

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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

J.S. McCarthy Company
Augusta, Maine
1997

enact Title 15, section 2128, subsection 6 apply to any petition filed after one year following the effective date of the Act. A petition filed within the one year following the effective date of this Act is not subject to the new filing deadline, but remains subject to the provisions of former section 2128, subsection 5 relating to delay.

See title page for effective date.

CHAPTER 400

H.P. 1213 - L.D. 1713

An Act Relating to Compensatory and Punitive Damages Under the Maine Human Rights Act

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

Sec. 1. 5 MRSA §4613, sub-§2, ¶B, as amended by PL 1991, c. 474, §1 and affected by §3, is further amended to read:

B. If the court finds that unlawful discrimination occurred, its judgment must specify an appropriate remedy or remedies for that discrimination. The remedies may include, but are not limited to:

- (1) An order to cease and desist from the unlawful practices specified in the order;
- (2) An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
- (3) An order to accept or reinstate such a person in a union;
- (4) An order to rent or sell a specified housing accommodation, or one substantially identical to that accommodation if controlled by the respondent, to a victim of unlawful housing discrimination;
- (5) An order requiring the disclosure of the locations and descriptions of all housing accommodations that the violator has the right to sell, rent, lease or manage; and forbidding the sale, rental or lease of ~~that~~ those housing accommodations until the violator has given security to assure compliance with any order entered against the violator and with all provisions of this Act. An order may continue the court's jurisdiction until the violator has demonstrated compliance, and may defer decision on some or all relief until after a probationary

period and a further hearing on the violator's conduct during that period;

(6) An order to pay the victim, in cases of unlawful price discrimination, 3 times the amount of any excessive price demanded and paid by reason of that unlawful discrimination; ~~and~~

(7) An order to pay to the victim of unlawful discrimination, other than employment discrimination in the case of a respondent who has more than 14 employees, or, if the commission brings action on behalf of the victim, an order to pay to the victim, the commission or both, civil penal damages not in excess of \$10,000 in the case of the first order under this Act against the respondent, not in excess of \$25,000 in the case of a 2nd order against the respondent arising under the same subchapter of this Act and not in excess of \$50,000 in the case of a 3rd or subsequent order against the respondent arising under the same subchapter of this Act, except that the total amount of civil penal damages awarded in any action filed under this Act may not exceed the limits contained in this subparagraph; ~~and~~

(8) In cases of intentional employment discrimination, compensatory and punitive damages as provided in this subparagraph.

(a) In an action brought by a complaining party under section 4612 and this section against a respondent who engaged in unlawful intentional discrimination prohibited under sections 4571 to 4575, if the complaining party can not recover under 42 United States Code, Section 1981 (1994), the complaining party may recover compensatory and punitive damages as allowed in this subparagraph in addition to any relief authorized elsewhere in this subsection from the respondent.

(b) When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded under this subparagraph when the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity

and would not cause an undue hardship on the operation of the business.

(c) A complaining party may recover punitive damages under this subparagraph against a respondent if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the rights of an aggrieved individual protected by this Act.

(d) Compensatory damages awarded under this subparagraph do not include back pay, interest on back pay or any other type of relief authorized elsewhere under this subsection.

(e) The sum of compensatory damages awarded under this subparagraph for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed for each complaining party:

(i) In the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;

(ii) In the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000;

(iii) In the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$200,000; and

(iv) In the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.

(f) Nothing in this subparagraph may be construed to limit the scope of, or

the relief available under, 42 United States Code, Section 1981 (1994).

(g) If a complaining party seeks compensatory or punitive damages under this subparagraph, any party may demand a trial by jury and the court may not inform the jury of the limitations described in division (e).

(h) This subparagraph does not apply to recoveries for a practice that is unlawful only because of its disparate impact.

(i) Punitive damages may not be included in a judgment or award against a governmental entity, as defined in Title 14, section 8102, subsection 2, or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of that employee's employment; and

(9) In addition to other remedies in subparagraphs (1) to (8), an order to pay actual damages in the case of discriminatory housing practices. This subparagraph is not intended to limit actual damages available to a plaintiff alleging other discrimination if the remedy of actual damages is otherwise available under this Act.

Sec. 2. 5 MRSA §4622, sub-§1, as amended by PL 1995, c. 393, §30, is further amended to read:

1. Limitation. ~~No attorneys' fees~~ Attorney's fees under section 4614 and ~~no~~ no civil penal damages or compensatory and punitive damages under section 4613 may not be awarded to a plaintiff in a civil action under this Act unless the plaintiff alleges and establishes that, prior to the filing of the civil action, the plaintiff first filed a complaint with the commission and the commission either:

A. Dismissed the case under section 4612, subsection 2;

B. Failed, within 90 days after finding reasonable grounds to believe that unlawful discrimination occurred, to enter into a conciliation agreement to which the plaintiff was a party; or

C. Issued a right-to-sue letter under section 4612, subsection 6 and the action was brought by the aggrieved person not more than 2 years after the act of unlawful discrimination of which the complaint was made as provided in section 4613, subsection 2, paragraph C.

This subsection does not apply to or limit any remedies for civil actions filed under subchapter V if one or more additional causes of action are alleged in the same civil action that do not require exhaustion of administrative remedies.

See title page for effective date.

CHAPTER 401

H.P. 1134 - L.D. 1590

An Act to Provide Retirement Benefit Options for Fire Marshals and Motor Vehicle Investigators

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

Sec. 1. 5 MRSA §§17715 and 17716 are enacted to read:

§17715. State fire marshals

A state fire marshal, state fire marshal investigator or a state fire marshal inspector who elects the retirement option provided in section 17851, subsection 13 shall contribute to the retirement system or have pick-up contributions made by the employer as provided in section 17852, subsection 13.

§17716. Motor vehicle investigators

A motor vehicle investigator, senior motor vehicle investigator, principal motor vehicle investigator or chief motor vehicle investigator who elects the retirement option provided in section 17851, subsection 14 shall contribute to the retirement system or have pick-up contributions made by the employer as provided in section 17852, subsection 15.

Sec. 2. 5 MRSA §17851, sub-§§13 and 14 are enacted to read:

13. Fire marshals; option. A state fire marshal, state fire marshal investigator or state fire marshal inspector qualifies for a service retirement benefit upon reaching 55 years of age after completing at least 25 years of creditable service in that capacity if notice of election of the option and payment of employee contributions and actuarial costs are made as provided in section 17852, subsection 13.

14. Motor vehicle investigators; option. A motor vehicle investigator, senior motor vehicle investigator, principal motor vehicle investigator or chief motor vehicle investigator qualifies for a service retirement benefit upon reaching 55 years of age after completing at least 25 years of creditable service in that capacity if notice of election of the option and

payment of employee contributions and actuarial costs are made as provided in section 17852, subsection 15.

Sec. 3. 5 MRSA §17852, sub-§§13, 14, 15 and 16 are enacted to read:

13. Fire marshals; option. The retirement benefit of a person who qualifies under section 17851, subsection 13 and who retires upon or after reaching 55 years of age is computed in accordance with subsection 1 if:

A. The person was first employed as a fire marshal on or after October 1, 1997, elects the option provided in section 17851, subsection 13 and pays to the retirement system an increased employee payroll contribution in an amount that equals the full actuarial cost of electing that option; or

B. The person was first employed as a fire marshal before October 1, 1997, elects the option provided in section 17851, subsection 13 and pays to the retirement system a single payment or periodic payments of a lump sum or a combination of single and periodic payments of that amount that equals the full actuarial cost of electing that option for service before that date.

A person who requests calculation of the full actuarial cost, regardless of whether the person elects the option, must pay to the retirement system by a single lump sum payment the reasonable administrative costs of determining the full actuarial costs. Payment of the full actuarial cost related to service on or after November 1, 1997 is made as part of the employee payroll contribution.

For the purposes of this subsection, "full actuarial cost" means that the person's payment or payments must fully offset any unfunded liability that would or does result from retirement under the option provided in section 17851, subsection 13 and must fully fund the cost of the person's retirement prior to normal retirement age so that an additional employer contribution is not required.

A person who makes the election provided in section 17851, subsection 13 at any time after the date on which the person is first employed as a fire marshal must include interest, at a rate to be set by the board not to exceed regular interest by 5 or more percentage points, applied as of the date on which the person was first employed in that capacity to the contributions the person would have paid or had picked up by the employer had the person elected that option at the date of first employment.

This subsection takes effect October 1, 1997. Election to retire under this subsection is a one-time irrevocable election. A person who was first employed as a