

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)



STATE LAW LIBRARY
AUGUSTA, MAINE

124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 962

H.P. 664

House of Representatives, March 10, 2009

An Act To Protect Family Caregivers

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DILL of Cape Elizabeth.
Cosponsored by Senator BLISS of Cumberland and
Representatives: BRIGGS of Mexico, CORNELL du HOUX of Brunswick, HASKELL of
Portland, HILL of York, WALSH INNES of Yarmouth, PERCY of Phippsburg, PERRY of
Calais, Senator: SIMPSON of Androscoggin.

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

2 **Sec. 1. 5 MRSA §4552**, as amended by PL 2005, c. 10, §1, is further amended to
3 read:

4 **§4552. Policy**

5 To protect the public health, safety and welfare, it is declared to be the policy of this
6 State to keep continually in review all practices infringing on the basic human right to a
7 life with dignity, and the causes of these practices, so that corrective measures may,
8 where possible, be promptly recommended and implemented, and to prevent
9 discrimination in employment, housing or access to public accommodations on account
10 of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or
11 national origin; and in employment, discrimination on account of family caregiver status
12 or age or because of the previous assertion of a claim or right under former Title 39 or
13 Title 39-A and in housing because of familial status; and to prevent discrimination in the
14 extension of credit on account of age, race, color, sex, sexual orientation, marital status,
15 religion, ancestry or national origin; and to prevent discrimination in education on
16 account of sex, sexual orientation or physical or mental disability.

17 **Sec. 2. 5 MRSA §4553, sub-§5-B** is enacted to read:

18 **5-B. Family caregiver.** "Family caregiver" means a person who cares for a family
19 member.

20 **Sec. 3. 5 MRSA §4553, sub-§5-C** is enacted to read:

21 **5-C. Family member.** "Family member" means a person's child, parent, spouse,
22 domestic partner or sibling.

23 **Sec. 4. 5 MRSA §4571**, as amended by PL 2005, c. 10, §10, is further amended to
24 read:

25 **§4571. Right to freedom from discrimination in employment**

26 The opportunity for an individual to secure employment without discrimination
27 because of race, color, sex, sexual orientation, physical or mental disability, family
28 caregiver status, religion, age, ancestry or national origin is recognized as and declared to
29 be a civil right.

30 **Sec. 5. 5 MRSA §4572, sub-§1**, as amended by PL 2005, c. 10, §§11 and 12, is
31 further amended to read:

32 **1. Unlawful employment.** It is unlawful employment discrimination, in violation of
33 this Act, except when based on a bona fide occupational qualification:

34 A. For any employer to fail or refuse to hire or otherwise discriminate against any
35 applicant for employment because of race or color, sex, sexual orientation, physical
36 or mental disability, family caregiver status, religion, age, ancestry or national origin,
37 because of the applicant's previous assertion of a claim or right under former Title 39

1 or Title 39-A or because of previous actions taken by the applicant that are protected
2 under Title 26, chapter 7, subchapter 5-B; or, because of those reasons, to discharge
3 an employee or discriminate with respect to hire, tenure, promotion, transfer,
4 compensation, terms, conditions or privileges of employment or any other matter
5 directly or indirectly related to employment; or, in recruiting of individuals for
6 employment or in hiring them, to utilize any employment agency that the employer
7 knows or has reasonable cause to know discriminates against individuals because of
8 their race or color, sex, sexual orientation, physical or mental disability, family
9 caregiver status, religion, age, ancestry or national origin, because of their previous
10 assertion of a claim or right under former Title 39 or Title 39-A or because of
11 previous actions that are protected under Title 26, chapter 7, subchapter 5-B;

12 (1) This paragraph does not apply to discrimination governed by Title 39-A,
13 section 353;

14 B. For any employment agency to fail or refuse to classify properly, refer for
15 employment or otherwise discriminate against any individual because of race or
16 color, sex, sexual orientation, physical or mental disability, family caregiver status,
17 religion, age, ancestry or national origin, because of the individual's previous
18 assertion of a claim or right under former Title 39 or Title 39-A or because of
19 previous actions taken by the individual that are protected under Title 26, chapter 7,
20 subchapter 5-B; or to comply with an employer's request for the referral of job
21 applicants if a request indicates either directly or indirectly that the employer will not
22 afford full and equal employment opportunities to individuals regardless of their race
23 or color, sex, sexual orientation, physical or mental disability, family caregiver status,
24 religion, age, ancestry or national origin, because of previous assertion of a claim or
25 right under former Title 39 or Title 39-A or because of previous actions that are
26 protected under Title 26, chapter 7, subchapter 5-B;

27 C. For any labor organization to exclude from apprenticeship or membership or to
28 deny full and equal membership rights to any applicant for membership because of
29 race or color, sex, sexual orientation, physical or mental disability, family caregiver
30 status, religion, age, ancestry or national origin, because of the applicant's previous
31 assertion of a claim or right under former Title 39 or Title 39-A or because of
32 previous actions taken by the applicant that are protected under Title 26, chapter 7,
33 subchapter 5-B; or, because of those reasons, to deny a member full and equal
34 membership rights, expel from membership, penalize or otherwise discriminate with
35 respect to hire, tenure, promotion, transfer, compensation, terms, conditions or
36 privileges of employment, representation, grievances or any other matter directly or
37 indirectly related to membership or employment, whether or not authorized or
38 required by the constitution or bylaws of that labor organization or by a collective
39 labor agreement or other contract; to fail or refuse to classify properly or refer for
40 employment or otherwise discriminate against any member because of race or color,
41 sex, sexual orientation, physical or mental disability, family caregiver status, religion,
42 age, ancestry or national origin, because of the member's previous assertion of a
43 claim or right under former Title 39 or Title 39-A or because of previous actions
44 taken by the member that are protected under Title 26, chapter 7, subchapter 5-B; or
45 to cause or attempt to cause an employer to discriminate against an individual in
46 violation of this section, except that it is lawful for labor organizations and employers

1 to adopt a maximum age limitation in apprenticeship programs, if the employer or
2 labor organization obtains prior approval from the Maine Human Rights Commission
3 of any maximum age limitation employed in an apprenticeship program. The
4 commission shall approve the age limitation if a reasonable relationship exists
5 between the maximum age limitation employed and a legitimate expectation of the
6 employer in receiving a reasonable return upon the employer's investment in an
7 apprenticeship program. The employer or labor organization bears the burden of
8 demonstrating that such a relationship exists;

9 D. For any employer, employment agency or labor organization, prior to
10 employment or admission to membership of any individual, to:

11 (1) Elicit or attempt to elicit information directly or indirectly pertaining to race
12 or color, sex, sexual orientation, physical or mental disability, family caregiver
13 status, religion, age, ancestry or national origin, any previous assertion of a claim
14 or right under former Title 39 or Title 39-A or any previous actions that are
15 protected under Title 26, chapter 7, subchapter 5-B;

16 (2) Make or keep a record of race or color, sex, sexual orientation, physical or
17 mental disability, family caregiver status, religion, age, ancestry or national
18 origin, any previous assertion of a claim or right under former Title 39 or Title
19 39-A or any previous actions that are protected under Title 26, chapter 7,
20 subchapter 5-B, except under physical or mental disability when an employer
21 requires a physical or mental examination prior to employment, a privileged
22 record of that examination is permissible if made and kept in compliance with
23 this Act;

24 (3) Use any form of application for employment, or personnel or membership
25 blank containing questions or entries directly or indirectly pertaining to race or
26 color, sex, sexual orientation, physical or mental disability, family caregiver
27 status, religion, age, ancestry or national origin, any previous assertion of a claim
28 or right under former Title 39 or Title 39-A or any previous actions that are
29 protected under Title 26, chapter 7, subchapter 5-B. This section does not
30 prohibit any officially recognized government agency from keeping records
31 permitted to be kept under this Act in order to provide free services to individuals
32 requesting rehabilitation or employment assistance;

33 (4) Print, publish or cause to be printed or published any notice or advertisement
34 relating to employment or membership indicating any preference, limitation,
35 specification or discrimination based upon race or color, sex, sexual orientation,
36 physical or mental disability, family caregiver status, religion, age, ancestry or
37 national origin, any previous assertion of a claim or right under former Title 39 or
38 Title 39-A or any previous actions that are protected under Title 26, chapter 7,
39 subchapter 5-B; or

40 (5) Establish, announce or follow a policy of denying or limiting, through a
41 quota system or otherwise, employment or membership opportunities of any
42 group because of the race or color, sex, sexual orientation, physical or mental
43 disability, family caregiver status, religion, age, ancestry or national origin, the
44 previous assertion of a claim or right under former Title 39 or Title 39-A or

