



127th MAINE LEGISLATURE

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Legislative Document

No. 1171

H.P. 802

House of Representatives, March 31, 2015

An Act To Protect Certain Information under the Maine Human Rights Act

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WARREN of Hallowell.
Cosponsored by Senator KATZ of Kennebec and
Representatives: EVANGELOS of Friendship, GINZLER of Bridgton, HOBBS of Saco,
McCREIGHT of Harpswell, MOONEN of Portland, SHERMAN of Hodgdon, Senators:
BURNS of Washington, JOHNSON of Lincoln.

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

2 **Sec. 1. 5 MRSA §4612, sub-§1, ¶B**, as amended by PL 2009, c. 235, §2, is
3 further amended to read:

4 B. The commission or its delegated commissioner or investigator shall conduct such
5 preliminary investigation as it determines necessary to determine whether there are
6 reasonable grounds to believe that unlawful discrimination has occurred. In
7 conducting an investigation, the commission, or its designated representative, must
8 have access at all reasonable times to premises, records, documents, individuals and
9 other evidence or possible sources of evidence and may examine, record and copy
10 those materials and take and record the testimony or statements of such persons as are
11 reasonably necessary for the furtherance of the investigation. The commission may
12 issue subpoenas to compel access to or production of those materials or the
13 appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and
14 may serve interrogatories on a respondent to the same extent as interrogatories served
15 in aid of a civil action in the Superior Court. The commission may administer oaths.
16 The complaint and evidence collected during the investigation of the complaint, other
17 than data ~~identifying persons not parties to the complaint~~ designated confidential
18 under subsection 5, is a matter of public record at the conclusion of the investigation
19 of the complaint prior to a determination by the commission. An investigation is
20 concluded upon issuance of a letter of dismissal or upon listing of the complaint on a
21 published commission meeting agenda, whichever first occurs. Prior to the
22 conclusion of an investigation, all information possessed by the commission relating
23 to the investigation is confidential and may not be disclosed, except that the
24 commission and its employees have discretion to disclose such information as is
25 reasonably necessary to further the investigation. Notwithstanding any other
26 provision of this section, the complaint and evidence collected during the
27 investigation of the complaint may be used as evidence in any subsequent
28 proceeding, civil or criminal. The commission must conclude an investigation under
29 this paragraph within 2 years after the complaint is filed with the commission.

30 **Sec. 2. 5 MRSA §4612, sub-§5**, as amended by PL 2011, c. 613, §20 and affected
31 by §29, is repealed and the following enacted in its place:

32 **5. Confidentiality.** This subsection governs the confidentiality of certain
33 information.

34 A. Records of the commission that are open to the public under Title 1, chapter 13
35 must be kept in such a manner as to ensure that:

36 (1) Information identifying a person who is not a party to a complaint under this
37 chapter as a complainant or a respondent is not reflected in the record; and

38 (2) Medical records, medical diagnoses, medical information and information
39 regarding a complainant's disability is not reflected in the record.

40 B. Information identifying a minor is confidential and records of the commission that
41 are open to the public under Title 1, chapter 13 must be kept in such a manner as to
42 ensure that information identifying a minor is not reflected in the record.

1 C. Medical records, medical diagnoses, medical information and information
2 regarding an individual's disability are confidential and may not be released without
3 the written authorization of the individual who is the subject of the medical records,
4 medical diagnoses, medical information and information regarding the disability,
5 except that:

6 (1) During an investigation conducted pursuant to subsection 1, the commission
7 or its delegated commissioner or investigator may request and is entitled to
8 receive access to the complainant's medical records, medical diagnoses, medical
9 information and information regarding any disability experienced by the
10 complainant;

11 (2) During an investigation conducted pursuant to subsection 1, medical records,
12 medical diagnoses, medical information and information regarding an
13 individual's disability that are used by an investigator must be provided to the
14 commission or its delegated commissioner or investigator with the names
15 redacted of individuals who are not parties to the complaint, except that, upon
16 request, the commission or its delegated commissioner or investigator and the
17 complainant may receive unredacted records;

18 (3) During an investigation conducted pursuant to subsection 1, if the case
19 relates to the complainant's medical diagnoses or disability, the respondent is
20 entitled to receive unredacted copies of the complainant's medical records,
21 medical diagnoses, medical information and information regarding any disability
22 experienced by the complainant, if:

23 (a) The complainant authorizes that disclosure to the respondent by signing
24 the medical release form provided by the commission; and

25 (b) The respondent signs the nondisclosure agreement provided by the
26 commission;

27 (4) Nothing in this paragraph may be construed to limit the ability of the
28 commission during the pendency of an investigation or during its deliberations on
29 a complaint at a public hearing to consider or discuss a complainant's medical
30 records, medical diagnoses, medical information and information regarding any
31 disability experienced by the complainant if that information is relevant to
32 consideration of and deliberation on the complaint; and

33 (5) The commission may provide to the parties to a complaint and their counsel
34 an unredacted copy of an investigator's report concerning that complaint.

35 Nothing in this paragraph may be construed to limit the ability of a complainant or
36 other individual to provide written authorization to disclose the complainant's or the
37 individual's own medical records, medical diagnoses, medical information and
38 information regarding the complainant's or the individual's disability.

39 SUMMARY

40 This bill protects from public disclosure information in the records of the Maine
41 Human Rights Commission that identifies minors. It also designates as confidential
42 medical records, medical diagnoses, medical information and information regarding an

1 individual's disability contained in the commission's records. The bill specifies that
2 medical records, medical diagnoses, medical information and information regarding an
3 individual's disability may not be disclosed without the written authorization of the
4 individual who is the subject of the medical records or medical diagnoses and provides
5 specific exceptions designed to authorize disclosure necessary to further investigation of
6 and deliberation on complaints.