

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987

and the

**SECOND REGULAR SESSION**

January 6, 1988 to May 5, 1988

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Twin City Printery  
Lewiston, Maine  
1988

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
FIRST AND SECOND SPECIAL SESSIONS  
and  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

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2. Funds transferred. Notwithstanding the Maine Revised Statutes, Title 5, sections 1585 and 1586, all accrued expenditures, assets, liabilities, balances, appropriations or allocations, transfers, revenues or other available funds in any account or subdivision of an account of any unit of State Government related to a function transferred by this Act shall be transferred to the unit which receives the responsibility for that function.

3. Transfer of employee benefits. Any employees of any unit of State Government who may be transferred to the Department of the Secretary of State, Division of Motor Vehicles, shall be transferred with their accrued rights and benefits. The accrued fringe benefits, including vacation and sick leave, health and life insurance, and retirement shall remain with those persons.

4. Rules and procedures. All rules and procedures relating to the functions transferred by this Act currently in effect and in operation and which are in compliance with this Act shall remain in effect until rescinded or amended as provided by law.

5. Contracts and agreements. All contracts and agreements currently in effect with respect to any unit of State Government affected by this Act shall remain in effect until rescinded, terminated or modified as provided by law.

6. Equipment and property transferred. All equipment and property of the State used by employees and officials of any unit of State Government related to a function transferred by this Act shall be transferred to the unit which receives the responsibility for that function.

7. Organization and operation. Notwithstanding any other provision of law, any appointment and preparation work for the transfer of functions required by this Act may be made or may occur prior to the appropriate effective date of this Act, but shall not become binding or take effect until the appropriate effective date.

8. Financial order required. The Deputy Secretary of State, the Commissioner of Public Safety and the Commissioner of Transportation shall jointly prepare a financial order to transfer the necessary funds, positions, equipment and property to implement this Act. They shall submit that order to the Budget Office in a timely manner so that the transfer can be carried out on July 1, 1989.

Sec. 14. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

All Other	35,000
Capital Expenditures	3,750
Total	\$52,789

Provides funds for a branch chief supervisor position and anticipated office rental expenses to assist in the proposed transition period.

Sec. 15. Effective date. This Act shall take effect July 1, 1989, except that section 13, subsections 7 and 8 and section 14 shall take effect February 1, 1989.

Effective July 1, 1989, unless otherwise indicated.

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## CHAPTER 782

S.P. 936 — L.D. 2469

### AN ACT to Promote Greater Workplace Safety.

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

Sec. 1. 5 MRSA §4572, as amended by PL 1987, c. 559, Pt. B, §2, is further amended to read:

§4572. Unlawful employment discrimination

1. Unlawful employment. It shall be unlawful employment discrimination, in violation of this Act, except where based on a bona fide occupational qualification:

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, physical or mental handicap, religion, ancestry or national origin or age, or because of the applicant's previous assertion of a claim or right under Title 39, or because of previous actions taken by the applicant which are protected under Title 26, chapter 7, subchapter V-B, or because of any such reason to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, or in recruiting of individuals for employment or in hiring them, to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or their previous assertion of a claim or right under Title 39, or because of previous actions which are protected under Title 26, chapter 7, subchapter V-B;

(1) This paragraph does not apply to discrimination against any individual after hiring because of that individual's previous or subsequent assertion of a claim or right under Title 39. Such discrimination is governed by Title 39, section 111;

1988-89

SECRETARY OF STATE, DEPARTMENT OF THE

Administration — Motor Vehicles

Positions	(1)
Personal Services	\$14,039

B. For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or the individual's previous assertion of a claim or right under Title 39, or because of previous actions taken by the individual which are protected under Title 26, chapter 7, subchapter V-B, or to comply with an employer's request for the referral of job applicants, if such request indicates either directly or indirectly that such employer will not afford full and equal employment opportunities to individuals regardless of their race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or previous assertion of a claim or right under Title 39, or previous actions which are protected under Title 26, chapter 7, subchapter V-B;

C. For any labor organization to exclude from apprenticeship or membership, or to deny full and equal membership rights, to any applicant for membership, because of race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or the applicant's previous assertion of a claim or right under Title 39, or because of previous actions taken by the applicant which are protected under Title 26, chapter 7, subchapter V-B, or because of any such reason to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate in any manner with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organization or by a collective labor agreement or other contract, or to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or because of the member's previous assertion of a claim or right under Title 39, or because of previous actions taken by the member which are protected under Title 26, chapter 7, subchapter V-B, or to cause or attempt to cause an employer to discriminate against an individual in violation of this section, except that it shall be lawful for labor organizations and employers to adopt a maximum age limitation in apprenticeship programs, provided that the employer or labor organization obtains prior approval from the Maine Human Rights Commission of any maximum age limitation employed in an apprenticeship program. The commission shall approve the age limitation if a reasonable relationship exists between the maximum age limitation employed and a legitimate expectation of the employer in receiving a reasonable return upon his investment in an apprenticeship program. The employer or labor organization bears the burden of demonstrating that such a relationship exists;

D. For any employer or employment agency or labor

organization, prior to employment or admission to membership of any individual, to:

(1) Elicit or attempt to elicit any information directly or indirectly pertaining to race or color, sex, physical or mental handicap, religion, age, ancestry or national origin, or any previous assertion of a claim or right under Title 39, or any previous actions which are protected under Title 26, chapter 7, subchapter V-B, except where a physical or mental handicap is determined by the employer, employment agency or labor organization to be job related; or where some privileged information is necessary for an employment agency or labor organization to make a suitable job referral;

(2) Make or keep a record of race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or any previous assertion of a claim or right under Title 39, or any previous actions which are protected under Title 26, chapter 7, subchapter V-B, except under physical or mental handicap, when an employer requires a physical or mental examination prior to employment, a privileged record of such an examination is permissible;

(3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, sex, physical or mental handicap, religion, age, ancestry or national origin or any previous assertion of a claim or right under Title 39, or any previous actions which are protected under Title 26, chapter 7, subchapter V-B, except under physical or mental handicap, where it can be determined by the employer that the job or jobs to be filled require such information for the well-being and safety of the individual; nor will this section prohibit any officially recognized agency from keeping necessary records in order to provide free services to individuals requiring rehabilitation or employment assistance;

(4) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, sex, physical or mental handicap, age, ancestry or national origin or any previous assertion of a claim or right under Title 39, or any previous actions which are protected under Title 26, chapter 7, subchapter V-B, except under physical or mental handicap when the text of such printed or published material strictly adheres to this Act; or

(5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, physical or mental handicap, religion, age, ancestry, national origin or the previous assertion of a claim or right under Title 39, or because of previous actions which are protected under Title 26, chapter 7, subchapter V-B, of such group; or

E. For an employer or employment agency or labor organization to discriminate in any manner against any individual because they have opposed any practice which would be a violation of this Act, or because they have made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this Act.

Sec. 2. 26 MRSA §42-A, sub-§2, ¶E, as enacted by PL 1985, c. 372, Pt. A, §6, is amended to read:

E. The development and implementation of a training and education program for department staff engaged in the administration and enforcement of this section; and

Sec. 3. 26 MRSA §42-A, sub-§2, ¶E-1 is enacted to read:

E-1. The development and administration of programs to educate employers and employees regarding the Whistleblowers' Protection Act, chapter 7, subchapter V-B; and

Sec. 4. 26 MRSA §833, as reallocated by PL 1983, c. 583, §15, is repealed and the following enacted in its place:

§833. Discrimination against certain employees prohibited

1. Discrimination prohibited. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because:

A. The employee, acting in good faith, or a person acting on behalf of the employee, reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States;

B. The employee, acting in good faith, or a person acting on behalf of the employee, reports to the employer or a public body, orally or in writing, what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual;

C. The employee is requested to participate in an investigation, hearing or inquiry held by that public body, or in a court action; or

D. The employee acting in good faith, has refused to carry out a directive that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the dangerous condition from the employer.

2. Initial report to employer required; exception. Subsection 1 does not apply to an employee who has reported or caused to be reported a violation, or unsafe condition or practice to a public body, unless the employee has first brought the alleged violation, condition or practice to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable opportunity to correct that violation, condition or practice.

Prior notice to an employer is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition or practice.

3. Reports of suspected abuse. An employee required to report suspected abuse, neglect or exploitation under Title 22, section 3477 or 4011, shall follow the requirements of those sections under those circumstances. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee followed the requirements of those sections.

Sec. 5. 26 MRSA §834, as amended by PL 1983, c. 816, Pt. A, §18, is repealed.

Sec. 6. 26 MRSA §834-A is enacted to read:

§834-A. Arbitration before the Maine Human Rights Commission

An employee who alleges a violation of that employee's rights under section 833, and who has complied with the requirements of section 833, subsection 2, may bring a complaint before the Maine Human Rights Commission for action under Title 5, section 4612.

Sec. 7. 26 MRSA §835, as reallocated by PL 1983, c. 583, §15, is repealed.

Sec. 8. 26 MRSA §839, as reallocated by PL 1983, c. 583, §15, is repealed and the following enacted in its place:

§839. Notices of employee protections and obligations

1. Notice provided; posting. The Department of Labor shall provide each employer in the State with a notice as provided in this section. Each employer shall prominently post the notice in the employer's place of business so that the employees are informed of their protections and obligations under this subchapter.

2. Contents of notice. The notice provided by the Department shall include:

A. A summary of this subchapter written in concise and plain language;

B. A telephone number at the department that employees may call if they have questions or wish to report a violation, condition or practice; and

C. A space where the employer shall write in the name of the individual or department to which employees may report violations, unsafe conditions or practices as required by section 833.

Sec. 9. 26 MRSA §840, as reallocated by PL 1983, c. 583, §15, is repealed and the following enacted in its place:

§840. Common-law rights

Nothing in this section may be construed to derogate any common-law rights of an employee.

Sec. 10. **Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1988-89
<u>LABOR, DEPARTMENT OF</u>	
Regulation and Enforcement	
All Other	\$8,300
<u>MAINE HUMAN RIGHTS COMMISSION</u>	
Positions	(1)
Personal Services	\$25,975
All Other	2,393
Capital Expenditures	368
Provides funds for one investigator to handle additional caseload.	
Total	<u>\$28,736</u>
TOTAL APPROPRIATIONS	<u>\$37,036</u>

Effective August 4, 1988.

**CHAPTER 783**

S.P. 924 — L.D. 2435

**AN ACT to Provide Funds for Teenage Suicide Prevention.**

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

Sec. 1. 34-B MRSA §3007 is enacted to read:

§3007. Teenage Suicide Prevention Program

The bureau shall, in cooperation with the Department of Educational and Cultural Services, the Department of Human Services and the "local action councils" funded in Public Law 1987, chapter 349, Part A under the heading "Human Services, Department of," develop a teenage suicide prevention strategy and a model suicide prevention program to be presented in the secondary

schools of the State. Development of such a program shall include preparation of relevant educational materials which shall be distributed in the schools.

Sec. 2. **Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1988-89
<u>MENTAL HEALTH AND MENTAL RETARDATION, DEPARTMENT OF</u>	
Bureau of Children with Special Needs	
All Other	\$20,000
Provides funds to develop and implement a model suicide prevention program for secondary schools in the State.	

Effective August 4, 1988.

**CHAPTER 784**

H.P. 1766 — L.D. 2419

**AN ACT Relating to Conflict of Interest for Certain Governmental Officials and Employees.**

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

Sec. 1. 5 MRSA §18, sub-§1, ¶B, as amended by PL 1985, c. 779, §7, is further amended to read:

B. "Executive employee" means the constitutional officers, the State Auditor, members of the state boards and commissions as defined in chapter 379 and compensated members of the classified or unclassified service employed by the Executive Branch, but it shall not include:

- (1) The Governor;
- (2) Employees of and members serving with the National Guard;
- (3) Employees of the University of Maine System, the Maine Maritime Academy and State state vocational-technical institutes; and
- (4) Employees who are employees solely by their appointment to an advisory body;
- (5) Members of boards listed in chapter 379, who are required by law to represent a specific interest, except as otherwise provided by law; and
- (6) Members of advisory boards as listed in chapter 379.

Sec 2. 5 MRSA §18, sub-§3, as enacted by PL 1979, c. 734, §2, is repealed and the following enacted in its place: