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H.P. 1217

House of Representatives, May 8, 2019

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

Submitted by the Maine Human Rights Commission pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

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

ROBERT B. HUNT
Clerk

Presented by Representative BAILEY of Saco.

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

2 **Sec. 1. 5 MRSA §4554, sub-§§5 and 6** are enacted to read:

3 **5. Act to be construed broadly.** This Act must be construed to provide broad
4 protection from discrimination; where the Act differs from federal antidiscrimination law,
5 the Act may not be construed to provide less coverage than the federal law. Any
6 exceptions and defenses to the Act's coverage must be construed narrowly.

7 **6. Commission interpretation and rules.** The commission's interpretation of the
8 Act is entitled to deference in a court of law and must be upheld unless it is plainly
9 contrary to the language of the Act.

10 **Sec. 2. 5 MRSA §4566, sub-§3,** as amended by PL 1985, c. 785, Pt. B, §36, is
11 further amended to read:

12 **3. Personnel.** To appoint a full-time executive ~~secretary~~ director and counsel to the
13 commission, not subject to the Civil Service Law, and determine their remuneration; ~~and~~
14 ~~to appoint, subject to the Civil Service Law, other personnel including, but not limited to,~~
15 ~~investigators, attorneys, compliance personnel and secretaries, as it shall deem necessary~~
16 ~~to effectuate the purposes of this Act;.~~ The executive director has authority to appoint or
17 hire additional personnel, subject to the Civil Service Law, as the executive director
18 considers necessary to effectuate the purposes of this Act.

19 **Sec. 3. 5 MRSA §4566, sub-§4,** as enacted by PL 1971, c. 501, §1, is amended to
20 read:

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

31 **Sec. 4. 5 MRSA §4566, sub-§6,** as amended by PL 2005, c. 10, §7, is further
32 amended to read:

33 **6. Advisory groups.** To create local or statewide advisory agencies and conciliation
34 councils to aid in effectuating the purposes of this Act. The commission may study or
35 may empower these agencies and councils to study the problems of discrimination in all
36 or specific fields of human relationships when based on ~~race or color, sex, sexual~~
37 ~~orientation, physical or mental disability, religion, age, ancestry or national origin~~
38 protected class characteristics, membership or status, and foster good will among the
39 groups and elements of the population of the State. Agencies and councils may make
40 recommendations to the commission for the development of policies and procedures.

1 Advisory agencies and conciliation councils created by the commission must be
2 composed of representative citizens serving without pay, but with reimbursement for
3 actual and necessary traveling expenses;

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

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

10 **Sec. 6. 5 MRSA §4566, sub-§11**, as amended by PL 2005, c. 10, §9, is further
11 amended to read:

12 **11. Reports.** To report to the Legislature and the Governor at least once a year
13 describing the investigations, proceedings and hearings the commission has conducted
14 and the outcome and other work performed by the commission, and to make
15 recommendations for further legislation or executive action concerning abuses and
16 discrimination based on ~~race or color, sex, sexual orientation, physical or mental~~
17 ~~disability, religion, age, ancestry or national origin~~ protected class characteristics,
18 membership or status, or other infringements on human rights or personal dignity; and

19 **Sec. 7. 5 MRSA §4612**, as amended by PL 2011, c. 613, §§19 and 20 and affected
20 by §29, is further amended to read:

21 **§4612. Procedure on complaints**

22 **1. Predetermination resolution; investigation.** Upon receipt of such a complaint,
23 the commission or its delegated single commissioner or investigator shall take the
24 following actions.

25 A. The commission or its delegated single commissioner or investigator shall
26 provide an opportunity for the complainant and respondent to resolve the matter by
27 settlement agreement prior to a determination of whether there are reasonable
28 grounds to believe that unlawful discrimination has occurred. Evidence of conduct or
29 statements made in compromise settlement negotiations, offers of settlement and any
30 final agreement are confidential and may not be disclosed without the written consent
31 of the parties to the proceeding nor used as evidence in any subsequent proceeding,
32 civil or criminal, except in a civil action alleging a breach of agreement filed by the
33 commission or a party. Notwithstanding this paragraph, the commission and its
34 employees have discretion to disclose such information to a party as is reasonably
35 necessary to facilitate settlement. The commission may adopt rules providing for a
36 3rd-party neutral mediation program. The rules may permit one or more parties to a
37 proceeding to agree to pay the costs of mediation. The commission may receive
38 funds from any source for the purposes of implementing a 3rd-party neutral
39 mediation program, and such funds are not subject to any statewide cost allocation
40 plan.

1 B. The commission or its delegated commissioner or investigator shall conduct such
2 preliminary investigation as it determines necessary to determine whether there are
3 reasonable grounds to believe that unlawful discrimination has occurred. In
4 conducting an investigation, the commission, or its designated representative, must
5 have access at all reasonable times to premises, records, documents, individuals and
6 other evidence or possible sources of evidence and may examine, record and copy
7 those materials and take and record the testimony or statements of such persons as are
8 reasonably necessary for the furtherance of the investigation. The commission may
9 issue subpoenas to compel access to or production of those materials or the
10 appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and
11 may serve interrogatories on a respondent to the same extent as interrogatories served
12 in aid of a civil action in the Superior Court. The commission may administer oaths.
13 The complaint and evidence collected during the investigation of the complaint, other
14 than data identifying persons not parties to the complaint and other information
15 designated as confidential in subsection 1-A, is a matter of public record at the
16 conclusion of the investigation of the complaint prior to a determination by the
17 commission. An investigation is concluded upon issuance of a letter of dismissal or
18 upon listing of the complaint on a published commission meeting agenda, whichever
19 first occurs. Prior to the conclusion of an investigation, all information possessed by
20 the commission relating to the investigation is confidential and may not be disclosed,
21 except that the commission and its employees have discretion to disclose such
22 information as is reasonably necessary to further the investigation. Notwithstanding
23 any other provision of this section, the complaint and evidence collected during the
24 investigation of the complaint may be used as evidence in any subsequent
25 proceeding, civil or criminal. The commission must conclude an investigation under
26 this paragraph within 2 years after the complaint is filed with the commission.

27 **1-A. Confidential documents.** The following information collected during the
28 investigation of a complaint pursuant to this section is confidential and may not be
29 disclosed except to the parties to a complaint, the commission and its federal partner
30 agencies or in a subsequent civil or criminal legal action:

- 31 A. Medical, counseling, psychiatric and other confidential health records;
- 32 B. Social security numbers;
- 33 C. Evidence of conduct or statements made in compromise settlement negotiations,
34 offers of settlement and final agreements made prior to the conclusion of the
35 investigative process;
- 36 D. Names of minor children;
- 37 E. Any information the commission is required to keep confidential pursuant to
38 work-sharing agreements with the United States Equal Employment Opportunity
39 Commission, the United States Department of Housing and Urban Development or
40 any other federal partner agencies;
- 41 F. Criminal history record information that is not otherwise made public by law;
- 42 G. Personnel records and personal information that has been made confidential by
43 law;

1 H. Notes made by the investigator for the investigator's private use in assessing
2 evidence gathered during an investigation; and

3 I. Any other records that are not public records in accordance with Title 1, section
4 402.

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

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

11 **2-A. Administrative dismissal.** The executive director of the commission may
12 administratively dismiss a complaint for reasons including, but not limited to:

13 A. Lack of jurisdiction;

14 B. Failure to substantiate the complaint of discrimination;

15 C. Failure to file a complaint of discrimination within 300 days of the date of alleged
16 discrimination;

17 D. Failure by complainant to proceed or cooperate with the investigation, including
18 but not limited to a complainant's repeated or egregious failure to abide by the
19 commission's confidentiality requirements;

20 E. Bankruptcy filing by respondent; or

21 F. Death of a complainant, if no person with legal authority to continue the case
22 appears on that person's own behalf or on behalf of the complainant's estate within a
23 reasonable time.

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

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

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

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

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

17 (1) In unlawful housing discrimination, that the housing accommodation sought
18 is likely to be sold or rented to another during the pendency of proceedings, or
19 that an unlawful eviction is about to occur;

20 (2) In unlawful employment discrimination, that the victim of the discrimination
21 has lost or is threatened with the loss of job and income as a result of such
22 discrimination;

23 (3) In unlawful public accommodations discrimination, that such discrimination
24 is causing inconvenience to many persons;

25 (4) In any unlawful discrimination, that the victim of the discrimination is
26 suffering or is in danger of suffering severe financial loss in relation to
27 circumstances, severe hardship or personal danger as a result of such
28 discrimination.

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

35 **6. Right to sue.** If, within 180 days of a complaint being filed with the commission,
36 the commission has not filed a civil action in the case or has not entered into a
37 conciliation agreement in the case, the complainant may request a right-to-sue letter, and,
38 if a letter is given, the commission shall end its investigation. The executive director of
39 the commission may issue a right-to-sue letter in any case in which the commission has
40 not filed a civil action in the case or has not entered into a conciliation agreement in the
41 case within 180 days of the complaint being filed, whether or not such a letter has been
42 requested by the complainant.

1 9. Prohibits the awarding of attorney's fees and costs to the commission and
2 specifies that the commission is not liable to pay attorney's fees and costs of another
3 party.