

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1566

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H.P. 1079

House of Representatives, May 2, 2017

### An Act To Enact the Maine Fair Chance Employment Act

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative TALBOT ROSS of Portland.  
Cosponsored by Representative DeCHANT of Bath, Senator VOLK of Cumberland and  
Representatives: HICKMAN of Winthrop, HYMANSON of York, VACHON of Scarborough,  
WARREN of Hallowell, Senators: BELLOWS of Kennebec, CHIPMAN of Cumberland,  
DION of Cumberland, SAVIELLO of Franklin.

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

2 **PART A**

3 **Sec. A-1. 5 MRSA §5301**, as amended by PL 2011, c. 286, Pt. O, §1 and PL  
4 2015, c. 429, §23, is further amended to read:

5 **§5301. Eligibility for occupational license, registration or permit**

6 **1. Effect of criminal history record information respecting certain convictions.**

7 Subject to ~~subsection 2~~ this section and sections 5302 and 5303, in determining eligibility  
8 for the granting of any occupational license, registration or permit issued by the State, the  
9 appropriate ~~State~~ state licensing agency may take into consideration criminal history  
10 record information from Maine or elsewhere relating to certain convictions ~~which that~~  
11 have not been set aside, dismissed, sealed or expunged or for which a full and free pardon  
12 has not been granted, but the existence of such information ~~shall~~ may not operate as an  
13 automatic bar to being licensed, registered or permitted to practice any profession, trade  
14 or occupation.

15 **2. Criminal history record information that may be considered.** A licensing

16 agency may not inquire into or consider the criminal history of an applicant until after the  
17 applicant has been found to be otherwise qualified for the license, registration or permit.  
18 A licensing agency ~~may use~~ shall consider only the following in connection with an  
19 application for an occupational license, registration or permit criminal history record  
20 information pertaining to the following:

21 A. Convictions for which incarceration for less than one year may be imposed and  
22 ~~which that~~ involve dishonesty or false statement;

23 B. Convictions for which incarceration for less than one year may be imposed and  
24 ~~which that~~ directly relate to the profession, trade or occupation for which the license  
25 or permit is sought;

26 ~~C. Convictions for which no incarceration can be imposed and which directly relate~~  
27 ~~to the trade or occupation for which the license or permit is sought;~~

28 D. Convictions for which incarceration for one year or more may be imposed; or

29 E. Convictions for which incarceration for less than one year may be imposed and  
30 that involve sexual misconduct by an applicant for massage therapy licensure or a  
31 licensed massage therapist or an applicant or licensee of the Board of Licensure in  
32 Medicine, the Board of Osteopathic Licensure, the Board of Dental Practice, the State  
33 Board of Examiners of Psychologists, the State Board of Social Worker Licensure,  
34 the Board of Chiropractic Licensure, the State Board of Examiners in Physical  
35 Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory  
36 Care Practitioners, the Board of Counseling Professionals Licensure, the Board of  
37 Occupational Therapy Practice, the Board of Speech, Audiology and Hearing, the  
38 Radiologic Technology Board of Examiners, the Nursing Home Administrators  
39 Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of  
40 Complementary Health Care Providers, the Maine Board of Pharmacy, the Board of

1 Trustees of the Maine Criminal Justice Academy, the State Board of Nursing and the  
2 Emergency Medical Services' Board.

3 **3. Criminal history record information directly related to the profession, trade**  
4 **or occupation.** In determining pursuant to subsection 2 whether criminal history record  
5 information is directly related to the profession, trade or occupation for which the license,  
6 registration or permit is being sought, the licensing agency must consider the following  
7 factors:

8 A. Whether the conviction is directly related to the duties and responsibilities of that  
9 position or profession, trade or occupation;

10 B. Whether the position or profession, trade or occupation offers the opportunity for  
11 the same or a similar offense to occur;

12 C. Whether circumstances leading to the conduct for which the person was convicted  
13 will recur in the position or profession, trade or occupation; and

14 D. The length of time since the offense occurred.

15 **4. Criminal convictions prohibited by statute.** Notwithstanding subsection 2, a  
16 licensing agency may consider criminal convictions that are explicitly prohibited by  
17 statute for the license, registration or permit sought.

18 **Sec. A-2. 5 MRSA §5302**, as amended by PL 1989, c. 84, §2, is further amended  
19 to read:

20 **§5302. Denial, suspension, revocation or other discipline of licensees because of**  
21 **criminal record**

22 **1. Reasons for denial or disciplinary action; process.** Licensing agencies may  
23 refuse to grant or renew, or may suspend, revoke or take other disciplinary action against  
24 any occupational license, registration or permit based in whole or in part on the basis of  
25 the criminal history record information relating to convictions denominated in section  
26 5301, subsection 2, but only if the licensing agency determines has complied with the  
27 notice requirements of this section and after the licensing agency has properly considered  
28 a timely appeal of its preliminary determination, if any, and has determined that the  
29 applicant, licensee, registrant or permit holder so convicted has not been sufficiently  
30 rehabilitated to warrant the public trust as described in subsection 3. The applicant,  
31 licensee, registrant or permit holder ~~shall bear~~ bears the burden of proof that there exists  
32 sufficient rehabilitation to warrant the public trust.

33 **2. Preliminary determination.** ~~The~~ Before a licensing agency may make a final  
34 decision, the licensing agency shall explicitly state in writing the reasons for a decision  
35 which prohibits preliminary determination that the applicant, licensee, registrant or permit  
36 holder should be prohibited from practicing the profession, trade or occupation if that  
37 decision is based in whole or in part on conviction of any crime described in that may be  
38 considered pursuant to section 5301, subsection 2. The licensing agency shall issue a  
39 notice containing the written preliminary determination to the applicant, licensee,  
40 registrant or permit holder. The written notice required by this subsection must include  
41 the following information:

- 1           A. The criminal conviction or convictions that are the basis for the preliminary  
2           denial;
- 3           B. A copy of the criminal history record information, if any;
- 4           C. Information about the applicant's, licensee's, registrant's or permit holder's right to  
5           appeal the preliminary determination; and
- 6           D. Any examples of mitigation or rehabilitation evidence that the applicant, licensee,  
7           registrant or permit holder may voluntarily provide.

8           **3. Appeal of preliminary determination.** An applicant, licensee, registrant or  
9           permit holder may appeal a preliminary determination of a licensing agency made  
10           pursuant to subsection 2 by challenging the accuracy of the criminal history record  
11           information or by demonstrating that the applicant, licensee, registrant or permit holder is  
12           sufficiently rehabilitated to warrant the public trust. An applicant, licensee, registrant or  
13           permit holder may demonstrate sufficient rehabilitation to warrant the public trust by  
14           providing the licensing agency:

- 15           A. Evidence demonstrating that at least one year has elapsed since the applicant's,  
16           licensee's, registrant's or permit holder's release from any correctional institution  
17           without criminal conviction or arrest; or
- 18           B. Any other information or evidence of mitigation or rehabilitation and present  
19           fitness to practice the profession, trade or occupation for which the license,  
20           registration or permit is being sought, including, but not limited to, letters of  
21           reference.

22           If the applicant, licensee, registrant or permit holder demonstrates sufficient rehabilitation  
23           to warrant the public trust, the licensing agency may not deny the applicant, licensee,  
24           registrant or permit holder the license, registration or permit based in whole or in part on  
25           the applicant's, licensee's, registrant's or permit holder's prior criminal conviction.

26           After receiving notice of the preliminary denial issued pursuant to subsection 2, the  
27           applicant, licensee, registrant or permit holder must send or hand deliver the appeal  
28           within 30 business days.

29           **4. Final determination.** If the licensing agency has made a final determination that  
30           the applicant, licensee, registrant or permit holder should be prohibited from practicing  
31           the profession, trade or occupation because the applicant, licensee, registrant or permit  
32           holder has not been sufficiently rehabilitated to warrant the public trust as described in  
33           subsection 3, the licensing agency must notify the applicant, licensee, registrant or permit  
34           holder in writing of the following:

- 35           A. The final determination;
- 36           B. Information about the right to appeal pursuant to section 5304 the licensing  
37           agency's decision;
- 38           C. A statement that the applicant, licensee, registrant or permit holder may be  
39           eligible for a different license, registration or permit; and
- 40           D. The earliest date on which the applicant, licensee, registrant or permit holder may  
41           reapply with the licensing agency, if applicable.

1           **Sec. A-3. 5 MRSA §5303**, as amended by PL 2007, c. 369, Pt. A, §2 and affected  
2 by Pt. C, §5 and amended by PL 2015, c. 429, §23, is further amended to read:

3           **§5303. Time limit on consideration of prior criminal conviction**

4           **1. Three-year limits.** Except as set forth in this subsection ~~and subsection 2~~, the  
5 procedures outlined in sections 5301 and 5302 for the consideration of prior criminal  
6 conviction as an element of fitness to practice a ~~licensed~~ profession, trade or occupation  
7 ~~shall requiring a license, registration or permit~~ apply within 3 years of the applicant's ~~or~~  
8 ~~licensee's final discharge, if any, from the correctional system, registrant's or permit~~  
9 ~~holder's criminal conviction~~. Beyond the 3-year period, ex-offender applicants ~~or~~  
10 ~~licensees, registrants or permit holders~~ with no additional convictions are to be  
11 considered in the same manner as applicants ~~or~~, ~~licensees, registrants or permit holders~~  
12 possessing no prior criminal record for the purposes of licensing decisions. There is no  
13 time limitation for consideration of an applicant's ~~or~~, ~~licensee's, registrant's or permit~~  
14 ~~holder's~~ conduct ~~which that~~ gave rise to the criminal conviction if that conduct is  
15 otherwise a ground for disciplinary action against a ~~licensee, registrant or permit holder~~.

16           ~~**2. Ten-year limits.** For applicants to and licensees and registrants of the Board of~~  
17 ~~Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Practice,~~  
18 ~~the State Board of Examiners of Psychologists, the State Board of Social Worker~~  
19 ~~Licensure, the State Board of Nursing, the Board of Chiropractic Licensure, the Board of~~  
20 ~~Trustees of the Maine Criminal Justice Academy, the State Board of Examiners in~~  
21 ~~Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of~~  
22 ~~Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the~~  
23 ~~Board of Occupational Therapy Practice, the Board on Speech-language Pathology,~~  
24 ~~Audiology and Hearing Aid Dealing and Fitting, the Radiologic Technology Board of~~  
25 ~~Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure~~  
26 ~~of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine~~  
27 ~~Board of Pharmacy, and the Emergency Medical Services' Board and applicants for~~  
28 ~~massage therapy licensure or licensed massage therapists, the following apply.~~

29           ~~A. The procedures outlined in sections 5301 and 5302 for the consideration of prior~~  
30 ~~criminal conviction as an element of fitness to practice a licensed profession, trade or~~  
31 ~~occupation apply within 10 years of the applicant's or licensee's final discharge, if~~  
32 ~~any, from the correctional system.~~

33           ~~B. Beyond the 10 year period, ex-offender applicants or licensees with no additional~~  
34 ~~convictions must be considered in the same manner as applicants or licensees~~  
35 ~~possessing no prior criminal record for the purposes of licensing decisions.~~

36           ~~C. There is no time limitation for consideration of a registrant's, an applicant's or~~  
37 ~~licensee's conduct that gave rise to the criminal conviction if that conduct is otherwise~~  
38 ~~a ground for disciplinary action.~~

39           **Sec. A-4. 5 MRSA §5305** is enacted to read:

1 **§5305. Confidential**

2 Criminal history record information, and any other information pertaining to an  
3 applicant's, licensee's, registrant's or permit holder's background check obtained in  
4 conjunction with a screening, in the possession of a licensing agency is confidential and  
5 may not be disclosed if the information is being requested for use in connection with any  
6 application for employment or a license, registration or permit.

7 **Sec. A-5. 5 MRSA §5306** is enacted to read:

8 **§5306. Application**

9 The provisions of this chapter apply notwithstanding any provision of law to the  
10 contrary, except to the extent the provision of law contains additional limitations on the  
11 consideration of criminal history record information by licensing agencies.

12 **PART B**

13 **Sec. B-1. 5 MRSA §4611**, as amended by PL 2011, c. 613, §18 and affected by  
14 §29, is further amended to read:

15 **§4611. Complaint**

16 Any aggrieved person, or any employee of the commission, may file a complaint  
17 under oath with the commission stating the facts concerning the alleged discrimination,  
18 except that a complaint must be filed with the commission not more than 300 days after  
19 the alleged act of unlawful discrimination. In addition, any person may file a complaint  
20 pursuant to section 4632 or section 4635.

21 **Sec. B-2. 5 MRSA §4635** is enacted to read:

22 **§4635. Use of criminal history information**

23 Any person aggrieved by an employer's or prospective employer's violation of section  
24 4724, 4725 or 4726 may file a complaint with the commission. The commission shall  
25 investigate and review such complaints and shall keep a record of all complaints or other  
26 contact concerning reports of problems, concerns or suggestions regarding the  
27 implementation, compliance and impact of chapter 337-D. The commission shall also  
28 conduct periodic reviews with private employers to assess compliance with that chapter.

29 **1. Civil action by commission.** If the commission finds that a private employer has  
30 violated section 4725 or section 4726, the employer is subject to:

31 A. For the first violation, a civil penalty not to exceed \$1,000; and

32 B. For each subsequent violation, a civil penalty not to exceed \$2,000.

33 Penalties are collected by the commission in a civil action and must be paid to the  
34 Treasurer of State for deposit to the General Fund.

35 There is a rebuttable presumption that an employer has violated section 4725 or section  
36 4726 if the employer does not maintain records in compliance with section 4728, or does

1 not allow the commission reasonable access to such records, absent clear and convincing  
2 evidence that the employer has not violated section 4725 or 4726.

3 **2. Compliance counseling.** The commission shall provide counseling to a private  
4 employer it has found to be in violation of chapter 337-D to ensure future compliance  
5 with that chapter.

6 **Sec. B-3. 5 MRSA c. 337-D** is enacted to read:

7 **CHAPTER 337-D**

8 **MAINE FAIR CHANCE EMPLOYMENT ACT**

9 **§4721. Short title**

10 This chapter may be known and cited as "the Maine Fair Chance Employment Act."

11 **§4722. Declaration of policy**

12 It is the declared public policy of the State to encourage the rehabilitation of criminal  
13 offenders and to assist them in the resumption of the responsibilities of citizenship by  
14 increasing opportunities for this population to secure employment and secure licensure in  
15 order to engage in a meaningful and profitable occupation.

16 **§4723. Definitions**

17 As used in this chapter, unless the context otherwise indicates, the following terms  
18 have the following meanings.

19 **1. Applicant.** "Applicant" means any person requesting consideration or otherwise  
20 under consideration for a position of employment by an employer or requesting  
21 consideration of licensure from a licensing authority. "Applicant" includes any current  
22 employee requesting consideration for another position of employment with the  
23 employer.

24 **2. Criminal history information.** "Criminal history information" includes criminal  
25 history record information as defined in Title 16, section 703, subsection 3 and other  
26 information regarding the criminal history of an applicant, from whatever source.

27 **3. Employer.** "Employer" means any person, partnership, firm, association,  
28 corporation, organization or other legal entity that is located in the State that employs one  
29 or more individuals, acts directly or indirectly in the interest of an employer or that  
30 procures employees or opportunities for employment in exchange for compensation.  
31 "Employer" includes the State and its political subdivisions.

32 **4. License.** "License" means any license, permit, certificate, registration or other  
33 authorization required to engage in an occupation that is granted or issued by the State or  
34 its political subdivisions.

35 **5. Licensing authority.** "Licensing authority" means the person, board, commission  
36 or department of the State or its political subdivisions with authority to issue a license.



1           **6. Licensure.** "Licensure" means the issuing of a license by a licensing authority.

2           **7. Occupation.** "Occupation" means any occupation, trade, vocation, profession,  
3 business or employment of any kind for which a license is required to be issued by the  
4 State or its political subdivisions.

5           **8. Political subdivision.** "Political subdivision" has the same meaning as in Title  
6 30-A, section 2252.

7           **9. State.** "State" means the State, or any office, department, agency, authority,  
8 commission, board, institution, hospital or other instrumentality of the State, including  
9 the Maine Turnpike Authority, the Maine Port Authority, the Northern New England  
10 Passenger Rail Authority, the Maine Community College System, the University of  
11 Maine System, the Maine Veterans' Homes, the Maine Public Employees Retirement  
12 System, the Maine Military Authority and all such other state entities.

13           **§4724. Limitations on State use and disclosure of criminal history information**

14           **1. Prohibition.** The State and its political subdivisions may not use the following  
15 criminal history information in connection with an application for employment:

16           A. Information related to a deferred criminal adjudication, participation in a  
17 diversion program, an arrest not followed by a criminal conviction or an infraction;

18           B. A criminal conviction that has been dismissed or expunged or for which the  
19 records have been sealed or for which the individual was pardoned;

20           C. Juvenile adjudications;

21           D. Civil violations;

22           E. Convictions for Class D or Class E crimes for which no sentence of incarceration  
23 can be imposed;

24           F. Convictions for Class D or Class E crimes that were adjudicated more than one  
25 year prior, excluding any period of incarceration or custody; or

26           G. Convictions for Class A, Class B or Class C crimes that were adjudicated more  
27 than 3 years prior, excluding any period of incarceration or custody.

28           The State may not discriminate in any way, for the purposes of hiring decisions, between  
29 applicants with criminal convictions that occurred more than 3 years from the date of  
30 application and applicants with no prior criminal history information.

31           **2. Confidential.** Criminal history information described in subsection 1 that is in the  
32 possession of the State or its political subdivisions is confidential and may not be  
33 disclosed if the information is being requested for use in connection with any application  
34 for employment. Any information that pertains to an applicant's criminal background  
35 check obtained in conjunction with an employment decision by the State or its political  
36 subdivisions is confidential and may not be disclosed unless specifically required by law.

1           **§4725. Consideration of criminal history information**

2           **1. Inquiry only after conditional offer of employment.** An employer may not  
3 inquire into or consider an applicant's criminal history information until the applicant has  
4 received a conditional offer of employment. A person may not be denied employment  
5 when such denial is based in whole or in part on criminal history information unless that  
6 criminal history information is directly related to the position of employment or includes  
7 a criminal conviction that is explicitly prohibited by statute for the position of  
8 employment.

9           **2. Criminal history information directly related.** In determining whether criminal  
10 history information directly relates to the position of employment pursuant to subsection  
11 1, the employer shall consider the following factors:

12           A. Whether the criminal history information is directly related to the duties and  
13 responsibilities of that position or occupation;

14           B. Whether the position or occupation offers the opportunity for the same or a  
15 similar offense to occur;

16           C. Whether circumstances that is the subject of the conduct that is the subject of the  
17 criminal history information will recur in the position or occupation; and

18           D. The length of time since the offense occurred.

19           **§4726. Employer use of criminal history information**

20           **1. Preliminary denial of employment.** Before an employer may make a final  
21 decision to deny an applicant a position of employment based in whole or in part on the  
22 applicant's prior conviction of a crime, the employer must notify the applicant of its intent  
23 to deny the employment in writing, including the following information:

24           A. The criminal history information that is the basis for the preliminary denial;

25           B. A copy of the entire criminal history information report, if any;

26           C. Information about the applicant's right to appeal the preliminary denial; and

27           D. Any evidence of mitigation or rehabilitation that the applicant may voluntarily  
28 provide.

29           **2. Appeal of preliminary denial.** An applicant may appeal a preliminary denial of  
30 employment with the employer by demonstrating mitigation or rehabilitation or by  
31 challenging the accuracy of the criminal history information. Mitigation or rehabilitation  
32 may be demonstrated by providing the employer:

33           A. Evidence demonstrating that at least one year has elapsed since the applicant's  
34 release from any correctional institution without criminal conviction or arrest; or

35           B. Any other information or evidence of mitigation or rehabilitation and present  
36 fitness to perform the duties of the position of employment, including, but not limited  
37 to, letters of reference.

1 If the applicant demonstrates mitigation or rehabilitation to the employer, the employer  
2 may not deny the applicant the position of employment based in whole or in part on the  
3 applicant's criminal history information. The employer may not hire another individual  
4 for the position of employment until after it has made a final employment decision  
5 pursuant to subsection 3.

6 After receiving notice of the preliminary denial issued pursuant to subsection 1, the  
7 applicant must send or deliver the preliminary appeal within 10 business days.

8 **3. Final denial of employment.** If the applicant submits a timely appeal of a  
9 preliminary denial of employment pursuant to subsection 2, the employer must make its  
10 employment decision based on an individualized assessment of the information submitted  
11 by the applicant in light of the factors recommended by the federal Equal Employment  
12 Opportunity Commission, "Consideration of Arrest and Conviction Records in  
13 Employment Decisions Under Title VII of the Civil Rights Act of 1964," Enforcement  
14 Guidance Number 915.002, from April 25, 2012.

15 If the employer decides to make a final denial of employment, the employer must notify  
16 the applicant in writing of the following:

17 A. The final denial;

18 B. The appeal process, if any;

19 C. A statement that the applicant may be eligible for other employment; and

20 D. The earliest date on which the applicant may reapply for a position of  
21 employment.

22 **§4727. State contractors; policy**

23 It is the policy of the State to do business with only contractors that have adopted and  
24 comply with written policies, practices and standards that are consistent with the  
25 requirements of this Act. State agencies shall review all potential contractors' criminal  
26 background check policies for consistency with this Act and shall consider criminal  
27 background check policies and practices among the performance criteria in evaluating  
28 whether to award a contract to a contractor.

29 **§4728. Records**

30 **1. Retention and creation.** An employer shall retain all application forms, records  
31 of employment and other pertinent records and information related to compliance with  
32 this Act for a minimum of 3 years, including, but not limited to, the following records:

33 A. The number of positions of employment requiring criminal background checks;

34 B. For positions of employment requiring criminal background checks, the number  
35 of applicants and the number of applicants who were provided a conditional offer of  
36 employment;

37 C. The number of applicants regarding whom the employer was aware of criminal  
38 history information and;

- 1           (1) To whom the employer provided a preliminary denial notice pursuant to  
2           section 4726, subsection 1;
- 3           (2) Who provided the employer with evidence of mitigation or rehabilitation  
4           pursuant to section 4726, subsection 2;
- 5           (3) To whom the employer provided a final denial notice pursuant to section  
6           4726, subsection 3; and
- 7           (4) Who were hired;

8           D. Communications with applicants for employment; and  
9           E. For the State and its political subdivisions, records of the number of employees in  
10          positions for which a preemployment criminal background check is not conducted  
11          who have a criminal conviction. The State shall create these records through  
12          regularly conducted confidential and anonymous surveys of its employees.

13          **2. Commission access; presumption.** An employer shall allow the Maine Human  
14          Rights Commission access to all pertinent records and information for the purpose of  
15          monitoring compliance with this Act. There is a rebuttable presumption that an employer  
16          has not complied with this Act if the employer does not maintain records in compliance  
17          with this section, or does not allow the Maine Human Rights Commission reasonable  
18          access to such records, absent clear and convincing evidence of compliance with this Act.

19          **§4729. Violation by a private employer**

20          **1. Maine Human Rights Commission.** An individual who is aggrieved by a private  
21          employer's violation of this chapter may file a complaint with the Maine Human Rights  
22          Commission pursuant to section 4635. A private employer who violates section 4725 or  
23          section 4726 is subject to the penalties in section 4635, including a civil penalty of up to  
24          \$1,000 for the first violation and \$2,000 for each subsequent violation.

25          **2. Civil action.** An aggrieved individual may bring a civil action in a court of  
26          competent jurisdiction against a private employer that has violated section 4725 or  
27          section 4726 and, upon prevailing, is entitled to such legal or equitable relief as the court  
28          may determine appropriate and reasonable attorney's fees and costs.

29          **§4730. Violation by a public employer**

30          An individual who is aggrieved by a violation of section 4724, section 4725 or  
31          section 4726 by the State or its political subdivisions may file a complaint with the Maine  
32          Human Rights Commission pursuant to section 4635, but such public employers are not  
33          subject to civil penalties pursuant to that section. An individual may not bring a civil  
34          action pursuant to section 4729, subsection 2 against the State or its political  
35          subdivisions.

36          The Director of Human Resources shall conduct a periodic audit to review the State's  
37          hiring practices in an effort to ensure that individuals with criminal convictions are not  
38          unreasonably denied employment with the State.

1 **§4731. Application**

2 The provisions of this Act apply notwithstanding any provision of law to the  
3 contrary, except to the extent the provision of law contains additional limitations on the  
4 consideration of criminal history information of applicants for employment.

5 **SUMMARY**

6 This bill enacts the Maine Fair Chance Employment Act and adds restrictions to the  
7 use of criminal history information in the context of employment decisions by private  
8 employers and the State and its political subdivisions and of licensing decisions by  
9 licensing agencies.

10 It prohibits an employer from asking an applicant for employment to disclose  
11 information concerning the applicant's criminal history, or considering such information,  
12 until after the applicant has received a conditional offer of employment. It restricts the  
13 way a private employer, or the State and its political subdivisions, may use criminal  
14 history information in the course of making employment decisions and adds similar  
15 restrictions to the existing restrictions applicable to licensing agencies' consideration of  
16 criminal history information. It also makes certain criminal history information in the  
17 possession of the State and its political subdivisions confidential and makes all criminal  
18 background check information obtained by the State in connection with an employment  
19 decision confidential.

20 The Maine Human Rights Commission is charged with enforcement of the Maine  
21 Fair Chance Employment Act and may seek civil penalties against a private employer for  
22 a violation of \$1,000 for the first violation and \$2,000 for each subsequent violation.

23 The bill also creates a private right of action that may be brought by an affected  
24 individual against a private employer that has violated the Maine Fair Chance  
25 Employment Act and, upon prevailing, the affected individual is entitled to such legal or  
26 equitable relief as the court may determine appropriate and reasonable attorney's fees and  
27 costs.