

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)

LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE

FIRST REGULAR SESSION

January 5, 1977 to July 25, 1977

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

PORTLAND LITHOGRAPH COMPANY
PORTLAND, MAINE
1977

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND EIGHTH LEGISLATURE

1977

able in not more than 10 annual installments, at no interest, and such installment payments shall commence at such time as the state contract student concludes his professional education under rules promulgated by the commissioner. Payments shall be made to the State at the rate of 5% per year of the total amount expended by the State to secure the space for the first 4 years, and at 10% per year of the total amount expended by the State to secure the space for the remaining years. For the purposes of this section, practicing in Maine shall mean to have practiced during the full term of the reimbursement periods.

Sec. 2. 20 MRSA § 2278, as enacted by PL 1977, c. 335, § 6, is repealed and the following enacted in its place:

§ 2278. Nonlapsing fund and Grant-Loan Scholarship Revolving Account

It is the intent of the Legislature that any unexpended money appropriated by the Legislature under section 2276 shall not lapse, but shall be carried to the following year to be expended by the department solely for the same purpose. It is further the intent to establish a revolving grant-loan scholarship fund and moneys returned to the State shall not be deposited in the General Fund but shall be deposited in the Grant-Loan Scholarship Revolving Account, to be expended solely for same purpose.

SECTION M

APPROPRIATIONS AND ALLOCATIONS

TOTAL APPROPRIATIONS AND ALLOCATIONS

IN THIS ACT

	1976-77	1977-78	1978-79
TOTAL GENERAL FUND	(\$2,250,000)	\$5,692,817	\$6,913,270
TOTAL ALLOCATION — TITLE II		\$2,500,000	\$2,500,000
TOTAL ALLOCATION — HIGHWAY FUND		\$1,300,000	\$1,500,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1, 1977, unless otherwise indicated.

Effective July 1, 1977, except as otherwise indicated

CHAPTER 580

AN ACT to Prohibit the Practice of a Mandatory Retirement Age.

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

Sec. 1. 5 MRSA § 1001, sub-§ 27 is enacted to read:

27. Normal retirement age. "Normal retirement age" means the specified age, the years of service requirement, or any age and years of service

combination at which a member may become eligible for retirement benefits, which benefits are not subject to a reduction under section 1121, subsection 3. This subsection shall not be construed to require the mandatory retirement of a member or to deny employment to any person based solely on his normal retirement age.

Sec. 2. 5 MRSA § 1006 is enacted to read:

§ 1006. Mandatory retirement age prohibited

1. Legislative findings and intent. The Legislature finds that many older Maine citizens are pushed out of the work force solely because of their age. The Legislature further finds that many older Maine residents who have been pushed out of the work force are fully capable of carrying out the duties and responsibilities required by employment. Finally, the Legislature finds that many older Maine citizens, because of their years of experience, can make valuable contributions to the work force.

It is the intent of the Legislature that discrimination based on age against any person who seeks employment in the public sector or who is already employed by a public employer shall not be tolerated. It is further the intent of the Legislature to ensure that any older person who seeks or wishes to continue employment in the public sector and who is capable of fulfilling the duties and responsibilities of such employment, shall be treated like any other person who seeks or wishes to continue such employment. Finally, it is the clear and unequivocal intent of the Legislature to prohibit employers in the public sector from requiring employees to retire at a specified age, or after completion of a specified number of years of service.

2. Prohibition. No employee, as defined under section 1001, subsection 10, shall be required, as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service.

3. Criteria and standards. A state department or public school may establish reasonable criteria and standards of job performance to be used for the purpose of determining when employment of its employees should be terminated. Where there is a certified bargaining agent, the establishment of these criteria and standards may be a subject of collective bargaining. These criteria and standards shall be consistent for all employees in the same or similar job classifications, shall be applied fairly to all employees regardless of age and shall be consistent with the provisions of the Maine Human Rights Act relating to the employment of physically and mentally handicapped persons.

4. Normal retirement age. This section shall not be construed to prohibit the use of a "normal retirement age," as defined in section 1001, subsection 27, provided that normal retirement age and the accrual or awarding of pension or retirement benefits shall not be used in any way to require the retirement of an employee or to deny employment to a person.

5. Federal requirements. This section shall not be construed to effect or limit any power or duty relating to pension or retirement plans which the United States Government reserves to itself.

Sec. 3. 5 MRSA § 1092, sub-§ 15 is enacted to read:

15. Mandatory retirement age prohibited. Any participating local district shall be governed by section 1006, the provisions of which prohibit the use of a mandatory retirement age.

Sec. 4. 5 MRSA § 1121, sub-§ 1, ¶ B, as last amended by PL 1975, c. 766, § 4, is repealed.

Sec. 5. 5 MRSA § 1121, sub-§ 1, ¶ C, first ¶, first sentence, as repealed and replaced by PL 1975, c. 770, § 23, is amended to read:

Any member of the State Police who became a member of that department subsequent to July 9, 1943 may retire upon completion of 20 years of creditable service as a state police officer but must retire upon attainment of age 55, except that any member who is a state police officer on January 1, 1967 and who will not have 20 years of creditable service at the time age 55 is attained may continue in that service until 20 years is attained and forthwith shall be retired.

Sec. 6. 5 MRSA § 1121, sub-§ 1, ¶ C, first ¶, 3rd sentence, as repealed and replaced by PL 1975, c. 770, § 23, is repealed as follows:

Notwithstanding anything to the contrary, a state police officer appointed as the chief, deputy chief or a Commissioner of Public Safety shall be permitted to continue in such position beyond attained age 55 or after completion of 20 years of creditable service until the end of the term for which he was appointed and the Commissioner of Public Safety may be appointed or reappointed, regardless of attained age or length of creditable service

Sec. 7. 5 MRSA § 1121, sub-§ 1, ¶ D, first ¶, as last amended by PL 1975, c. 622, § 44, is repealed and the following enacted in its place:

Any law enforcement officer in the Department of Inland Fisheries and Wildlife and any law enforcement officer in the Department of Marine Resources may retire upon completion of 20 years of creditable service as a law enforcement officer in the Department of Inland Fisheries and Wildlife or a law enforcement officer in the Department of Marine Resources. Military service credits, as allowed under section 1094, shall not be considered as part of the creditable service as a law enforcement officer under this section, but any military service creditable under section 1091 shall be considered to be part of the creditable service necessary for the 20 years as a law enforcement officer, provided that he was a law enforcement officer in either of these departments at the time of entrance into such military service and upon separation from military service again became a law enforcement officer in either of these departments. The total amount of the service retirement allowance of a law enforcement officer retired in accordance with this paragraph, shall be equal to $\frac{1}{2}$ of his average final compensation and an additional 2% of his average final compensation for each year of membership service not included in determining eligibility for retirement under this paragraph.

Sec. 8. 5 MRSA § 1121, sub-§ 1, ¶ E, as last amended by PL 1975, c. 622, § 46, is repealed and the following enacted in its place:

E. Any forest ranger in the Department of Conservation may retire at attained age 50 or upon completion of 25 years of total creditable service as a forest ranger in this department, whichever is later. The total amount

of the service retirement allowance of a forest ranger in this department, retired in accordance with this paragraph, shall be equal to $\frac{1}{2}$ of his average final compensation and an additional 2% of his average final compensation for each year of membership service not included in the age and service conditions for retirement under this paragraph.

Sec. 9. 5 MRSA § 1121, sub-§ 4, ¶ B, as repealed and replaced by PL 1977, c. 78, § 15, is repealed.

Sec. 10. 5 MRSA § 1121, sub-§ 4, ¶ D, first sentence, as repealed and replaced by PL 1975, c. 622, § 50, is repealed and the following enacted in its place:

Any member who is a liquor inspector, including the chief inspector and who has completed at least 25 years of creditable service in his respective capacity, may retire at age 55 on a service retirement allowance, which shall be equal to $\frac{1}{2}$ of his average final compensation and an additional 2% of his average final compensation for each year of membership service not included in the age and service conditions for retirement under this paragraph.

Sec. 11. 5 MRSA § 1121, sub-§ 4, ¶ F, as repealed and replaced by PL 1975, c. 622, § 50-A, is repealed and the following enacted in its place:

F. Any member who is the warden or deputy warden of the Maine State Prison, or any officer or employee of the Maine State Prison employed as a guard, or engaged in any management of prisoners, or as the supervising officers of any such guards or employees, and in any case, who has at least 20 years of creditable service in his respective capacity, or cumulatively in any combination of such prison employment capacities may retire at age 50 on a service retirement allowance, which shall be equal to $\frac{1}{2}$ of his average final compensation and an additional 2% of his average final compensation for each year of membership service not included in the age and service conditions for retirement under this paragraph.

Sec. 12. 5 MRSA § 1122, sub-§ 1, first sentence, as last amended by PL 1977, c. 450, § 1, is repealed and the following enacted in its place:

Any eligible member who, while in service and prior to attaining age 60 or reaching the normal retirement age for a particular group of employees, if earlier, has become mentally or physically incapacitated to such an extent that it is impossible for him to perform the duties of his employment position, may, if such incapacity can be expected to be permanent, retire on a disability retirement allowance upon written application to the executive director and approval of the application by the executive director.

Sec. 13. 5 MRSA § 1122, sub-§ 3, ¶ A, as repealed and replaced by PL 1975, c. 622, § 54, is amended to read:

A. The disability retirement allowance of a beneficiary shall cease ~~upon the attainment of his mandatory retirement age, without extensions, or prior thereto~~ whenever the service retirement allowance of the beneficiary would equal or exceed the amount of his disability retirement allowance.

Sec. 14. 5 MRSA § 4573, sub-§ 1, as enacted by PL 1971, c. 501, § 1, is repealed and the following enacted in its place:

1. Age. To discriminate on account of age, so as to:

A. Termination. Terminate employment in compliance with the terms or conditions of any bona fide retirement or pension plan, except where such termination:

- (1) Involves an employee of the University of Maine;
- (2) Is prohibited pursuant to section 1006; or
- (3) Is prohibited pursuant to Title 30, section 8 or section 2157.

B. Retirement plan. Observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, provided that the observation of such terms or conditions shall not result in the denial or termination of employment of any:

- (1) Employee of the University of Maine;
- (2) Employee defined under section 1001, subsection 10; or
- (3) Employee referred to under Title 30, section 8 or section 2157.

C. Insurance plan. Comply with the terms or conditions of any bona fide group or employee insurance plan, provided that the compliance with such terms or conditions shall not result in the denial or termination of employment of any:

- (1) Employee of the University of Maine;
- (2) Employee defined under section 1001, subsection 10; or
- (3) Employee referred to under Title 30, section 8 or section 2157.

D. Child labor laws. To comply with the state or federal laws relating to the employment of minors.

Sec. 15. 5 MRSA § 4574 is enacted to read:

§ 4574. Mandatory retirement age discouraged

The Legislature finds that many older Maine citizens are pushed out of the work force solely because of their age. The Legislature further finds that many older Maine residents who have been pushed out of the work force are fully capable of carrying out the duties and responsibilities required by employment. Finally, the Legislature finds that many older Maine citizens, because of their years of experience, can make valuable contributions to the work force.

It is the intent of the Legislature that discrimination based on age against

any person who seeks employment or who is already employed should not be tolerated. It is further the intent of the Legislature that any older person who seeks or wishes to continue employment and who is capable of fulfilling the duties and responsibilities of such employment, should be treated like any other person who seeks or wishes to continue such employment. Finally, it is the clear and unequivocal intent of the Legislature to discourage employers in private sector from requiring employees to retire at a specified age or after completion of a specified number of years of service.

Sec. 16. 20 MRSA § 161, sub-§ 5, 2nd sentence, as amended by PL 1975, c. 723, § 1, is repealed and the following enacted in its place:

After a probationary period of not to exceed 2 years, subsequent contracts of duly certified teachers shall be for not less than 2 years. Unless a duly certified teacher receives written notice to the contrary at least 6 months before the terminal date of the contract, the contract shall be extended automatically for one year and similarly in subsequent years although the right to an extension for a longer period of time through a new contract is specifically reserved to the contracting parties.

Sec. 17. 20 MRSA § 161, sub- 5, 4th and 5th sentences, as enacted by PL 1973, c. 454, § 1, are repealed.

Sec. 18. 30 MRSA § 8 is enacted to read:

§ 8. Mandatory retirement age prohibited

No county or county officer shall adopt any rule or regulation or take any action which requires a county employee, as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service. All of the provisions of section 2157 relating to the prohibition of mandatory retirement of municipal employees shall also apply to and prohibit the mandatory retirement of county employees.

Sec. 19. 30 MRSA § 2157 is enacted to read:

§ 2157. Mandatory retirement age prohibited

1. Legislative findings and intent. The legislative findings and intent for this section are the same as the findings and intent specified in Title 5, section 1006, subsection 1.

2. Prohibition. No municipality shall enact any ordinance or adopt any rule or regulation which requires a municipal employee, as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service.

3. Criteria and standards. A municipality may establish reasonable criteria and standards of job performance to be used for the purpose of determining when employment of municipal employees should be terminated. These criteria and standards shall be subject to all of the provisions included under Title 5, section 1006, subsection 3.

4. Normal retirement age. This section shall not be construed to prohibit the use of a "normal retirement age," as defined in the Federal Employee

Retirement Income Security Act of 1974, as amended, in computing pension or retirement benefits, provided that normal retirement age and the accrual or awarding of pension or retirement benefits shall not be used in any way to require the retirement of an employee or to deny employment to a person.

5. Federal requirements. This section shall not be construed to effect or limit any power or duty relating to pension or retirement plans which the United States Government reserves to itself.

Sec. 20. Study; intent. The Maine State Planning Office, in consultation with the Maine Committee on Aging, is directed to study and evaluate proceedings to be followed for an orderly phase-in of the prohibition against mandatory retirement in the private sector and shall report its findings and recommendations to the next Legislature no later than January 31, 1979.

It is the intent of this Act that, subject to the recommendations by the State Planning Office, the final phase of prohibiting the use of mandatory retirement age, namely, the prohibition of this age, effective January 1, 1980, for employees in the private sector shall be addressed during the 109th Legislature.

Sec. 21. Effective dates; compliance. Sections 1 to 14 and 16 to 19 shall shall become effective July 1, 1978.

Sections 15 and 20 shall be effective 90 days after the adjournment of the Legislature.

Any employer who, as a result of the provisions of this Act, is required to amend an existing employee retirement pension or insurance plan, shall complete any such amendment prior to July 1, 1978. However, if such amendment needs to be made through the negotiation of a collective bargaining contract and if such contract is not scheduled for negotiation prior to July 1, 1978, then such amendment shall be made during the next scheduled negotiation after July 1, 1978.

Effective October 24, 1977

CHAPTER 581

AN ACT to Provide a Uniform Basis for Recognizing the Right of the University of Maine Employees, Maine Maritime Academy Employees, Vocational-Technical Institute Employees and State Schools for Practical Nursing Employees to Join Labor Organizations.

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

Sec. 1. 26 MRSA § 1021, as enacted by PL 1975, c. 603, § 1, and as amended by PL 1975, c. 671, § 1, is further amended to read:

§ 1021. Purpose