An Act To Enhance Enforcement of Employment Laws

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

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Be it enacted by the People of the State of Maine as follows:

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

SUBCHAPTER 5-C

PRIVATE ENFORCEMENT OF EMPLOYMENT LAWS

§840-A. Definitions

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

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

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

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

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

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

6. **Whistleblower.** "Whistleblower" means an aggrieved person or a current or former employee, contractor, subcontractor or employee of such a contractor or subcontractor of an alleged violator with knowledge of the alleged violation of this chapter or of Title 5, chapter 337, subchapter 3 that is independent of and materially adds to any publicly disclosed information about the alleged violation.
§840-B. Public enforcement action

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

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

   A. If the State has intervened in the public enforcement action, the State may assess penalties on the defendant;
   B. If the State has not intervened in the public enforcement action but a responsible state official is authorized to assess a civil penalty, the court shall assess an equivalent civil penalty;
   C. If state law creates a duty owing to an employee but no civil penalty is specifically provided, the court shall assess a civil penalty of $250 for each aggrieved person for each 2-week period in which the violation occurred;
   D. The court shall award a penalty for each person aggrieved by each violation during the relevant time period; and
   E. The court may award a lesser amount of civil penalties than those specified if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

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

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

   A. If the State has not intervened, the relator is entitled to 30% of the amount recovered and the remaining 70% of the proceeds of the action or settlement must be returned to the State; and
   B. If the State has intervened, the relator is entitled to 20% of the amount recovered and the remaining 80% of the proceeds of the action or settlement must be returned to the State.

The relator shall equitably distribute the share of penalties due the relator among the persons aggrieved by the practices complained of in the public enforcement action. The relator shall submit a distribution summary to the State, which may order a different distribution within 60 days after submission of the distribution summary, as long as the relator receives an award that reflects the burdens and risks assumed by the relator in
prosecuting the action, including any costs incurred by a representative organization that
serves as a relator.

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

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

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

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

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

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

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

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

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

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

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

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

§840-E. Retaliation prohibited

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

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

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

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

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

§840-F. Procedure

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

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

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

B. The name and contact information of the relator;

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

D. A concise statement of the underlying claim reasonably calculated to apprise the responsible state official and the Attorney General of the substance and nature of the claim.
3. **Amended notice.** If within 30 days of the date upon which a relator files notice in accordance with subsection 1 the Attorney General determines that the notice is not in compliance with this section or the rules adopted pursuant to this section, the Attorney General shall allow the relator to furnish an amended notice. Such a determination must specify the deficiencies in the notice. If the Attorney General does not make such a determination within 30 days and provide the relator with an opportunity to amend the notice, the notice is deemed to comply with this section. The relator has 30 days from receiving a determination by the Attorney General of noncompliance to amend the notice. The amended notice will relate back to the original notice.

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

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

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

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

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

- (1) The State has primary responsibility for prosecuting the action and is not bound by an act of the relator bringing the action.
(2) The relator remains a party to the action;

(3) The State may move to dismiss or settle the action after the relator has been notified of the filing of the motion and has been provided with an opportunity to be heard and the court determines that such dismissal or settlement is fair, adequate, reasonable and in the public interest; and

(4) Any disposition by the State must provide fair compensation for the attorney's fees and costs expended on behalf of the relator in instituting the action.

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

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

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

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

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

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

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

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