



128th MAINE LEGISLATURE

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Legislative Document

No. 1239

H.P. 862

House of Representatives, March 30, 2017

An Act To Increase Efficiency in Enforcement of the Maine Human Rights Act

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TUELL of East Machias.
Cosponsored by Senator KATZ of Kennebec and
Representatives: COOPER of Yarmouth, McCREIGHT of Harpswell, TALBOT ROSS of
Portland, WARREN of Hallowell, Senator: BELLOWS of Kennebec.

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

2 **Sec. 1. 5 MRSA §4566, sub-§4-A**, as enacted by PL 1977, c. 648, §1, is amended
3 to read:

4 **4-A. Subpoena power.** Pursuant to a complaint ~~which~~ that has been filed in
5 accordance with section 4611 by a person who has been subject to unlawful
6 discrimination, ~~the commission may to~~ issue subpoenas; as provided in subsection 4-B,
7 and to compel access to or production of premises, records, documents and other
8 evidence or possible sources of evidence or the appearance of persons; provided that if
9 there is reasonable cause to believe that those materials or the testimony of the persons
10 are material to the complaint. The commission may not issue subpoenas except as
11 provided in this subsection.

12 A. If a subpoena is issued, notice must be given to the person who is alleged to have
13 engaged in the unlawful discrimination.

14 B. The person upon whom the subpoena is served may contest its validity. A
15 judicial review of the subpoena is permissible in any Superior Court;

16 **Sec. 2. 5 MRSA §4566, sub-§4-B**, as amended by PL 1993, c. 303, §1, is
17 repealed.

18 **Sec. 3. 5 MRSA §4566, sub-§§4-C, 7-A and 7-B** are enacted to read:

19 **4-C. Binding determination; remedies.** If both parties agree, to make a binding
20 determination on the question of violation of this Act and impose remedies available to
21 the court under section 4613.

22 A. If the commission makes a binding determination under this subsection, the
23 complainant may not file a de novo action in court under section 4621.

24 B. The commission's determination is a final agency action, and either party may
25 appeal the commission's determination pursuant to chapter 375, subchapter 7;

26 **7-A. Sanctions for false statements, false information, violation of**
27 **nondisclosure.** To impose sanctions and seek penalties for perjury, false swearing,
28 making a false statement, providing false information or violating the nondisclosure
29 requirements. Sanctions may include dismissal or a summary finding against the violating
30 party; rejection of any submissions by the violating party; drawing adverse inferences
31 regarding the credibility of the violating party; or other remedies appropriate to rectify
32 any harm done to the commission and its process by the violation;

33 **7-B. Protect process.** To establish by rule procedures to discourage abuse of the
34 complaint and investigation process including but not limited to refusing to accept
35 without justification more than 5 complaints from the same complainant in a 12-month
36 period; summary disposition of frivolous or repetitious complaints; and other requirements
37 designed to eliminate the filing of frivolous complaints;

38 **Sec. 4. 5 MRSA §4612, sub-§1, ¶B**, as amended by PL 2009, c. 235, §2, is
39 further amended to read:

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~~ subsection 4-A and
11 4-B, and may serve interrogatories on a respondent to the same extent as
12 interrogatories served in aid of a civil action in the Superior Court. The commission
13 may administer oaths. The complaint and evidence collected during the investigation
14 of the complaint, other than data identifying persons not parties to the complaint, is a
15 matter of public record at the conclusion of the investigation of the complaint prior to
16 a determination by the commission. An investigation is concluded upon issuance of a
17 letter of dismissal or upon listing of the complaint on a published commission
18 meeting agenda, whichever first occurs. Prior to the conclusion of an investigation,
19 all information possessed by the commission relating to the investigation is
20 confidential and may not be disclosed, except that the commission and its employees
21 have discretion to disclose such information as is reasonably necessary to further the
22 investigation. Notwithstanding any other provision of this section, the complaint and
23 evidence collected during the investigation of the complaint may be used as evidence
24 in any subsequent proceeding, civil or criminal. The commission must conclude an
25 investigation under this paragraph within 2 years after the complaint is filed with the
26 commission.

27 **Sec. 5. 5 MRSA §4612, sub-§1, ¶C** is enacted to read:

28 C. If at any time after the filing of the complaint the complainant files an affidavit
29 with the commission stating that the complainant will be requesting a right-to-sue
30 letter under subsection 6, the commission may suspend the investigation. The
31 commission shall treat the affidavit as a request for a right-to-sue letter and shall
32 issue the right-to-sue letter no more than 2 weeks after the end of the 180-day period
33 required by subsection 6. The complainant may not withdraw the affidavit after it is
34 filed.

35 **Sec. 6. 5 MRSA §4612, sub-§1-A** is enacted to read:

36 **1-A. Binding determination; remedies.** If both parties agree, the commission may
37 make a binding determination on the question of violation of this Act and impose
38 remedies available to the court under section 4613.

39 A. If the commission makes a binding determination under this subsection, the
40 complainant may not file a de novo action in court under section 4621.

41 B. The commission's determination is a final agency action, and either party may
42 appeal the commission's determination pursuant to chapter 375, subchapter 7.

1 **Sec. 7. 5 MRSA §4612, sub-§6**, as amended by PL 1995, c. 462, Pt. A, §7, is
2 further amended to read:

3 **6. Right to sue.** If, within 180 days of a complaint being filed with the commission,
4 the commission has not filed a civil action in the case ~~or~~ and has not entered into a
5 conciliation agreement in the case, ~~the complainant may request~~ the commission may
6 issue a right-to-sue letter, and, if to the complainant. This may occur either if the
7 complainant requests a right-to-sue letter or if the commission is releasing its jurisdiction
8 over the case. If a letter is given, the commission shall end its investigation.

9 **Sec. 8. Technology.** The Maine Human Rights Commission shall purchase a
10 computer system that, at a minimum, meets the specifications required by existing federal
11 contracts and facilitates electronic data management by the commission, including
12 making case status information available electronically to parties and their attorneys.

13 **Sec. 9. Appropriations and allocations.** The following appropriations and
14 allocations are made.

15 **MAINE HUMAN RIGHTS COMMISSION**

16 **Human Rights Commission - Regulation 0150**

17 Initiative: Provides funds for 2 Paralegal positions, one Consumer Outreach position and
18 related costs.

19

20 GENERAL FUND	2017-18	2018-19
21 POSITIONS - LEGISLATIVE COUNT	3.000	3.000
22 Personal Services	\$173,268	\$242,363
23 All Other	\$14,620	\$7,120
24		
25 GENERAL FUND TOTAL	<u>\$187,888</u>	<u>\$249,483</u>

26 **SUMMARY**

27 This bill implements several recommendations of a review panel created by the
28 Governor to review operations of the Maine Human Rights Commission.

29 Under the bill, if both parties are in agreement, the commission is authorized to make
30 binding determinations pertaining to violations of the Maine Human Rights Act. The
31 commission is authorized to order remedies that the court is currently authorized to
32 impose. Final decisions of the commission are appealable under the Maine
33 Administrative Procedure Act as final agency actions.

34 The bill provides for the commission to suspend an investigation if a complainant
35 files an affidavit with the commission stating that the complainant will seek a right-to-sue
36 letter when permitted under law. Current law allows a complainant to ask for a right-to-
37 sue letter, bypassing the commission findings, after 180 days have elapsed since the
38 complaint was filed. Because the commission will suspend the investigation once the

1 affidavit stating that the complainant will seek a right-to-sue letter is filed, the
2 complainant may not withdraw the affidavit.

3 The bill provides for the commission to issue a right-to-sue letter to a complainant if
4 180 days have elapsed since the complaint was filed and the commission has not filed a
5 civil action in the case and has not entered into a conciliation agreement in the case.

6 The bill corrects the format of language concerning the issuance of subpoenas.

7 The bill authorizes the commission to impose sanctions and seek penalties for
8 perjury, false swearing, making a false statement, providing false information or violating
9 the nondisclosure requirements. Sanctions may include the imposition of adverse
10 inference, liability or other remedies.

11 The bill authorizes the commission to establish by rule procedures to discourage
12 abuse of the complaint and investigation process. These procedures may include, but are
13 not limited to, refusing to accept more than 5 complaints from the same complainant in a
14 12-month period and other requirements designed to eliminate the filing of frivolous
15 complaints.

16 The bill provides funding for 2 new paralegal positions and one new consumer
17 outreach position. Currently, investigators are performing intake functions; paralegal
18 positions dedicated to intake will allow the investigators to concentrate on investigating
19 and completing cases. The consumer outreach position will provide public information
20 about the Maine Human Rights Act and rules, which will increase compliance. The
21 consumer outreach position will also provide information about the operations of the
22 commission.

23 The bill directs the commission to purchase a computer system to provide for
24 electronic data management that allows parties and their attorneys to access the status of
25 their cases electronically.