

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1372

H.P. 964

House of Representatives, March 13, 2007

An Act To Increase Caps on Damages in Actions under the Maine Human Rights Act

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLS of Farmington.

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

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

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

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

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

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

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

15 (5) An order requiring the disclosure of the locations and descriptions of all
16 housing accommodations that the violator has the right to sell, rent, lease or
17 manage; and forbidding the sale, rental or lease of those housing
18 accommodations until the violator has given security to ~~assure~~ ensure compliance
19 with any order entered against the violator and with all provisions of this Act. An
20 order may continue the court's jurisdiction until the violator has demonstrated
21 compliance; and may defer decision on some or all relief until after a
22 probationary period and a further hearing on the violator's conduct during that
23 period;

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

27 (7) An order to pay to the victim of unlawful discrimination, other than
28 employment discrimination in the case of a respondent who has more than 14
29 employees, or, if the commission brings action on behalf of the victim, an order
30 to pay to the victim, the commission or both, civil penal damages not in excess of
31 ~~\$10,000~~ \$20,000 in the case of the first order under this Act against the
32 respondent, not in excess of ~~\$25,000~~ \$50,000 in the case of a 2nd order against
33 the respondent arising under the same subchapter of this Act and not in excess of
34 ~~\$50,000~~ \$100,000 in the case of a 3rd or subsequent order against the respondent
35 arising under the same subchapter of this Act, except that the total amount of
36 civil penal damages awarded in any action filed under this Act may not exceed
37 the limits contained in this subparagraph;

38 (8) In cases of intentional employment discrimination, compensatory and
39 punitive damages as provided in this subparagraph.

40 (a) In an action brought by a complaining party under section 4612 and this
41 section against a respondent who engaged in unlawful intentional

1 discrimination prohibited under sections 4571 to 4575, if the complaining
2 party can not recover under 42 United States Code, Section 1981 (1994), the
3 complaining party may recover compensatory and punitive damages as
4 allowed in this subparagraph in addition to any relief authorized elsewhere in
5 this subsection from the respondent.

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

13 (c) A complaining party may recover punitive damages under this
14 subparagraph against a respondent if the complaining party demonstrates that
15 the respondent engaged in a discriminatory practice or discriminatory
16 practices with malice or with reckless indifference to the rights of an
17 aggrieved individual protected by this Act.

18 (d) Compensatory damages awarded under this subparagraph do not include
19 back pay, interest on back pay or any other type of relief authorized
20 elsewhere under this subsection.

21 (e) The sum of compensatory damages awarded under this subparagraph for
22 future pecuniary losses, emotional pain, suffering, inconvenience, mental
23 anguish, loss of enjoyment of life, other nonpecuniary losses and the amount
24 of punitive damages awarded under this section may not exceed for each
25 complaining party:

26 (i) In the case of a respondent who has more than 14 and fewer than 101
27 employees in each of 20 or more calendar weeks in the current or
28 preceding calendar year, \$50,000;

29 (ii) In the case of a respondent who has more than 100 and fewer than
30 201 employees in each of 20 or more calendar weeks in the current or
31 preceding calendar year, \$100,000;

32 (iii) In the case of a respondent who has more than 200 and fewer than
33 501 employees in each of 20 or more calendar weeks in the current or
34 preceding calendar year, ~~\$200,000~~ \$300,000; and

35 (iv) In the case of a respondent who has more than 500 employees in
36 each of 20 or more calendar weeks in the current or preceding calendar
37 year, ~~\$300,000~~ \$500,000.

38 (f) Nothing in this subparagraph may be construed to limit the scope of, or
39 the relief available under, 42 United States Code, Section 1981 (1994).

40 (g) If a complaining party seeks compensatory or punitive damages under
41 this subparagraph, any party may demand a trial by jury, and the court may
42 not inform the jury of the limitations described in division (e).

- 1 (h) This subparagraph does not apply to recoveries for a practice that is
2 unlawful only because of its disparate impact.
- 3 (i) Punitive damages may not be included in a judgment or award against a
4 governmental entity, as defined in Title 14, section 8102, subsection 2, or
5 against an employee of a governmental entity based on a claim that arises out
6 of an act or omission occurring within the course or scope of that employee's
7 employment; and
- 8 (9) In addition to other remedies in subparagraphs (1) to (8), an order to pay
9 actual damages in the case of discriminatory housing practices. This
10 subparagraph is not intended to limit actual damages available to a plaintiff
11 alleging other discrimination if the remedy of actual damages is otherwise
12 available under this Act.

13 **SUMMARY**

14 This bill increases the caps on damages in actions brought under the Maine Human
15 Rights Act.