

MAINE STATE LEGISLATURE

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Legislative Document

No. 507

H.P. 390

House of Representatives, February 1, 2007

An Act Recognizing Native American Religion in Maine Prisons and Jails

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SOCTOMAH of the Passamaquoddy Tribe.
Cosponsored by Representatives: CLEARY of Houlton, EATON of Sullivan, LORING of the Penobscot Nation, PERRY of Calais, PIEH of Bremen, SCHATZ of Blue Hill.

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

2 **Sec. 1. 5 MRSA §4553, sub-§10, ¶F**, as amended by PL 2005, c. 10, §5, is
3 further amended to read:

4 F. Unlawful educational discrimination as defined and limited by subchapter 5-B;
5 ~~and~~

6 **Sec. 2. 5 MRSA §4553, sub-§10, ¶G**, as enacted by PL 2005, c. 10, §6, is
7 amended to read:

8 G. Discrimination in employment, housing, public accommodation, credit and
9 educational opportunity on the basis of sexual orientation, except that a religious
10 corporation, association or organization that does not receive public funds is exempt
11 from this provision with respect to:

12 (1) Employment, as is more fully set forth in section 4553, subsection 4 and
13 section 4573-A;

14 (2) Housing, as is more fully set forth in section 4553, subsection 6, paragraph
15 C; and

16 (3) Educational opportunity, as is more fully set forth in section 4602, subsection
17 4.

18 Any for-profit organization owned, controlled or operated by a religious association
19 or corporation and subject to the provisions of the Internal Revenue Code, 26 United
20 States Code, Section 511(a) is not covered by the exemptions set forth in this
21 paragraph; and

22 **Sec. 3. 5 MRSA §4553, sub-§10, ¶H** is enacted to read:

23 H. Failure to provide reasonable accommodation of Native American religious
24 practices or ceremonies in violation of Title 30-A, section 1561-A or Title 34-A,
25 section 3031-C.

26 **Sec. 4. 5 MRSA §4613, sub-§2, ¶B**, as amended by PL 1997, c. 400, §1, is
27 further amended to read:

28 B. If the court finds that unlawful discrimination occurred, its judgment must specify
29 an appropriate remedy or remedies for that discrimination. The remedies may
30 include, but are not limited to:

31 (1) An order to cease and desist from the unlawful practices specified in the
32 order;

33 (2) An order to employ or reinstate a victim of unlawful employment
34 discrimination, with or without back pay;

35 (3) An order to accept or reinstate such a person in a union;

36 (4) An order to rent or sell a specified housing accommodation, or one
37 substantially identical to that accommodation if controlled by the respondent, to a
38 victim of unlawful housing discrimination;

- 1 (5) An order requiring the disclosure of the locations and descriptions of all
2 housing accommodations that the violator has the right to sell, rent, lease or
3 manage; and forbidding the sale, rental or lease of those housing
4 accommodations until the violator has given security to assure compliance with
5 any order entered against the violator and with all provisions of this Act. An
6 order may continue the court's jurisdiction until the violator has demonstrated
7 compliance, and may defer decision on some or all relief until after a
8 probationary period and a further hearing on the violator's conduct during that
9 period;
- 10 (6) An order to pay the victim, in cases of unlawful price discrimination, 3 times
11 the amount of any excessive price demanded and paid by reason of that unlawful
12 discrimination;
- 13 (7) An order to pay to the victim of unlawful discrimination, other than
14 employment discrimination in the case of a respondent who has more than 14
15 employees, or, if the commission brings action on behalf of the victim, an order
16 to pay to the victim, the commission or both, civil penal damages not in excess of
17 \$10,000 in the case of the first order under this Act against the respondent, not in
18 excess of \$25,000 in the case of a 2nd order against the respondent arising under
19 the same subchapter of this Act and not in excess of \$50,000 in the case of a 3rd
20 or subsequent order against the respondent arising under the same subchapter of
21 this Act, except that the total amount of civil penal damages awarded in any
22 action filed under this Act may not exceed the limits contained in this
23 subparagraph;
- 24 (8) In cases of intentional employment discrimination, compensatory and
25 punitive damages as provided in this subparagraph.
- 26 (a) In an action brought by a complaining party under section 4612 and this
27 section against a respondent who engaged in unlawful intentional
28 discrimination prohibited under sections 4571 to 4575, if the complaining
29 party can not recover under 42 United States Code, Section 1981 (1994), the
30 complaining party may recover compensatory and punitive damages as
31 allowed in this subparagraph in addition to any relief authorized elsewhere in
32 this subsection from the respondent.
- 33 (b) When a discriminatory practice involves the provision of a reasonable
34 accommodation, damages may not be awarded under this subparagraph when
35 the covered entity demonstrates good faith efforts, in consultation with the
36 person with the disability who has informed the covered entity that
37 accommodation is needed, to identify and make a reasonable accommodation
38 that would provide that individual with an equally effective opportunity and
39 would not cause an undue hardship on the operation of the business.
- 40 (c) A complaining party may recover punitive damages under this
41 subparagraph against a respondent if the complaining party demonstrates that
42 the respondent engaged in a discriminatory practice or discriminatory
43 practices with malice or with reckless indifference to the rights of an
44 aggrieved individual protected by this Act.

- 1 (d) Compensatory damages awarded under this subparagraph do not include
- 2 back pay, interest on back pay or any other type of relief authorized
- 3 elsewhere under this subsection.
- 4 (e) The sum of compensatory damages awarded under this subparagraph for
- 5 future pecuniary losses, emotional pain, suffering, inconvenience, mental
- 6 anguish, loss of enjoyment of life, other nonpecuniary losses and the amount
- 7 of punitive damages awarded under this section may not exceed for each
- 8 complaining party:
 - 9 (i) In the case of a respondent who has more than 14 and fewer than 101
 - 10 employees in each of 20 or more calendar weeks in the current or
 - 11 preceding calendar year, \$50,000;
 - 12 (ii) In the case of a respondent who has more than 100 and fewer than
 - 13 201 employees in each of 20 or more calendar weeks in the current or
 - 14 preceding calendar year, \$100,000;
 - 15 (iii) In the case of a respondent who has more than 200 and fewer than
 - 16 501 employees in each of 20 or more calendar weeks in the current or
 - 17 preceding calendar year, \$200,000; and
 - 18 (iv) In the case of a respondent who has more than 500 employees in
 - 19 each of 20 or more calendar weeks in the current or preceding calendar
 - 20 year, \$300,000.
- 21 (f) Nothing in this subparagraph may be construed to limit the scope of, or
- 22 the relief available under, 42 United States Code, Section 1981 (1994).
- 23 (g) If a complaining party seeks compensatory or punitive damages under
- 24 this subparagraph, any party may demand a trial by jury and the court may
- 25 not inform the jury of the limitations described in division (e).
- 26 (h) This subparagraph does not apply to recoveries for a practice that is
- 27 unlawful only because of its disparate impact.
- 28 (i) Punitive damages may not be included in a judgment or award against a
- 29 governmental entity, as defined in Title 14, section 8102, subsection 2, or
- 30 against an employee of a governmental entity based on a claim that arises out
- 31 of an act or omission occurring within the course or scope of that employee's
- 32 employment; ~~and~~
- 33 (9) In addition to other remedies in subparagraphs (1) to (8), an order to pay
- 34 actual damages in the case of discriminatory housing practices. This
- 35 subparagraph is not intended to limit actual damages available to a plaintiff
- 36 alleging other discrimination if the remedy of actual damages is otherwise
- 37 available under this Act; and
- 38 (10) In the case of a violation of Title 30-A, section 1561-A or Title 34-A,
- 39 section 3031-C, an order to provide appropriate accommodation for Native
- 40 American religious practices and ceremonies. The order may be as specific as
- 41 necessary to ensure that reasonable accommodation is provided.

42 **Sec. 5. 30-A MRSA §1561-A** is enacted to read:

1 **§1561-A. Religious rights of Native American prisoners**

2 **1. Religious rights.** A Native American prisoner in a county jail has a right to a
3 reasonable opportunity to conduct or take part in, and a county jail shall provide
4 reasonable accommodation for, Native American religious practices and ceremonies. For
5 purposes of this section, "reasonable accommodation for Native American religious
6 practices and ceremonies" includes, but is not limited to, reasonable accommodation of
7 the following:

8 A. Sacred pipe ceremonies involving ceremonial use of sacred herbs and tobacco;

9 B. Talking circle ceremonies used to facilitate group meetings and help participants
10 learn important lessons of listening to each other with respect and dignity;

11 C. Smudging ceremonies involving the smudging of sacred herbs such as sage,
12 sweet grass, cedar and tobacco in a smudging bowl;

13 D. Sweat lodge ceremonies;

14 E. Ceremonial drumming and singing of Native American songs;

15 F. Native American reading programs that allow and facilitate access to Native
16 American religious literature;

17 G. Annual traditional feasts with traditional foods; and

18 H. Possession and use of ceremonial items, including but not limited to medicine
19 bags, drums, eagle feathers, sweet grass, sacred pipes, tobacco ties, sage, cedar,
20 smudge bowls, turtle rattles, prayer blankets, beads and string for necklaces, dream
21 catchers and tribal ceremonial attire such as ribbon shirts, cloth shields and sacred
22 sticks.

23 **2. Remedies.** A person who believes that the person has been denied reasonable
24 accommodation in accordance with the requirements of this section may file a complaint
25 with the Maine Human Rights Commission pursuant to Title 5, section 4611 or file a civil
26 action in the Superior Court pursuant to Title 5, section 4621 against the sheriff or, if that
27 office is vacant, the jailer, for failure to provide such reasonable accommodation.

28 **Sec. 6. 30-A MRSA §1653,** as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
29 §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further
30 amended by adding at the end a new paragraph to read:

31 Accommodation for Native American religious practices and ceremonies must be
32 provided in accordance with section 1561-A.

33 **Sec. 7. 34-A MRSA §3031-C** is enacted to read:

34 **§3031-C. Religious rights of Native American prisoners**

35 **1. Religious rights.** A Native American prisoner in a correctional or detention
36 facility has a right to a reasonable opportunity to conduct or take part in, and the
37 commissioner shall ensure correctional and detention facilities under the general
38 administrative supervision of the department provide reasonable accommodation for,

1 Native American religious practices and ceremonies. For purposes of this section,
2 "reasonable accommodation for Native American religious practices and ceremonies"
3 includes, but is not limited to, reasonable accommodation of the following:

4 A. Sacred pipe ceremonies involving ceremonial use of sacred herbs and tobacco;

5 B. Talking circle ceremonies used to facilitate group meetings and help participants
6 learn important lessons of listening to each other with respect and dignity;

7 C. Smudging ceremonies involving the smudging of sacred herbs such as sage,
8 sweet grass, cedar and tobacco in a smudging bowl;

9 D. Sweat lodge ceremonies;

10 E. Ceremonial drumming and singing of Native American songs;

11 F. Native American reading programs that allow and facilitate access to Native
12 American religious literature;

13 G. Annual traditional feasts with traditional foods; and

14 H. Possession and use of ceremonial items, including but not limited to medicine
15 bags, drums, eagle feathers, sweet grass, sacred pipes, tobacco ties, sage, cedar,
16 smudge bowls, turtle rattles, prayer blankets, beads and string for necklaces, dream
17 catchers and tribal ceremonial attire such as ribbon shirts, cloth shields and sacred
18 sticks.

19 **2. Remedies.** A person who believes that the person has been denied reasonable
20 accommodation in accordance with the requirements of this section may file a complaint
21 with the Maine Human Rights Commission pursuant to Title 5, section 4611 or file a civil
22 action in the Superior Court pursuant to Title 5, section 4621 against the commissioner
23 for failure to provide such reasonable accommodation.

24 **Sec. 8. Development of guidance policies.** The Commissioner of Corrections
25 shall seek to develop guidance policies to assist correctional and detention facilities and
26 county jails in providing reasonable accommodation for Native American religious
27 practices and ceremonies in accordance with the requirements of the Maine Revised
28 Statutes, Title 30-A, section 1561-A and Title 34-A, section 3031-C. The commissioner
29 shall seek to form a Native American advisory group to assist in developing the guidance
30 policies by inviting the governing bodies of each of the 4 federally recognized tribes in
31 this State to appoint an appropriate member of that tribe to the advisory group. The
32 commissioner shall seek to develop guidance policies that are specific to particular Native
33 American practices or ceremonies, explain or describe the important elements of each
34 practice or ceremony and describe how a practice or ceremony may be accommodated in
35 a correctional setting. The commissioner shall provide to administrators of correctional
36 and detention facilities and county jails any guidance policies developed by the
37 commissioner and reviewed and approved by a Native American advisory group in
38 accordance with this section.

SUMMARY

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This bill provides Native Americans incarcerated in a state prison or county jail a right to a reasonable opportunity to conduct or take part in Native American religious practices and ceremonies. The bill provides that failure of the facility to provide reasonable accommodation for Native American religious practices and ceremonies is unlawful discrimination pursuant to the Maine Human Rights Act; remedies for such failure are provided under that Act. The bill directs the Commissioner of Corrections to seek to develop, in consultation with an advisory group of Native Americans, guidance policies to assist correctional and detention facilities and county jails in providing reasonable accommodations for Native American religious practices and ceremonies.