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No. 1693

S.P. 558

In Senate, May 7, 2019

An Act To Enhance Enforcement of Employment Laws

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.

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

2 **Sec. 1. 26 MRSA c. 7, sub-c. 5-C** is enacted to read:

3 **SUBCHAPTER 5-C**

4 **PRIVATE ENFORCEMENT OF EMPLOYMENT LAWS**

5 **§840-A. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 **1. Aggrieved person.** "Aggrieved person" means any employee, prospective or
9 former employee or person providing services for remuneration to another against whom
10 one or more alleged violations of this chapter or of Title 5, chapter 337, subchapter 3
11 were committed by an alleged violator, whether or not the person has received full or
12 partial relief from the alleged violation and whether or not the person is employed by the
13 violator at the time an action is filed, including a person who is not classified by an
14 employer as an employee but who claims to be an employee and whose claims against the
15 purported employer relate to the alleged misclassification.

16 **2. Public enforcement action.** "Public enforcement action" means a civil action
17 brought by a relator under this subchapter intended to enforce protections enforceable by
18 a responsible state official.

19 **3. Relator.** "Relator" means a whistleblower or a representative organization that
20 acts as a plaintiff in a public enforcement action under this subchapter.

21 **4. Representative organization.** "Representative organization" means a nonprofit
22 corporation or union that regularly assists in enforcement of this chapter or Title 5,
23 chapter 337, subchapter 3 and has been selected by an aggrieved person, in writing on a
24 form developed by the Attorney General, to initiate a public enforcement action on the
25 aggrieved person's behalf.

26 **5. Responsible state official.** "Responsible state official" means a person authorized
27 by law to enforce a provision of this chapter or of Title 5, chapter 337, subchapter 3, or to
28 impose or seek penalties or other remedies for violations of those laws, and includes
29 persons delegated to act on the responsible state official's behalf with respect to enforcing
30 those laws, imposing or seeking penalties or other remedies for violations of those laws
31 or receiving and disposing of notices pursuant to this subchapter.

32 **6. Whistleblower.** "Whistleblower" means an aggrieved person or a current or
33 former employee, contractor, subcontractor or employee of such a contractor or
34 subcontractor of an alleged violator with knowledge of the alleged violation of this
35 chapter or of Title 5, chapter 337, subchapter 3 that is independent of and materially adds
36 to any publicly disclosed information about the alleged violation.

1 **§840-B. Public enforcement action**

2 **1. Initiation of action.** A relator, on behalf of the State and in the name of the State,
3 may initiate a public enforcement action pursuant to the procedures and subject to the
4 limitations specified in section 840-F. A relator may seek injunctive or declaratory relief
5 that the State would be entitled to seek. A public enforcement action may be brought in
6 any court of competent jurisdiction for any county in which the alleged conduct occurred
7 and may allege multiple violations that have affected different parties aggrieved by the
8 same defendant.

9 **2. Penalties.** With respect to public enforcement actions brought pursuant to this
10 subchapter:

11 A. If the State has intervened in the public enforcement action, the State may assess
12 penalties on the defendant;

13 B. If the State has not intervened in the public enforcement action but a responsible
14 state official is authorized to assess a civil penalty, the court shall assess an
15 equivalent civil penalty;

16 C. If state law creates a duty owing to an employee but no civil penalty is
17 specifically provided, the court shall assess a civil penalty of \$250 for each aggrieved
18 person for each 2-week period in which the violation occurred;

19 D. The court shall award a penalty for each person aggrieved by each violation
20 during the relevant time period; and

21 E. The court may award a lesser amount of civil penalties than those specified if,
22 based on the facts and circumstances of the particular case, to do otherwise would
23 result in an award that is unjust, arbitrary and oppressive, or confiscatory.

24 **3. Attorney's fees; costs.** A relator that prevails in a public enforcement action,
25 including by recovering a civil penalty or obtaining declaratory or injunctive relief
26 pursuant to a court decision or settlement, must be awarded reasonable attorney's fees and
27 costs.

28 **4. Distribution of amounts recovered.** Civil penalties recovered under this section
29 pursuant to a court decision or settlement must be distributed as follows:

30 A. If the State has not intervened, the relator is entitled to 30% of the amount
31 recovered and the remaining 70% of the proceeds of the action or settlement must be
32 returned to the State; and

33 B. If the State has intervened, the relator is entitled to 20% of the amount recovered
34 and the remaining 80% of the proceeds of the action or settlement must be returned to
35 the State.

36 The relator shall equitably distribute the share of penalties due the relator among the
37 persons aggrieved by the practices complained of in the public enforcement action. The
38 relator shall submit a distribution summary to the State, which may order a different
39 distribution within 60 days after submission of the distribution summary, as long as the
40 relator receives an award that reflects the burdens and risks assumed by the relator in

1 prosecuting the action, including any costs incurred by a representative organization that
2 serves as a relator.

3 **5. Private agreement may not impair right.** The right to bring a public
4 enforcement action under this section may not be impaired by any private agreement.

5 **6. Commencement of action; statute of limitations.** Notwithstanding any other
6 provision of law to the contrary, a public enforcement action must be commenced within
7 the same period of time that the applicable responsible state official has to bring an action
8 under the applicable statute. The statute of limitations for bringing a public enforcement
9 action is tolled from the date a relator files a notice pursuant to section 840-F or the date
10 the State commences an investigation, whichever is earlier.

11 **7. Private action based on same injury.** Nothing in this section limits an aggrieved
12 party's right to pursue a private action based on the same injury.

13 **§840-C. Prohibition on certain public enforcement actions by relators**

14 Notwithstanding the provisions of section 840-B, a public enforcement action may
15 not be brought by a relator:

16 **1. Action by State.** If the State, on the same facts and theories, cites a person within
17 the time periods set forth in section 840-F for a violation of the same section or sections
18 of the laws under which the relator is attempting to recover a civil penalty or other
19 remedy on behalf of aggrieved employees or others, or files a proceeding to assess
20 penalties or enforce other remedies available to the State, as long as the State serves
21 notice on the relator pursuant to section 840-F. Actions brought by the State preclude
22 subsequent state enforcement efforts based on the same facts and law, whether brought by
23 the State or by a relator under this subchapter; however, nothing in this section limits the
24 State's right to seek restitution for aggrieved parties as part of a public enforcement action
25 in which it has intervened, and the State shall distribute any amounts it recovers as
26 restitution in the same manner in which it distributes restitution proceeds in other
27 enforcement actions initiated by the State;

28 **2. Posting, filing, reporting requirements.** For any violation of a posting, notice,
29 agency reporting or filing requirement, except when the filing or reporting requirement
30 involves mandatory payroll or injury reporting; or

31 **3. Minor variations in legal name or address.** If the violation is for minor
32 variations in the legal name or address of the employer in a wage statement required
33 under section 665 as long as the variations do not impair an employee's ability to
34 promptly and easily identify the employer.

35 **§840-D. Public access to information**

36 **1. Publicly available database.** The Attorney General shall establish and maintain a
37 publicly available database of public enforcement actions brought pursuant to this
38 subchapter that includes the names of the parties, the disposition and any other
39 information that the Attorney General by rule prescribes.

1 **2. Exceptions.** Notwithstanding subsection 1:

2 A. At the request of an aggrieved party, that aggrieved party's name and personally
3 identifying information must be kept confidential and may not be included in the
4 publicly available database; and

5 B. The Attorney General may redact from the publicly available database certain
6 information associated with a public enforcement action at the request of a relator.

7 **§840-E. Retaliation prohibited**

8 **1. Prohibition.** A person may not retaliate, or threaten to retaliate, in any manner
9 against an aggrieved person or whistleblower because:

10 A. The aggrieved person or whistleblower has brought a public enforcement action;

11 B. The aggrieved person or whistleblower has cooperated with a relator in a public
12 enforcement action; or

13 C. The person believes that the aggrieved person or whistleblower may bring a
14 public enforcement action or cooperate with a public enforcement action.

15 **2. Remedy.** A person aggrieved by a violation of this section may bring an action
16 seeking compensatory and punitive damages or equitable relief, including restraint of
17 prohibited acts, restitution of past and future wages or benefits, reinstatement, costs,
18 reasonable attorney's fees and other appropriate relief.

19 **§840-F. Procedure**

20 **1. Required notice; filing fee.** A public enforcement action under this subchapter
21 may not be commenced prior to 30 days after written notice of the claim has been
22 submitted by the relator to the responsible state official and to the Attorney General. If
23 more than one responsible state official is charged with enforcement of laws at issue in
24 the prospective action, the relator shall provide notice under this subsection to each
25 responsible state official. The relator shall submit a filing fee of \$75, and the time
26 periods set forth in this section begin when both the notice and filing fee have been
27 submitted. The Attorney General may waive the filing fee in accordance with rules
28 adopted by the Attorney General.

29 **2. Contents of notice.** The notice under subsection 1, which must be construed in
30 the light most favorable to the relator, must include:

31 A. The name, address and contact information of the alleged violator;

32 B. The name and contact information of the relator;

33 C. If the relator has retained legal counsel, the name, address and contact information
34 of the relator's legal counsel; and

35 D. A concise statement of the underlying claim reasonably calculated to apprise the
36 responsible state official and the Attorney General of the substance and nature of the
37 claim.

1 **3. Amended notice.** If within 30 days of the date upon which a relator files notice in
2 accordance with subsection 1 the Attorney General determines that the notice is not in
3 compliance with this section or the rules adopted pursuant to this section, the Attorney
4 General shall allow the relator to furnish an amended notice. Such a determination must
5 specify the deficiencies in the notice. If the Attorney General does not make such a
6 determination within 30 days and provide the relator with an opportunity to amend the
7 notice, the notice is deemed to comply with this section. The relator has 30 days from
8 receiving a determination by the Attorney General of noncompliance to amend the notice.
9 The amended notice will relate back to the original notice.

10 **4. Investigation; decision regarding action.** If a responsible state official who
11 receives notice under subsection 1 decides to investigate the alleged violation, the
12 responsible state official shall notify the relator of that decision within 30 calendar days
13 of the date of the notice. Within 120 calendar days of notifying the relator of that
14 decision, the responsible state official may investigate the alleged violation and take any
15 appropriate action. If the responsible state official, during the course of that
16 investigation, determines that additional time is necessary to complete the investigation,
17 the responsible state official may extend the time by not more than 60 calendar days and
18 shall issue a notice of the extension. If the responsible state official determines that no
19 action pursuant to the investigation will be taken, the responsible state official shall notify
20 the relator of that decision by certified mail within 5 business days of the determination.

21 **5. Commencement of public enforcement action.** Upon the receipt of notice under
22 subsection 4 from a responsible state official that no action pursuant to the investigation
23 will be taken, or if the responsible state official fails to provide timely or any notification
24 or does not take action within the time limits set forth in this section, the relator may
25 commence a public enforcement action.

26 **6. Objection to relator's counsel.** If the responsible state official does not object to
27 the filing of a public enforcement action pursuant to this section but objects to the State
28 being represented by a particular attorney proposed by the relator, the responsible state
29 official may, within the time limits set forth in subsection 4, file that objection with the
30 Attorney General. Upon finding, after notice and hearing, that, based on the attorney's
31 past conduct while representing clients, the attorney does not meet the required
32 professional standards of representatives or fails to zealously pursue the remedies
33 available under this subchapter, the Attorney General may order that the public
34 enforcement action may not be filed by the attorney on behalf of the relator. The statute
35 of limitations is tolled from the time the responsible state official files the objection until
36 the Attorney General issues an order or the time for doing so expires.

37 **7. Intervention by State.** Within 30 days after the filing of a public enforcement
38 action, the State may intervene as of right and proceed with any and all claims in the
39 action. After the expiration of the 30-day period, the State may intervene in the public
40 enforcement action for good cause shown, as determined by the court.

41 **A. If the State intervenes in a public enforcement action:**

42 **(1) The State has primary responsibility for prosecuting the action and is not**
43 **bound by an act of the relator bringing the action;**

- 1 (2) The relator remains a party to the action;
2 (3) The State may move to dismiss or settle the action after the relator has been
3 notified of the filing of the motion and has been provided with an opportunity to
4 be heard and the court determines that such dismissal or settlement is fair,
5 adequate, reasonable and in the public interest; and
6 (4) Any disposition by the State must provide fair compensation for the
7 attorney's fees and costs expended on behalf of the relator in instituting the
8 action.

9 B. If the State does not intervene in a public enforcement action, the relator has the
10 right to conduct the action subject to the following limitations.

11 (1) The court must review and approve any settlement of any action filed
12 pursuant to this subchapter. The proposed settlement must be submitted to the
13 responsible state official and to the Attorney General at the same time that it is
14 submitted to the court. The court may approve a settlement of the action only
15 upon a determination that the settlement or voluntary dismissal is fair, adequate,
16 reasonable and in the public interest. If the parties reach a settlement after the
17 relator has provided notice pursuant to this subchapter but prior to the action
18 being filed in court, the responsible state official shall review the proposed
19 settlement. The responsible state official shall approve the settlement if the
20 responsible state official determines it is fair, adequate, reasonable and in the
21 public interest.

22 (2) If the State requests, it must be served with copies of all pleadings filed in the
23 action and must be supplied with copies of all deposition transcripts. The State is
24 responsible for costs associated with service of requested pleadings and
25 deposition transcripts.

26 (3) The State may file, at any time, information or advice with the court as
27 amicus curiae concerning the action.

28 **8. Prompt trial.** A public enforcement action must be tried promptly, without
29 regard to concurrent adjudication of private claims.

30 **9. Not subject to rules governing class action suits.** A public enforcement action
31 is not required to meet the requirements governing class action suits in the Maine Rules
32 of Civil Procedure, Rule 23.

33 **10. Pretrial discovery.** The rules governing pretrial discovery in a public
34 enforcement action are the same as the rules applicable in other civil actions. A special
35 showing of merit or other additional requirement may not be imposed on a relator's
36 discovery rights in a public enforcement action.

37 **11. Action based on same facts.** If a person brings a public enforcement action,
38 another person may not bring a related public enforcement action based on the same facts
39 unless the court determines that the previously filed public enforcement action has not
40 been diligently prosecuted.

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§840-G. Community Outreach and Labor Education Fund

1. Establishment. The Community Outreach and Labor Education Fund, referred to in this section as "the fund," is established as a nonlapsing fund administered by the Department of Labor. Funds in the fund not spent in any fiscal year remain in the fund to be used for the purposes of this section. Any interest earned by the fund must be credited to the fund. All money in the fund is appropriated continuously for the purpose of awarding grants as provided in subsection 3.

2. Deposits. Of the funds collected by the State pursuant to section 840-B, subsection 4, 25% must be deposited in the fund.

3. Grants. The Department of Labor shall provide grants from the fund to nonprofit organizations to fund outreach, education and technical assistance to workers in the State pertaining to employee rights in the workplace. Grants provided under this subsection may be used for activities to assist workers in enforcing employment rights, including outreach, community-based education events, training materials, technical assistance, counseling, research and referral services. When considering applications for grants, the department shall give priority to projects that provide services to especially vulnerable workers.

4. Rules. The Department of Labor shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§840-H. Construction

This subchapter must be liberally construed in light of its remedial purposes to expand the enforcement of state law protecting employees.

SUMMARY

This bill authorizes private persons, acting in the public interest, to enforce the laws governing employment practices and prohibiting unfair discrimination in the workplace.

Under this bill:

- 1. Private persons or whistleblowers, acting as relators, may bring public enforcement actions of employment laws on behalf of the State;
- 2. Civic organizations may assist aggrieved persons in reporting violations of employment laws; and
- 3. Persons who are injured by violations of employment laws are protected from retaliation.