is  
20 considered to be based on the employee's status, experience  
or condition as a victim of crime if the action would not  
have been taken in the absence of the employee's status,  
condition or experience as a victim of crime; or

22 B. Because the employee was absent from work to testify in  
24 a criminal or civil proceeding or to assist in the  
26 preparation of a criminal or civil proceeding arising from  
the alleged offense if that testimony or preparation could  
not be made outside the employee's regular working hours.  
28 An employee who seeks protection under this paragraph shall  
30 provide the employer with a minimum of 24 hours notice prior  
to such absences and shall make all good faith efforts to  
provide as much notice as possible.

32 3. Defenses. The following defenses are defenses against  
34 liability under this section.

36 A. It is a defense against liability under this section if  
38 an adverse job action was necessary to protect the safety of  
an employee who is a victim of a crime or other person at  
the place of employment and the employer proves that:

40 (1) The employer took all reasonable steps to protect  
42 the safety of the victim of crime and others at the  
44 workplace that, if successful, would not have required  
the adverse job action; and

46 (2) No less adverse job action was reasonably possible  
48 without endangering the safety of the employee and  
others at the workplace.

50 An employee who is a victim of crime who is lawfully  
discharged, transferred, demoted or suspended under this

2 paragraph is entitled to be restored to that employee's  
3 former position or restored to an equivalent position with  
4 equivalent employment benefits, pay and other terms or  
5 conditions of employment when the conditions necessitating  
6 the change in employment no longer exist, provided the  
7 restoration does not impose an undue hardship.

8 B. It is a defense against liability under this section if,  
9 despite reasonable accommodation by the employer, the  
10 employee's experience as a victim of crime has left the  
11 employee unable to perform the essential functions of the  
12 employee's job. For purposes of this paragraph,  
13 consideration must be given to the employer's judgment as to  
14 what functions of a job are essential.

15 C. It is a defense against liability under this section if  
16 the employer can demonstrate that reasonably accommodating  
17 the health and safety of the victim of crime would impose an  
18 undue hardship on the operation of the business of the  
19 employer or would severely threaten the integrity of the  
20 employer's physical plant or facilities. To qualify for  
21 this defense, the employer must have made good faith efforts  
22 to implement the employee's proposal for reasonable  
23 accommodations.

24 4. Burden of proof. Once an employee establishes that an  
25 employer took an adverse job action against the employee after  
26 the employer knew or had reason to know that the employee had  
27 been the victim of a crime, the employer has the burden of  
28 proving that the adverse job action was not based on the  
29 employee's status, condition or experience as a victim of crime  
30 or that the employer's actions fell within the defenses allowed  
31 under subsection 3.

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## SUMMARY

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This bill makes discrimination in employment against victims of domestic violence crimes and similar crimes a violation of the Maine Human Rights Act governing fair employment.

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