

132nd Legislature
Senate of
Maine
Senate District 29

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Testimony of Senator Anne Carney introducing
LD 141, An Act to Provide Limited Immunity to Maine Human Rights
Commission Mediators
before the Joint Standing Committee on Judiciary
February 5, 2025

Representative Kuhn and esteemed members of the Judiciary Committee, I am Anne Carney, proudly representing Senate District 29, which includes South Portland, Cape Elizabeth and part of Scarborough. It is a pleasure to introduce LD 141, “An Act to Provide Limited Immunity to Maine Human Rights Commission Mediators,” to you this morning.

This bill from the Maine Human Rights Commission would extend to mediators working under contract with Maine Human Rights Commission the same immunity from personal civil liability that employees of government entities receive when they perform their official duties. It would be identical to the immunity granted to mediators who provide contract mediation services to the Court Alternative Dispute Resolution Service (CADRES). For example, the statute authorizing the CADRES mediator program provides:

3. Immunity from civil liability. A person serving as an ADR provider under contract with the Judicial Department or as the Director of the Court Alternative Dispute Resolution Service is immune from any civil liability, as are employees of governmental entities, under the Maine Tort Claims Act, for acts performed within the scope of the provider's or the director's duties. 4 MRS §18-B(3).

Immunity for mediators will help the commission fulfill its responsibility under the Maine Human Rights Act. Generally, the duty of the Maine Human Rights Commission is to prevent and remedy unlawful discrimination in employment, housing, public accommodations, credit and educational opportunity. 5 MRS §4552. In furtherance of this duty, the commission is required by law to “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.” 5 MRS §4612(1)(A). The law specifically states that “the commission is authorized to set up a 3rd-party neutral mediation program.” *Id.* The commission has had a mediation program for over a decade. Details about the program are in the

Maine Human Rights Commission Third-Party Neutral Mediation Program Handbook found [online](#).

As an attorney who represented many clients before the commission, I want to let you know that this opportunity for early settlement is valuable to both those who bring claims of discrimination and those who are alleged to have discriminated. Here's one example that I confronted often when representing employers. An employee charges race or sex discrimination based on repeated derogatory name calling and gestures by a supervisor. Upper management did not know of the behavior, agrees it happened and is reprehensible, and is concerned that news of the supervisor's behavior will significantly damage the company's customer relationships. The company feels a confidential settlement is in its best interest in this circumstance.

An employee sometimes has the same interest in privacy. Imagine representing an employee subject to sexual harassment that involved graphic sexual comments, whose middle-school aged children read about the harassment in the newspaper. You can appreciate the interest of parents in protecting their children from reading about their harsh workplace experiences in the local newspaper.

Changing gears for just a moment, I want to highlight the absolute immunity to which employees of governmental entities are entitled. The Maine Tort Claims Act provides that employees of governmental entities are generally immune from personal liability for acts and omissions within the scope of their employment. The law states "employees of governmental entities shall be absolutely immune from personal civil liability" and lists all the types of official acts that are protected. 14 MRS §8111(1). These include legislative acts – the work we do here today – as well as judicial acts, prosecutorial functions, performing or failing to perform any discretionary duty, and intentional acts and omissions. *Id.* As I noted at the beginning of my testimony, this absolute immunity has been extended by law to contract mediators in other programs run by state entities, like the CADRES program.

The purpose of LD 141 is to make sure that contract mediators who perform this valuable dispute resolution service to have the same protection against liability for performing their duties as would a state employee or a mediator working for similar state programs.

A representative from the Maine Human Rights Commission will follow me to present more specifics. I invite your questions, though you may also want to ask the commission.

Thank you for allowing me the opportunity to introduce this bill.

Anne Carney
State Senator, District 29