



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1250

H.P. 911

House of Representatives, March 14, 2019

An Act To Prohibit Sexual Harassment as a Subject Matter of Mandatory Arbitration in Employment Contracts

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

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

ROBERT B. HUNT
Clerk

Presented by Representative TIPPING of Orono.
Cosponsored by Senator LAWRENCE of York and
Representatives: BAILEY of Saco, DAUGHTRY of Brunswick, GRAMLICH of Old Orchard
Beach, MELARAGNO of Auburn, SYLVESTER of Portland, Senator: POULIOT of
Kennebec.

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

2 **Sec. 1. 26 MRSA §806, sub-§§1-B and 3-A** are enacted to read:

3 **1-B. Arbitration.** "Arbitration" means the use of a decision-making forum
4 conducted by an arbitrator or panel of arbitrators within the meaning of and subject to
5 Title 14, chapter 706.

6 **3-A. Mandatory arbitration clause.** "Mandatory arbitration clause" means a term
7 or provision in a written contract that requires the parties to the contract to submit any
8 matter arising under the contract to arbitration prior to the commencement of any legal
9 action to enforce the provisions of the contract.

10 **Sec. 2. 26 MRSA §808** is enacted to read:

11 **§808. Mandatory arbitration clauses related to sexual harassment prohibited**

12 **1. Prohibition.** Except when inconsistent with federal law, a written contract
13 entered into on or after the effective date of this section may not contain a mandatory
14 arbitration clause that requires as a condition of the enforcement of the contract or
15 obtaining remedies under the contract that the parties submit to mandatory arbitration to
16 resolve any allegation or claim of an unlawful discriminatory practice of sexual
17 harassment and that also further provides language to the effect that the facts found or
18 determination made by the arbitrator or panel of arbitrators in its application to a party
19 alleging an unlawful discriminatory practice based on sexual harassment is final and not
20 subject to independent court review.

21 **2. Exceptions.** Nothing in this section may be construed to impair or prohibit an
22 employer from incorporating within a contract a clause or other mandatory arbitration
23 provision not prohibited under subsection 1 upon which the parties agree.

24 **3. Mandatory arbitration clause related to sexual harassment void.** Except when
25 inconsistent with federal law, the provisions of a clause prohibited under subsection 1 are
26 void. The inclusion of such a clause in a written contract does not impair the
27 enforceability of any other provision of the contract.

28 **4. Conflict.** If there is a conflict between any collective bargaining agreement and
29 this section, the agreement controls.

30 **Sec. 3. Maine Revised Statutes headnote amended; revision clause.** In the
31 Maine Revised Statutes, Title 26, chapter 7, subchapter 4-B, in the subchapter headnote,
32 the words "sexual harassment policies" are amended to read "sexual harassment" and the
33 Revisor of Statutes shall implement this revision when updating, publishing or
34 republishing the statutes.

35 **SUMMARY**

36 This bill prohibits an employment contract entered into after the effective date of this
37 legislation from including a clause that requires arbitration of a sexual harassment

1 allegation or claim and makes any such clause void. The bill does not affect the ability of
2 an employer to include any other arbitration clause in a contract or to enforce the
3 provisions of a contract other than the prohibited clause.