

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TENTH LEGISLATURE
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5 **Legislative Document**

No. 1861

6
7 H. P. 1868 House of Representatives, January 20, 1982
Filed by the Joint Standing Committee on Labor under Joint Rule
18, pursuant to H. P. 1629. Approved by the Legislative Council June 4,
1981.

8 Reported by Representative Beaulieu from the Committee on
Labor pursuant to H. P. 1629 and printed under Joint Rules No. 18. Sent
up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

9
10 STATE OF MAINE
11

12 IN THE YEAR OF OUR LORD
13 NINETEEN HUNDRED AND EIGHTY-TWO
14

15 **AN ACT to Clarify the Provision of the Maine**
16 **Human Rights Act Relating to Employment**
17 **Discrimination Which is not Prohibited.**
18

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

20 **Sec. 1.** 5 MRSA §4573, sub-§4, as amended by PL 1975,
21 c. 770, §34, is further amended by adding at the end a new
22 paragraph to read:

23 It is sufficient evidence of the employee's inability under
24 this section that:

25 **Sec. 2.** 5 MRSA §4573, sub-§4, ¶¶A and B are enacted to
26 read:

27 A. The employee or applicant for employment suffers
28 from a physical or mental handicap; and

1 B. According to competent medical evidence, and given
2 the nature of the employment, either:

3 (1) The individual, due to his particular handi-
4 cap, is unable to safely perform the duties of the
5 employment; or

6 (2) The existence of that handicap in any person
7 and to any degree gives rise to a reasonable
8 probability that the person will be unable to
9 safely perform the duties of the employment.

10 STATEMENT OF FACT

11 Presently, the Maine Human Rights Act, Title 5, chapter
12 337, provides that the refusal to hire or the discharge of a
13 physically or mentally handicapped person is justifiable
14 only if either:

15 1. The absence of the handicap is a "bona fide occupa-
16 tional qualification," Title 5, section 4572, subsec-
17 tion 1; or

18 2. The handicap renders the person "unable to perform
19 his duties or perform those duties in a manner which
20 would not endanger the health or safety of the employee
21 or the health or safety of others," Title 5, section
22 4573, subsection 4.

23 In recent decisions, the Maine Human Rights Commission
24 has decided that, in the absence of persuasive evidence that
25 the particular individual is unable to safely perform the
26 duties, general medical judgments about the appropriateness
27 of certain handicaps to given jobs may be insufficient.
28 Thus, the commission held that workers suffering from
29 spondylolisthesis, a forward displacement of one vertebra
30 over another, could not be excluded as a class from employ-
31 ment in a position demanding strenuous back exertion, even
32 though the employee's physician noted that those workers
33 would "potentially and probably experience excruciating pain
34 and extreme motor damage" as a result of the work.

35 While employment of the handicapped is an important
36 goal to pursue, the present law may prevent an employer from
37 screening out classes of individuals whose handicaps render
38 them particularly unsuitable for certain jobs. The result
39 may be that workers suffering from some inchoate or latent

1 disability are seriously and irrevocably injured. This loss
2 to the worker, as well as to the employer who may be liable
3 for workers' compensation, ought to be avoided.
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