

# MAINE STATE LEGISLATURE

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**R. 0. 8.**

L.D. 523

DATE: 5-7-03

(Filing No. H-285)

**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
121ST LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 408, L.D. 523, Bill, "An Act To Hold Supervisors Personally Liable for Discrimination in the Workplace"

Amend the bill by striking out the title and substituting the following:

**'Resolve, Requiring the Maine Human Rights Commission To Report on Complaints Involving Supervisors'**

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

**'Whereas,** the Maine Supreme Court ruled, in Gordan v. Cummings, No. CUM-99-254, 2000 WL 419716 (Me. 4/19/00), withdrawn, 756 A.2d 942 (Me. 2000), in a decision that the court later vacated on procedural grounds, that a supervisor may be personally liable under the Maine Human Rights Act for acts of sexual harassment constituting a "hostile work environment"; and

**Whereas,** the language of the Maine Human Rights Act defining "employer" under the Maine Revised Statutes, Title 5, section 4553, subsection 4 as including "any person acting in the interest of any employer, directly or indirectly" is distinguishable from the language of the comparable federal statute, Title VII of the Civil Rights Act of 1964, 42 United States Code, Section 2000e(b); and

**Whereas,** the Maine Human Rights Commission has consistently interpreted the current language of the Maine Human Rights Act as providing for supervisory liability in some circumstances; and

**COMMITTEE AMENDMENT**

R.S.

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**Whereas,** the Legislature is mindful of the fact that an opposite interpretation would leave victims of invidious discrimination without a remedy and might leave the victim with no option other than to file a complaint against the owner for acts of discrimination committed by someone outside the scope of agency law; and

**Whereas,** the Legislature recognizes that there are a limited number of circumstances in which a supervisory employee should be held liable for actions of intentional discrimination amounting to sexual harassment producing a hostile work environment; and

**Whereas,** the Legislature is concerned that persons violating the law should not go unpunished, that victims should not be left without a remedy and that faultless business owners should not be subjected to lawsuits because of acts committed by supervisory personnel outside the purview of agency law; and

**Whereas,** the Legislature is not confident that revision of the statute is necessary in order to protect victims of sexual harassment or to insulate innocent business owners in appropriate circumstances; now, therefore, be it:

**Sec. 1. Report. Resolved:** That the Maine Human Rights Commission shall report to the Joint Standing Committee on Judiciary on the number of complaints the commission has received in which the employee has suffered discrimination through actions or inaction of a supervisor, but the employer has an affirmative defense against liability. The report must be submitted not later than January 14, 2004; and be it further

**Sec. 2. Legislation. Resolved:** That the Joint Standing Committee on Judiciary is authorized to submit legislation to the Second Regular Session of the 121st Legislature in response to the commission's report.'

**SUMMARY**

This amendment replaces the bill and changes the bill to a resolve. It requires the Maine Human Rights Commission to report to the Joint Standing Committee on Judiciary the number of complaints it has received in which a supervisor commits discrimination through the supervisor's actions or inaction and in which the employer avoids liability through the use of an affirmative defense. This will help the committee determine what

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COMMITTEE AMENDMENT "A" to H.P. 408, L.D. 523

2 impact the affirmative defense provided under federal civil  
rights law provided in Faragher v. City of Boca Raton, 524 U.S.  
4 775 (1998) has had on cases in Maine.

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**FISCAL NOTE REQUIRED**  
(See attached)

**COMMITTEE AMENDMENT**

Approved: 04/23/03 *MAC*



**121st Maine Legislature  
Office of Fiscal and Program Review**

**LD 523**

**Resolve, Requiring the Maine Human Rights Commission to Report on  
Complaints Involving Supervisors**

**LR 1699(02)**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Judiciary**

**Fiscal Note Required: Yes**

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**Fiscal Note**

Minor cost increase - General Fund