

MAINE STATE LEGISLATURE

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Legislative Document

No. 254

H. P. 160

House of Representatives, January 28, 1959.

Referred to the Committee on Labor, sent up for concurrence and 1,000 copies ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Miller of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-NINE

**AN ACT Relating to Unlawful Discrimination Against Race, Color,
Age or Ancestry.**

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

R. S., c. 30, §§ 53-A - 53-I, additional. Chapter 30 of the Revised Statutes is amended by adding 9 new sections to be numbered 53-A to 53-I, to read as follows:

‘Maine Fair Employment Practice Commission.

Sec. 53-A. Purpose. Employment without discrimination because of race, color, age or ancestry is declared to be a right and privilege of the inhabitants of this State.

Sec. 53-B. Definitions. The following terms used in sections 53-A to 53-I shall have the following meanings:

The word “age,” unless a different meaning clearly appears from the context, includes any person between the ages of 40 and 60.

The word “employee” does not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

The word “employer” does not include a club exclusively social, or a fraternal, charitable, educational or religious association or corporation, if such club, association or corporation is not organized for private profit, but shall include the State of Maine and all political subdivisions, boards, departments and commissions thereof in all respects.

The words “employment agency” includes any person undertaking to procure employees or opportunities to work.

The word "commission," unless a different meaning clearly appears from the context, means the Maine Fair Employment Practice Commission.

The words "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms of conditions of employment, or of other mutual aid or protection in connection with employment.

The word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers and the State of Maine and all political subdivisions, boards and commissions thereof.

The words "unlawful employment practice" includes only those unlawful employment practices specified in section 53-E.

Sec. 53-C. Maine Fair Employment Practice Commission. There is created within the Department of Labor and Industry a commission to be known as the Maine Fair Employment Practice Commission. The Commission shall consist of 3 members, to be known as Commissioners, who shall be appointed by the Governor, with the advice and consent of the Council, and one of whom shall be designated as chairman by the Governor. The term of office of each member of the Commission shall be for 3 years, provided that of the Commissioners first appointed, one shall be appointed for a term of one year, one for a term of 2 years, one for a term of 3 years. Any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Two members of the Commission shall constitute a quorum for the purpose of conducting the business thereof. A single vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission.

Each member of the commission shall receive \$20 per day when engaged in the performance of his duties, and his expenses actually and necessarily incurred by him in the performance of his duties, and shall be eligible for reappointment. Any member may be removed by the Governor, with the consent of the Council, for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

Sec. 53-D. Powers and duties of Commission. The Commission shall have the following functions, powers and duties:

- I. To formulate policies to effectuate the purposes of sections 53-A to 53-I and may make recommendations to agencies and officers of this State or its political subdivisions in aid of such policies and purposes;
- II. To meet and function at any place within the State;
- III. To appoint, subject to the provisions of the Personnel Law, such attorneys, clerks and other employees and agents as it may deem necessary and prescribe their duties;
- IV. To obtain upon request and utilize the services of all executive departments and agencies;

V. To adopt, promulgate, amend and rescind rules and regulations suitable to carry out the provisions of section 53-A to 53-I, and the policies and practice of the Commission in connection therewith;

VI. To receive, investigate and pass upon complaints alleging discrimination in employment because of race, color, age or ancestry;

VII. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the Commission. The Commission may make rules as to the issuance of subpoenas by individual commissioners.

No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the Commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying;

VIII. To create such advisory agencies and conciliation councils, local, regional or state-wide, as in its judgment will aid in effectuating the purposes of sections 53-A to 53-I, and the Commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination, because of race, color, age or ancestry, in order to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of this State, and make recommendations to the Commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the Commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the Commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance;

IX. To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, color, age or ancestry;

X. To render each year to the Governor and to the Legislature a full written report of its activities and of its recommendations.

Sec. 53-E. Unlawful employment practice. It shall be an unlawful employment practice:

I. For an employer, by himself or his agent, because of the race, color, age or ancestry of any individual, to refuse to hire or employ or to bar or to

discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification;

II. For a labor organization because of the race, color, age or ancestry of any individual to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless based upon a bona fide occupational qualification;

III. For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, age or ancestry or any intent to make any such limitation, specification or discrimination, or to discriminate in any way on the ground of race, color, age or ancestry, unless based upon a bona fide occupational qualification;

IV. For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under sections 53-A to 53-I or because he has filed a complaint, testified or assisted in any proceeding under section 53-F.

V. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under sections 53-A to 53-I or to attempt to do so.

Sec. 53-F. Proceedings before Commission. Any person claiming to be aggrieved by an alleged unlawful employment practice may, by himself or his attorney, make, sign and file with the Commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the Commission. The Attorney General may, in like manner, make, sign and file such complaint. The Commission, whenever it has reason to believe that any person has been or is engaging in an unlawful employment practice, may issue such a complaint. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of sections 53-A to 53-I, may file with the Commission a verified complaint asking for assistance by conciliation or other remedial action.

After the filing of any complaint, the chairman of the Commission shall designate one of the Commissioners to make, with the assistance of the Commission's staff, prompt investigation in connection therewith; and if such Commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, he shall immediately endeavor to eliminate the unlawful employment practice complained of by conference, conciliation and persuasion. The members of the Commission and its staff shall not disclose what has occurred in the course of such endeavors, provided that

the Commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been so disposed of. In case of failure so to eliminate such practice, or in advance thereof if in his judgment circumstances so warrant, he may cause to be issued and served in the name of the Commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the Commission, at a time and place to be specified in such notice. The place of any such hearing shall be the office of the Commission or such other place as may be designated by it. The case in support of the complaint shall be presented before the Commission by one of its attorneys or agents, and the Commissioner who shall have previously made the investigation and caused the notice to be issued shall not participate in the hearing except as a witness, nor shall he participate in the deliberations of the Commission in such case; and the aforesaid endeavors at conciliation shall not be received in evidence. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. In the discretion of the Commission, the complainant may be allowed to intervene and present testimony in person or by counsel. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed at the request of any party. If, upon all the evidence at the hearing the Commission shall find that a respondent has engaged in any unlawful employment practice as defined in section 53-E, the Commission shall state its finding of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in any respondent labor organization, as, in the judgment of the Commission, will effectuate the purposes of sections 53-A to 53-I and including a requirement for report of the manner of compliance. If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. A copy of its order shall be delivered in all cases to the Attorney General and such other public officers as the Commission deems proper. The Commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within 6 months after the alleged act of discrimination.

Sec. 53-G. Judicial enforcement and review. Any complainant, respondent or other person aggrieved by such order of the Commission may obtain judicial review thereof, and the Commission may obtain an order of court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be

brought in the Superior Court within any county wherein the unlawful employment practice which is the subject of the Commission's order occurs or wherein any person required in the order to cease and desist from an unlawful employment practice or to take other affirmative action resides or transacts business. Such proceedings shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing before the Commission, and issuance and service of an order of notice as in proceedings in equity. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings set forth in such transcript an order or decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission with full power to issue injunctions against any respondent and to punish for contempt thereof. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Any party may move the court to remit the case to the Commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows reasonable grounds for the failure to adduce such evidence before the Commission. The findings of the Commission as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the court as expeditiously as possible and shall take precedence over all other matters before it, except matters of like nature. The jurisdiction of the Superior Court shall be exclusive and its final order or decree shall be subject to review by the Supreme Judicial Court in the same manner and form and with the same effect as in appeals from a final order or decree in proceedings in equity. The Commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the Commission. The review shall be heard on the record without requirement of printing. The Commission may appear in court by one of its attorneys. A proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within 30 days after the service of the order of the Commission.

Sec. 53-H. Notice. Every employer, employment agency and labor union subject to sections 53-A to 53-I shall post in a conspicuous place or places on his premises a notice to be prepared or approved by the Commission, which shall set forth excerpts of sections 53-A to 53-I and such other relevant information which the Commission deems necessary to explain the said sections. Any employer, employment agency or labor union refusing to comply with the provisions of this section shall be punished by a fine of not less than \$10 nor more than \$100.

Sec. 53-I. Violation. Any person, employer, labor organization or employment agency, who or which shall willfully resist, prevent, impede or interfere with the Commission or any of its members or representatives in the performance of duty under sections 53-A to 53-I, or shall willfully violate a final order of

the Commission, or who shall willfully file a false complaint shall be punished for each offense by imprisonment for not more than one year, or by a fine of not more than \$500, or by both; but procedure for the review of the order shall not be deemed to be such willful conduct.'