

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1599

H.P. 1176

House of Representatives, March 13, 2001

**An Act to Clarify the Maine Human Rights Act Concerning
Responsibility for Employment Discrimination.**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative SCHNEIDER of Durham.
Cosponsored by Senator TURNER of Cumberland and
Representatives: BOWLES of Sanford, BRUNO of Raymond, JODREY of Bethel, LOVETT
of Scarborough, McNEIL of Rockland, MENDROS of Lewiston, SNOWE-MELLO of Poland.

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

2
3 **Sec. 1. 5 MRSA §4553, sub-§4**, as amended by PL 1995, c. 393,
4 §5, is further amended to read:

6 **4. Employer.** "Employer" includes any person in this State
7 employing any number of employees, whatever the place of
8 employment of the employees, and any person outside this State
9 employing any number of employees whose usual place of employment
10 is in this State; ~~any person acting in the interest of any~~
11 ~~employer, directly or indirectly;~~ and labor organizations,
12 whether or not organized on a religious, fraternal or sectarian
13 basis, with respect to their employment of employees. "Employer"
14 does not include a religious or fraternal corporation or
15 association, not organized for private profit and in fact not
16 conducted for private profit, with respect to employment of its
17 members of the same religion, sect or fraternity, except for
18 purposes of disability-related discrimination, in which case the
19 corporation or association is considered to be an employer.

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

21
22 **§4572-B. Liability for actions of agents**

23 An individual acting as agent of, or in the interest of, an
24 employer is not personally liable for actions that constitute
25 unlawful employment discrimination. Liability of the employer
26 for unlawful employment discrimination by that employer's agent
27 or a person acting in the interest of that employer is determined
28 by reference to general common law principles of agency and
29 respondeat superior.

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33 **SUMMARY**

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35 This bill clarifies employment discrimination provisions of
36 the Maine Human Rights Act.

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38 Under the Maine Human Rights Act, the definition of
39 "employer" includes "any person acting in the interest of any
40 employer, directly or indirectly." Since its enactment in 1971,
41 the Maine Human Rights Commission, Maine's lower courts, and the
42 judges of the United States District Court in Maine have
43 interpreted "persons acting in the interest of the employer" to
44 mean that employers are liable for the acts of their agents,
45 including specifically supervisory employees, in accordance with
46 established principles of agency law. They did not interpret
47 this definition to mean that the agents themselves were
48 separately, personally liable. Ten of 12 United States Circuit
49 Courts of Appeals have considered this issue under the analogous
50

2 federal anti-discrimination statutes and have ruled the same way,
3 finding that individual supervisors are not personally liable.
4 The other 2 Circuit Courts have not decided the issue.

6 Last summer, in the case of Gordan v. Cummings (Docket
7 #Cum-99-254, April 19, 2000), a panel of the Law Court voted 3-2
8 that the Maine Human Rights Act makes supervisors personally
9 liable for employment discrimination. It based that
10 determination primarily on this same language. On July 25, 2000,
11 the Law Court withdrew that opinion and replaced it with one that
12 did not consider the question of personal liability for
13 supervisory employees.

14 The Gordan decisions have created uncertainty for the
15 commission and for employers and employees. This bill seeks to
16 resolve that uncertainty by making it clear that employers are
17 the proper parties to hold accountable for employment
18 discrimination, and that a person other than the employer is not
19 personally liable for discrimination. It does so by removing the
20 part of the definition in question and establishing employer
21 responsibility through a new section that eliminates any
22 ambiguity from the statute. This new section implements the
23 rationale of the federal courts in interpreting the analogous
24 federal statutes by providing that an employer is liable for the
25 actions of the employer's agents or persons acting in the
26 employer's interest under established principles of the law of
agency and respondeat superior.