



132nd MAINE LEGISLATURE

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Legislative Document

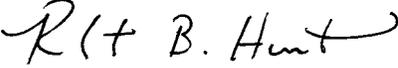
No. 1660

H.P. 1101

House of Representatives, April 15, 2025

An Act Creating a Private Right of Action Against a Government Employer

Reference to the Committee on Judiciary suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative BOYER of Poland.
Cosponsored by Senator HICKMAN of Kennebec and
Representatives: BABIN of Fort Fairfield, CHAPMAN of Auburn, HASENFUS of Readfield,
LEE of Auburn, LOOKNER of Portland, MILLIKEN of Blue Hill, SMITH of Palermo,
WHITE of Guilford.

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

2 **Sec. 1. 5 MRSA §4684-D** is enacted to read:

3 **§4684-D. Claims against government entities**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Government" means the State, a county or municipal government and any other
7 political subdivision of the State.

8 B. "Government employee" means an individual employed or contracted by a
9 government employer.

10 C. "Government employer" means an executive, legislative or judicial agency,
11 department, board, commission, authority, institution or instrumentality of the State or
12 of a county, municipality or other political subdivision in this State.

13 **2. Applicability.** Notwithstanding the Maine Tort Claims Act and any provision of this
14 chapter to the contrary, if a claim is brought under section 4681 or 4682 against a
15 government employer or government employee, under color of law, intentionally
16 interfering or attempting to interfere with the exercise or enjoyment by any other person of
17 a right secured by the United States Constitution or the Constitution of Maine, the
18 provisions of this section apply.

19 **3. Government employer; proper defendant.** A government employer, and not the
20 government employee, is liable for an injury caused by an act or omission of a government
21 employee who violates a right of another person under the United States Constitution or
22 the Constitution of Maine. The proper defendant in an action under this section is the
23 government employer and is not a government employee.

24 **4. Notification of government employee.** A government employer shall notify the
25 government employee whose act or omission is the subject of a claim under this chapter
26 within 10 days of the government employer being served with a complaint pursuant to this
27 section.

28 **5. Right to intervene.** A government employee subject to a claim pursuant to this
29 section has a right to intervene under the Maine Rules of Civil Procedure, Rule 24(a) as a
30 3rd-party defendant in an action under this section.

31 **6. Limitation on damages.** Notwithstanding Title 14, section 8104-D or any other
32 provision of law to the contrary, a government employee may not be found financially
33 liable in an action under this section.

34 **7. Exceptions.** Except as provided in subsection 10, an action brought under this
35 section is not subject to:

36 A. Common law doctrines of immunity;

37 B. Qualified immunity;

38 C. Sovereign immunity, governmental immunity, custom or policy; or

39 D. Immunities and limitations on liability or damages under any other provision of law.

1 **8. Judicial and legislative immunity.** This section may not be construed to abrogate
2 the immunity of judges or legislators at any level of government pursuant to Title 14,
3 section 8104-B for actions taken in their judicial or legislative capacities.

4 **9. Statute of limitations.** A claim under this section must be commenced no later than
5 3 years from the date the cause of action accrues.

6 **10. Evaluating use of force.** When evaluating a government employee's use of force
7 under the United States Constitution or the Constitution of Maine in an action under this
8 section, the court shall evaluate the reasonableness of the force used from the perspective
9 of a reasonable government employee on the scene confronted with the immediate facts
10 and circumstances in existence when the force was used, giving due consideration to the
11 fact that government employees often must make split-second decisions in tense, uncertain
12 and rapidly evolving situations. The court may not use hindsight or consider facts and
13 circumstances that were later discovered when determining the reasonableness of the force
14 used.

15 **11. Order.** The court's order in an action under this section must be supported by
16 findings of fact and conclusions of law.

17 **12. Attorney's fees and costs.** Notwithstanding section 4683, with respect to a claim
18 under this section:

19 A. If a plaintiff prevails, the government is liable for reasonable attorney's fees and
20 other litigation costs; and

21 B. If the court dismisses the complaint and makes a finding that the complaint was
22 frivolous, the court may award reasonable attorney's fees and costs to the prevailing
23 party.

24 **13. Termination of employment.** For an employment contract or agreement entered
25 into on or after the effective date of this section and notwithstanding any provision of law
26 to the contrary, a court's finding that a government employee violated a right of another
27 person under the United States Constitution or the Constitution of Maine under this chapter
28 is evidence that the government employer has just cause for terminating the employment
29 of the government employee. The government employer's termination of an employment
30 contract or agreement under this subsection does not affect the government employer's
31 liability under this chapter.

32 SUMMARY

33 This bill creates a private right of action for a person against a government employer
34 for an injury caused by an act or omission of a government employee who violates a right
35 of another person under the United States Constitution or the Constitution of Maine.