

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 685

S.P. 222

February 9, 2007

### **An Act To Amend the Maine Human Rights Act**

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Reported by Senator NUTTING of Androscoggin for the Maine Human Rights Commission pursuant to the Maine Revised Statutes, Title 5, section 4566, subsection 11.

Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule 218.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

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

2 **Sec. 1. 5 MRSA §4581, sub-§1**, as enacted by PL 1989, c. 245, §3, is amended to  
3 read:

4 **1. Number of occupants.** Nothing in this subchapter limits the applicability of any  
5 reasonable local, state or federal restrictions regarding the maximum number of  
6 occupants permitted to occupy a dwelling. Nor does any provision in this ~~subsection~~  
7 subchapter regarding familial status apply with respect to housing for older persons.

8 **Sec. 2. 5 MRSA §4582, 5th ¶**, as amended by PL 1989, c. 245, §4, is further  
9 amended to read:

10 For any person furnishing rental premises or public accommodations to refuse to rent  
11 or impose different terms of tenancy to any individual who is a recipient of federal, state  
12 or local public assistance, including medical assistance and housing subsidies, primarily  
13 because of the individual's status as recipient or because of any requirement of such a  
14 public assistance program; or

15 **Sec. 3. 5 MRSA §4582-A, sub-§1**, as amended by PL 1991, c. 99, §18, is further  
16 amended to read:

17 **1. Modifications.** For any owner, lessee, sublessee, managing agent or other person  
18 having the right to sell, rent, lease or manage a housing accommodation; or any of their  
19 agents to refuse to permit, at the expense of ~~the~~ a person with physical or mental  
20 disability, reasonable modifications of existing premises occupied or to be occupied by  
21 that person if the modifications may be necessary to give that person full enjoyment of  
22 the premises, except that, with a rental, the landlord, when it is reasonable to do so, may  
23 condition permission for a modification on the renter's agreeing to restore the interior of  
24 the premises to the condition that existed before the modification, reasonable wear and  
25 tear excepted; or

26 **Sec. 4. 5 MRSA §4582-A, sub-§2**, as enacted by PL 1989, c. 779, is amended to  
27 read:

28 **2. Accommodations.** For any owner, lessee, sublessee, managing agent or other  
29 person having the right to sell, rent, lease or manage a housing accommodation; or any of  
30 their agents to refuse to make reasonable accommodations in rules, policies, practices or  
31 services when those accommodations are necessary to give ~~that person~~ a person with  
32 physical or mental disability equal opportunity to use and enjoy the housing.

33 **Sec. 5. 5 MRSA §4583**, as amended by PL 2005, c. 10, §15, is further amended to  
34 read:

35 **§4583. Application**

36 Nothing in this Act may be construed to prohibit or limit the exercise of the privilege  
37 of every person and the agent of any person having the right to sell, rent, lease or manage  
38 a housing accommodation to set up and enforce specifications in the selling, renting,

1 leasing or letting or in the furnishings of facilities or services in connection with the  
2 facilities that are consistent with business necessity and are not based on the race, color,  
3 sex, sexual orientation, physical or mental disability, religion, country of ancestral origin,  
4 or familial status of or the receipt of public assistance payments ~~of~~ by any prospective or  
5 actual purchaser, lessee, tenant or occupant. Nothing in this Act may be construed to  
6 prohibit or limit the exercise of the privilege of every person and the agent of any person  
7 making loans for or offering financial assistance in the acquisition, construction,  
8 rehabilitation, repair or maintenance of housing accommodations; to set standards and  
9 preferences, terms, conditions, limitations or specifications for the granting of loans or  
10 financial assistance that are consistent with business necessity and are not based on the  
11 race, color, sex, sexual orientation, physical or mental disability, religion, country of  
12 ancestral origin, or familial status of or the receipt of public assistance payments ~~of~~ by the  
13 applicant for a loan or financial assistance or of any existing or prospective owner, lessee,  
14 tenant or occupant of housing accommodation.

15 **Sec. 6. 5 MRSA §4612, sub-§1, ¶A,** as amended by PL 1993, c. 578, §1, is  
16 further amended to read:

17 A. The commission or its delegated single commissioner or investigator shall  
18 provide an opportunity for the complainant and respondent to resolve the matter by  
19 settlement agreement prior to a determination of whether there are reasonable  
20 grounds to believe that unlawful discrimination has occurred. Evidence of conduct or  
21 statements made in compromise settlement negotiations, offers of settlement and any  
22 final agreement are confidential and may not be ~~made public~~ disclosed without the  
23 written consent of the parties to the proceeding nor used as evidence in any  
24 subsequent proceeding, civil or criminal, except in a civil action alleging a breach of  
25 agreement filed by the commission or a party. Notwithstanding this paragraph, the  
26 commission and its employees have discretion to disclose such information to a party  
27 as is reasonably necessary to facilitate settlement. The commission may adopt rules  
28 providing for a 3rd-party neutral mediation program. The rules may permit one or  
29 more parties to a proceeding to agree to pay the costs of mediation. The commission  
30 may receive funds from any source for the purposes of implementing a 3rd-party  
31 neutral mediation program.

32 **Sec. 7. 5 MRSA §4612, sub-§1, ¶B,** as enacted by PL 1985, c. 585, §1, is  
33 amended to read:

34 B. The commission or its delegated commissioner or investigator shall conduct  
35 such preliminary investigation as it ~~deems~~ determines necessary to determine whether  
36 there are reasonable grounds to believe that unlawful discrimination has occurred. In  
37 conducting an investigation, the commission, or its designated representative, ~~shall~~  
38 must have access at all reasonable times to premises, records, documents, individuals  
39 and other evidence or possible sources of evidence and may examine, record and  
40 copy those materials and take and record the testimony or statements of such persons  
41 as are reasonably necessary for the furtherance of the investigation. The commission  
42 may issue subpoenas to compel access to or production of those materials or the  
43 appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and  
44 may serve interrogatories on a respondent to the same extent as interrogatories served  
45 in aid of a civil action in the Superior Court. The commission may administer oaths.

1 The complaint and evidence collected during the investigation of the complaint, other  
2 than data identifying persons not parties to the complaint, ~~shall become~~ is a matter of  
3 public record at the conclusion of the investigation of the complaint prior to a  
4 determination by the commission. An investigation is concluded upon issuance of a  
5 letter of dismissal or upon listing of the complaint on a published commission  
6 meeting agenda, whichever first occurs. Prior to the conclusion of an investigation,  
7 all information possessed by the commission relating to the investigation is  
8 confidential and may not be disclosed, except that the commission and its employees  
9 have discretion to disclose such information as is reasonably necessary to further the  
10 investigation. Notwithstanding any other provision of this section, the complaint and  
11 evidence collected during the investigation of the complaint may be used as evidence  
12 in any subsequent proceeding, civil or criminal.

13 **Sec. 8. 5 MRSA §4612, sub-§3,** as amended by PL 1985, c. 585, §2, is further  
14 amended to read:

15 **3. Informal methods, conciliation.** If the commission finds reasonable grounds to  
16 believe that unlawful discrimination has occurred, but finds no emergency of the sort  
17 contemplated in subsection 4, paragraph B, it shall endeavor to eliminate such  
18 discrimination by informal means such as conference, conciliation and persuasion.  
19 ~~Nothing~~ Everything said or done as part of such endeavors is confidential and may not be  
20 ~~made public~~ disclosed without the written consent of the parties to the proceeding, nor  
21 used as evidence in any subsequent proceeding, civil or criminal, except in a civil action  
22 alleging a breach of agreement filed by the commission or a party. Notwithstanding this  
23 subsection, the commission and its employees have discretion to disclose such  
24 information to a party as is reasonably necessary to facilitate conciliation. If the case is  
25 disposed of by such informal means in a manner satisfactory to a majority of the  
26 commission, it shall dismiss the proceeding.

27 **Sec. 9. 5 MRSA §4613, sub-§2, ¶B,** as amended by PL 1997, c. 400, §1, is  
28 further amended to read:

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

- 32 (1) An order to cease and desist from the unlawful practices specified in the  
33 order;
- 34 (2) An order to employ or reinstate a victim of unlawful employment  
35 discrimination, with or without back pay;
- 36 (3) An order to accept or reinstate such a person in a union;
- 37 (4) An order to rent or sell a specified housing accommodation, or one  
38 substantially identical to that accommodation if controlled by the respondent, to a  
39 victim of unlawful housing discrimination;
- 40 (5) An order requiring the disclosure of the locations and descriptions of all  
41 housing accommodations that the violator has the right to sell, rent, lease or  
42 manage; and forbidding the sale, rental or lease of those housing

1 accommodations until the violator has given security to ~~assure~~ ensure compliance  
2 with any order entered against the violator and with all provisions of this Act. An  
3 order may continue the court's jurisdiction until the violator has demonstrated  
4 compliance; and may defer decision on some or all relief until after a  
5 probationary period and a further hearing on the violator's conduct during that  
6 period;

7 (6) An order to pay the victim, in cases of unlawful price discrimination, 3 times  
8 the amount of any excessive price demanded and paid by reason of that unlawful  
9 discrimination;

10 (7) An order to pay to the victim of unlawful discrimination, other than  
11 employment discrimination in the case of a respondent who has more than 14  
12 employees, or, if the commission brings action on behalf of the victim, an order  
13 to pay to the victim, the commission or both, civil penal damages not in excess of  
14 \$10,000 in the case of the first order under this Act against the respondent, not in  
15 excess of \$25,000 in the case of a 2nd order against the respondent arising under  
16 the same subchapter of this Act and not in excess of \$50,000 in the case of a 3rd  
17 or subsequent order against the respondent arising under the same subchapter of  
18 this Act, except that the total amount of civil penal damages awarded in any  
19 action filed under this Act may not exceed the limits contained in this  
20 subparagraph;

21 (8) In cases of intentional employment discrimination with respondents who  
22 have more than 14 employees, compensatory and punitive damages as provided  
23 in this subparagraph.

24 (a) In an action brought by a complaining party under section 4612 and this  
25 section against a respondent who engaged in unlawful intentional  
26 discrimination prohibited under sections 4571 to 4575, if the complaining  
27 party can not recover under 42 United States Code, Section 1981 (1994), the  
28 complaining party may recover compensatory and punitive damages as  
29 allowed in this subparagraph in addition to any relief authorized elsewhere in  
30 this subsection from the respondent.

31 (b) When a discriminatory practice involves the provision of a reasonable  
32 accommodation, damages may not be awarded under this subparagraph when  
33 the covered entity demonstrates good faith efforts, in consultation with the  
34 person with the disability who has informed the covered entity that  
35 accommodation is needed, to identify and make a reasonable accommodation  
36 that would provide that individual with an equally effective opportunity and  
37 would not cause an undue hardship on the operation of the business.

38 (c) A complaining party may recover punitive damages under this  
39 subparagraph against a respondent if the complaining party demonstrates that  
40 the respondent engaged in a discriminatory practice or discriminatory  
41 practices with malice or with reckless indifference to the rights of an  
42 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;

38 **SUMMARY**

39 This bill amends the Maine Human Rights Act to correct typographical errors, clarify  
40 the protections of the act, make certain Maine Human Rights Commission records  
41 confidential and prohibit unreasonable housing practices that have a disparate impact on

- 1 the basis of race, color, sex, sexual orientation, physical or mental disability, religion,
- 2 country of ancestral origin, familial status or the receipt of public assistance payments.