

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

SECOND SPECIAL SESSION
June 19, 2018 to September 13, 2018

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
DECEMBER 13, 2018

ONE HUNDRED AND TWENTY-NINTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2018 to June 20, 2019

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 2019

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

Augusta, Maine
2019

E. In determining whether a person is acting as an agent or employee of another person so as to make such other person responsible for that person's acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling;

F. Unlawful educational discrimination as defined and limited by subchapter 5-B; and

G. Discrimination in employment, housing, public accommodation, credit and educational opportunity on the basis of sexual orientation or gender identity, except that a religious corporation, association or organization that does not receive public funds is exempt from this provision with respect to:

- (1) Employment, as is more fully set forth in section 4553, subsection 4 and section 4573-A;
- (2) Housing; and
- (3) Educational opportunity, as is more fully set forth in section 4602, subsection 4.

Any for-profit organization owned, controlled or operated by a religious association or corporation and subject to the provisions of the Internal Revenue Code, 26 United States Code, Section 511(a) is not covered by the exemptions set forth in this paragraph.

Sec. 2. 5 MRSA §4555, as enacted by PL 1995, c. 393, §10, is repealed.

Sec. 3. 5 MRSA §4573-A, sub-§1, as enacted by PL 1995, c. 393, §21, is amended to read:

1. General provisions. It is a defense to a charge of discrimination under this subchapter that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual ~~with a disability based on protected class status~~ has been shown to be job-related and consistent with business necessity, and such performance can not be accomplished by reasonable accommodation, as required by this subchapter.

Sec. 4. 5 MRSA §4573-A, sub-§1-B, as enacted by PL 1995, c. 511, §1 and affected by §3, is repealed.

Sec. 5. 5 MRSA §4592, sub-§7, ¶B, as amended by PL 2007, c. 664, §6, is further amended to read:

B. That perpetuate the discrimination of others who are subject to common administrative control; ~~and~~

Sec. 6. 5 MRSA §4592, sub-§8, as amended by PL 2015, c. 457, §4, is further amended to read:

8. Service animals. For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to refuse to permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the public accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the public accommodation by others. The use of a service animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal. This subsection does not apply to an assistance animal as defined in section 4553, subsection 1-H unless the assistance animal also qualifies as a service animal; ~~and~~

Sec. 7. 5 MRSA §4592, sub-§9 is enacted to read:

9. Unlawful public accommodations. For any public accommodation to designate a single-occupancy toilet facility as for use only by members of one sex. A single-occupancy toilet facility may be identified by a sign, as long as the sign does not indicate that the facility is for use by members of one specific sex. For the purposes of this subsection, a "single-occupancy toilet facility" is a restroom for use by one user at a time or for family or assisted use and that has an outer door that can be locked by the occupant.

See title page for effective date.

CHAPTER 465

H.P. 1217 - L.D. 1702

An Act To Enhance the Administration of the Maine Human Rights Act

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

Sec. 1. 5 MRSA §4566, sub-§3, as amended by PL 1985, c. 785, Pt. B, §36, is further amended to read:

3. Personnel. To appoint a full-time executive ~~secretary~~ director and counsel to the commission, not subject to the Civil Service Law, and determine their remuneration; and to appoint, subject to the Civil Service Law, other personnel including, but not limited to, investigators, attorneys, compliance personnel and

secretaries, as it shall deem necessary to effectuate the purposes of this Act;

Sec. 2. 5 MRSA §4566, sub-§4, as enacted by PL 1971, c. 501, §1, is amended to read:

4. Hearings. To hold hearings, to administer oaths and to take the testimony of any person under oath. There ~~shall be~~ is no executive privilege in such investigations and hearings, but law enforcement officers, prosecution officers and judges of this State and of the United States ~~shall be~~ are privileged from compulsory testimony or production of documents before the commission. Such hearings and testimony may relate to general investigations concerning the effectiveness of this Act and the existence of practices of discrimination not prohibited by it, as well as to investigations of other alleged infringements upon human rights and personal dignity. The commission may make rules as to the administration of oaths, and the holding of preliminary and general investigations by panels of commissioners and by the executive ~~secretary~~ director;

Sec. 3. 5 MRSA §4566, sub-§6, as amended by PL 2005, c. 10, §7, is further amended to read:

6. Advisory groups. To create local or statewide advisory agencies and conciliation councils to aid in effectuating the purposes of this Act. The commission may study or may empower these agencies and councils to study the problems of discrimination in all or specific fields of human relationships when based on ~~race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin~~ protected class characteristics, membership or status, and foster good will among the groups and elements of the population of the State. Agencies and councils may make recommendations to the commission for the development of policies and procedures. Advisory agencies and conciliation councils created by the commission must be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

Sec. 4. 5 MRSA §4566, sub-§10, as amended by PL 2005, c. 10, §8, is further amended to read:

10. Publications. To publish results of investigations and research to promote good will and minimize or eliminate discrimination based on ~~race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin~~ protected class characteristics, membership or status;

Sec. 5. 5 MRSA §4566, sub-§11, as amended by PL 2005, c. 10, §9, is further amended to read:

11. Reports. To report to the Legislature and the Governor at least once a year describing the investigations, proceedings and hearings the commission has conducted and the outcome and other work performed by the commission, and to make recommendations for

further legislation or executive action concerning abuses and discrimination based on ~~race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin~~ protected class characteristics, membership or status, or other infringements on human rights or personal dignity; and

Sec. 6. 5 MRSA §4612, as amended by PL 2011, c. 613, §§19 and 20 and affected by §29, is further amended to read:

§4612. Procedure on complaints

1. Predetermination resolution; investigation.

Upon receipt of such a complaint, the commission or its delegated single commissioner or investigator shall take the following actions.

A. The commission or its delegated single commissioner or investigator shall provide an opportunity for the complainant and respondent to resolve the matter by settlement agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and any final agreement are confidential and may not be disclosed without the written consent of the parties to the proceeding nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this paragraph, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement. The commission may adopt rules providing for a 3rd-party neutral mediation program. The rules may permit one or more parties to a proceeding to agree to pay the costs of mediation. The commission may receive funds from any source for the purposes of implementing a 3rd-party neutral mediation program, and such funds are not subject to any statewide cost allocation plan.

B. The commission or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the commission, or its designated representative, must have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The commission may issue subpoenas to compel access to or production of those materials or the appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and may

serve interrogatories on a respondent to the same extent as interrogatories served in aid of a civil action in the Superior Court. The commission may administer oaths. The complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint and other information designated as confidential in subsection 1-A, is a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission. An investigation is concluded upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs. Prior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. Notwithstanding any other provision of this section, the complaint and evidence collected during the investigation of the complaint may be used as evidence in any subsequent proceeding, civil or criminal. The commission must conclude an investigation under this paragraph within 2 years after the complaint is filed with the commission.

1-A. Confidential documents. The following information collected during the investigation of a complaint pursuant to this section is confidential and may not be disclosed except to the parties to a complaint, the commission and its federal partner agencies or in a subsequent civil or criminal legal action:

- A. Medical, counseling, psychiatric and other confidential health records;
- B. Social security numbers;
- C. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and final agreements made prior to the conclusion of the investigative process;
- D. Names of minor children;
- E. Any information the commission is required to keep confidential pursuant to work-sharing agreements with the United States Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development or any other federal partner agencies;
- F. Criminal history record information that is not otherwise made public by law;
- G. Personnel records and personal information that has been made confidential by law;
- H. Notes made by the investigator for the investigator's private use in assessing evidence gathered during an investigation; and

I. Any other records that are not public records in accordance with Title 1, section 402.

Documents containing information set forth in this subsection are not "public records," as defined in Title 1, section 402, subsection 3, and do not become a matter of public record under this section.

2. Order of dismissal. If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding.

2-A. Administrative dismissal. The executive director of the commission may administratively dismiss a complaint for reasons including, but not limited to:

- A. Lack of jurisdiction;
- B. Failure to substantiate the complaint of discrimination;
- C. Failure to file a complaint of discrimination within 300 days of the date of alleged discrimination;
- D. Failure by complainant to proceed or cooperate with the investigation, including but not limited to a complainant's repeated or egregious failure to abide by the commission's confidentiality requirements;
- E. Bankruptcy filing by respondent; or
- F. Death of a complainant, if no person with legal authority to continue the case appears on that person's own behalf or on behalf of the complainant's estate within a reasonable time.

An administrative dismissal operates as an order of dismissal and has the same effect as a finding by the commission that no reasonable grounds exist to believe that unlawful discrimination has occurred.

3. Informal methods, conciliation. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, but finds no emergency of the sort contemplated in subsection 4, paragraph B, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. Everything said or done as part of such endeavors is confidential and may not be disclosed without the written consent of the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Any post-finding conciliation agreement that includes the commission as a signatory is a public record. Notwithstanding this subsection, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. If the case is disposed of by such informal means in a manner satisfactory to

a majority of the commission, it shall dismiss the proceeding.

4. Civil action by commission. The commission may file a civil action in accordance with this subsection.

A. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination or to members of a ~~racial, color, sex, sexual orientation, physical or mental disability, religious or nationality group or age~~ protected class group if relief is not immediately granted, or if conciliation efforts under subsection 3 have not succeeded, the commission may file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders. In a complaint investigated pursuant to a memorandum of understanding between the commission and the United States Department of Housing and Urban Development that results in a reasonable grounds determination, the commission shall file a civil action for the use of complainant if conciliation efforts under subsection 3 are unsuccessful.

B. Grounds for the filing of such an action before attempting conciliation include, but are not limited to:

- (1) In unlawful housing discrimination, that the housing accommodation sought is likely to be sold or rented to another during the pendency of proceedings, or that an unlawful eviction is about to occur;
- (2) In unlawful employment discrimination, that the victim of the discrimination has lost or is threatened with the loss of job and income as a result of such discrimination;
- (3) In unlawful public accommodations discrimination, that such discrimination is causing inconvenience to many persons;
- (4) In any unlawful discrimination, that the victim of the discrimination is suffering or is in danger of suffering severe financial loss in relation to circumstances, severe hardship or personal danger as a result of such discrimination.

5. Confidentiality of 3rd-party records. The Legislature finds that persons who are not parties to a complaint under this chapter as a complainant or a respondent have a right to privacy. Any records of the commission that are open to the public under Title 1, chapter 13, must be kept in such a manner as to ensure that data identifying these 3rd parties is not reflected in the record. ~~Only data reflecting the identity of these persons may be kept confidential.~~

6. Right to sue. If, within 180 days of a complaint being filed with the commission, the commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the complainant may request a right-to-sue letter, and, if a letter is given, the commission shall end its investigation.

Sec. 7. 5 MRSA §4614, as enacted by PL 1981, c. 255, §3, is amended to read:

§4614. Attorney's fees and costs

In any civil action under this Act, the court, in its discretion, may allow the prevailing party, ~~other than the commission,~~ reasonable ~~attorneys'~~ attorney's fees and costs, ~~and except that the commission shall be liable for attorneys' fees and costs the same as a private person may not be awarded attorney's fees and costs and is not liable to pay any party's attorney's fees and costs.~~

Sec. 8. 5 MRSA §4622, sub-§1, ¶A, as amended by PL 1993, c. 327, §3, is further amended to read:

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

See title page for effective date.

CHAPTER 466

H.P. 588 - L.D. 800

An Act To Amend Mandatory Law Enforcement Agency Policies Regarding Recording Suspects To Include Cases of Murder and Class A, Class B and Class C Crimes

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

Sec. 1. 25 MRSA §2803-B, sub-§1, ¶K, as amended by PL 2013, c. 147, §18, is further amended to read:

K. Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in ~~serious crimes~~ murder, Class A, Class B and Class C crimes and the preservation of investigative notes and records in such cases;

See title page for effective date.