

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

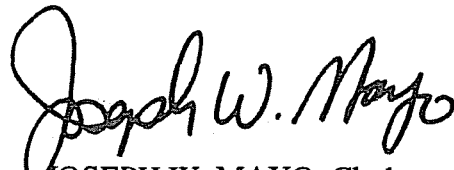
No. 1783

H.P. 1321

House of Representatives, January 25, 1994

An Act Relating to Access for People with Disabilities.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative FARNSWORTH of Hallowell.

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

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Sec. 1. 5 MRSA §4553, sub-§§1-A and 6-B are enacted to read:

1-A. Auxiliary aids and services. "Auxiliary aids and services" means aids and services designed to ensure effective communication with persons with disabilities that affect hearing, speech or vision. Auxiliary aids and services include:

A. Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

B. Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

C. Acquisition or modification of equipment or devices for individuals with hearing, speech or visual impairments; and

D. Other services and actions similar to those listed in paragraphs A to C.

6-B. Major life activities. "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Sec. 2. 5 MRSA §4553, sub-§7-A, as amended by PL 1991, c. 99, §2, is repealed and the following enacted in its place:

7-A. Physical or mental disability. "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.

A. As used in this subsection, "a record of such an impairment" means a history of, or a misclassification as having, a physical or mental impairment that substantially limits one or more major life activities.

B. As used in this subsection, "being regarded as having such an impairment" means having a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation; having a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward that impairment; or having none of the impairments described in subsection 7-B,

2 but being treated by an employer as having such an
3 impairment and as being substantially limited by that
4 impairment in one or more major life activities.

5 **Sec. 3. 5 MRSA §4553, sub-§§7-B, 8-A, 8-B, 9-A, 9-B and 9-C** are
6 enacted to read:

7 **7-B. Physical or mental impairment.** "Physical or mental
8 impairment" means:

9 A. Any physiological disorder or condition, cosmetic
10 disfigurement, or anatomical loss affecting one or more of
11 the following body systems: the neurological system; the
12 musculoskeletal system; special sense organs; the
13 respiratory system, including speech organs; the
14 cardiovascular system; the reproductive system; the
15 digestive system; the genito-urinary system; the hemic and
16 lymphatic system; skin; and the endocrine system; or

17 B. Any mental or psychological disorder, such as mental
18 retardation, organic brain syndrome, emotional or mental
19 illness and specific learning disabilities.

20 **8-A. Qualified individual with a disability.** "Qualified
21 individual with a disability" means an individual with a
22 disability who, with or without reasonable accommodation, can
23 perform the essential functions of the employment position that
24 the individual holds or desires. For the purposes of this
25 chapter, consideration must be given to the employer's judgment
26 as to what functions of a job are essential and, if an employer
27 has prepared a written description before advertising or
28 interviewing applicants for the job, this description must be
29 considered evidence of the essential functions of the job.

30 **8-B. Readily achievable.** "Readily achievable" means easily
31 accomplishable and able to be carried out without much difficulty
32 or expense. In determining whether an action is readily
33 achievable, factors to be considered include:

34 A. The nature and cost of the action needed under this
35 chapter;

36 B. The overall financial resources of the facility involved
37 in the action; the number of persons employed at the
38 facility; the effect on expenses and resources of the
39 facility; or the impact otherwise of such action upon the
40 operation of the facility;

41 C. The overall financial resources of the owner or lessee
42 of the place of public accommodation; the overall size of
43

2 the business of the entity with respect to the number of its
3 employees; and the number, type and location of its
4 facilities; and

5 D. The type of operation or operations of the entity that
6 owns the place of public accommodation, including the
7 composition, structure and functions of the work force of
8 that entity; and the geographic separateness and the
9 administrative or fiscal relationship of the facility or
10 facilities in question to the entity.

11 9-A. Reasonable accommodation. "Reasonable accommodation"
12 means:

13 A. Modifications or adjustments to a job application
14 process that enable a qualified applicant with a disability
15 to be considered for the position that the qualified
16 applicant desires;

17 B. Modifications or adjustments to the work environment or
18 to the manner or circumstances under which the position held
19 or desired is customarily performed that enable a qualified
20 individual with a disability to perform the essential
21 functions of that position; or

22 C. Modifications or adjustments that enable a qualified
23 individual with a disability to enjoy equal benefits and
24 privileges of employment as are enjoyed by the employer's
25 other similarly situated employees without disabilities.

26 "Reasonable accommodation" may include but is not limited to
27 making existing facilities used by employees readily accessible
28 to and usable by individuals with disabilities; job
29 restructuring; part-time or modified work schedules; reassignment
30 to vacant positions; acquisition or modification of equipment or
31 devices; appropriate adjustment or modification of examinations,
32 training materials or policies; the provision of qualified
33 readers or interpreters; and other similar accommodations for
34 individuals with disabilities. To determine the appropriate
35 reasonable accommodation, it may be necessary for the employer to
36 initiate an informal, interactive process with the qualified
37 individual with a disability in need of the accommodation. This
38 process should identify the precise limitations resulting from
39 the disability and potential reasonable accommodations that could
40 overcome those limitations.

41 9-B. Substantially limits. "Substantially limits" means to
42 cause:

2 A. An inability to perform a major life activity that the
average person in the general population can perform; or

4 B. A significant restriction as to the condition, manner or
duration under which an individual can perform a particular
6 major life activity as compared to the condition, manner, or
duration under which the average person in the general
8 population can perform that same major life activity.

10 9-C. Undue hardship. "Undue hardship" means an action
requiring significant difficulty or expense, when considered in
12 light of relevant factors, including the following:

14 A. The nature and cost of the accommodation needed under
this chapter;

16 B. The overall financial resources of the facility involved
18 in the provision of the reasonable accommodation; the number
of persons employed at such facility; the effect on expenses
20 and resources of the facility; or the impact otherwise of
such accommodation upon the operation of the facility;

22 C. The overall financial resources of the employer or the
24 owner or lessee of a place of public accommodation; the
overall size of the business of the entity with respect to
26 the number of its employees; and the number, type and
location of its facilities; and

28 D. The type of operation or operations of the employer or
30 the owner or lessee of a place of public accommodation,
including the composition, structure and functions of the
32 work force of that entity; and the geographic separateness
and administrative or fiscal relationship of the facility or
34 facilities in question to the entity.

36 **Sec. 4. 5 MRSA §4572, sub-§1, ¶A, as amended by PL 1991, c.**
38 **885, Pt. E, §7 and affected by §47, is further amended to read:**

40 A. For any employer to fail or refuse to hire or otherwise
42 discriminate against any applicant for employment because of
44 race or color, sex, physical or mental disability, religion,
46 age, ancestry or national origin, because of the applicant's
48 previous assertion of a claim or right under former Title 39
50 or Title 39-A or because of previous actions taken by the
applicant that are protected under Title 26, chapter 7,
subchapter V-B; or, because of those reasons, to discharge
an employee or discriminate with respect to hire, tenure,
promotion, transfer, compensation, terms, conditions or
privileges of employment or any other matter directly or
indirectly related to employment; to fail or refuse to make

2 reasonable accommodation for the physical or mental
3 disability of an otherwise qualified employee or applicant
4 for employment unless the employer can demonstrate that a
5 reasonable accommodation does not exist or that an
6 accommodation would impose an undue hardship on the conduct
7 of the employer's business; or, in recruiting of individuals
8 for employment or in hiring them, to utilize any employment
9 agency that the employer knows or has reasonable cause to
10 know discriminates against individuals because of their race
11 or color, sex, physical or mental disability, religion, age,
12 ancestry or national origin, because of their previous
13 assertion of a claim or right under former Title 39 or Title
14 39-A or because of previous actions that are protected under
15 Title 26, chapter 7, subchapter V-B;

16 (1) This paragraph does not apply to discrimination
17 governed by Title 39-A, section 353;

18 **Sec. 5. 5 MRSA §4572, sub-§1, ¶D,** as amended by PL 1991, c.
19 885, Pt. E, §7 and affected by §47, is further amended to read:

22 D. For any employer, employment agency or labor
23 organization, prior to employment or admission to membership
24 of any individual, to:

26 (1) Elicit or attempt to elicit information directly
27 or indirectly pertaining to race or color, sex,
28 physical or mental disability, religion, age, ancestry
29 or national origin, any previous assertion of a claim
30 or right under former Title 39 or Title 39-A or any
31 previous actions that are protected under Title 26,
32 chapter 7, subchapter V-B, except when a physical or
33 mental disability is determined by the employer,
34 employment agency or labor organization to be job
35 related or when some privileged information is
36 necessary for an employment agency or labor
37 organization to make a suitable job referral;

38 (2) Make or keep a record of race or color, sex,
39 physical or mental disability, religion, age, ancestry
40 or national origin, any previous assertion of a claim
41 or right under former Title 39 or Title 39-A or any
42 previous actions that are protected under Title 26,
43 chapter 7, subchapter V-B, except under physical or
44 mental disability when an employer requires a physical
45 or mental examination prior to employment, a privileged
46 record of that examination is permissible;

48 (3) Use any form of application for employment, or
49 personnel or membership blank containing questions or
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2 entries directly or indirectly pertaining to race or
color, sex, physical or mental disability, religion,
4 age, ancestry or national origin, any previous
assertion of a claim or right under former Title 39 or
6 Title 39-A or any previous actions that are protected
under Title 26, chapter 7, subchapter V-B, except under
8 physical or mental disability when it can be determined
by the employer that the job or jobs to be filled
10 require that information for the well-being and safety
of the individual. This section does not prohibit any
12 officially recognized agency from keeping necessary
records in order to provide free services to
14 individuals requiring rehabilitation or employment
assistance;

16 (4) Print, publish or cause to be printed or published
any notice or advertisement relating to employment or
18 membership indicating any preference, limitation,
specification or discrimination based upon race or
20 color, sex, physical or mental disability, religion,
age, ancestry or national origin, any previous
22 assertion of a claim or right under former Title 39 or
Title 39-A or any previous actions that are protected
24 under Title 26, chapter 7, subchapter V-B, except under
physical or mental disability when the text of printed
26 or published material strictly adheres to this Act; or

28 (5) Establish, announce or follow a policy of denying
or limiting, through a quota system or otherwise,
30 employment or membership opportunities of any group
because of the race or color, sex, physical or mental
32 disability, religion, age, ancestry or national origin,
the previous assertion of a claim or right under former
34 Title 39 or Title 39-A or because of previous actions
that are protected under Title 26, chapter 7,
36 subchapter V-B, of that group; or

38 **Sec. 6. 5 MRSA §4572, sub-§1, ¶E**, as amended by PL 1991, c. 99,
40 §7, is further amended to read:

42 E. For an employer, employment agency or labor organization
to discriminate in any manner against individuals because
44 they have opposed a practice that would be a violation of
this Act or because they have made a charge, testified or
46 assisted in any investigation, proceeding or hearing under
this Act; or

48 **Sec. 7. 5 MRSA §4572, sub-§1, ¶F** is enacted to read:

2 F. For any employer, employment agency or labor
4 organization to discriminate in any manner against an
6 individual because of the known disability of another
8 individual with whom the individual is known to have a
10 relationship or association.

12 **Sec. 8. 5 MRSA §4592**, as amended by PL 1991, c. 99, §§21 and
14 22, is further amended to read:

16 **§4592. Unlawful public accommodations**

18 It is unlawful public accommodations discrimination, in
20 violation of this Act:

22 **1. Denial of public accommodations.** For any person who is
24 the owner, lessee, proprietor, manager, superintendent, agent or
26 employee of any place of public accommodation to directly or
indirectly refuse, withhold from or deny to any person, on
account of race or color, sex, physical or mental disability,
religion, ancestry or national origin, any of the goods,
services, accommodations, advantages, facilities or privileges of
public accommodation, or in any manner discriminate against any
person in the price, terms or conditions upon which access to
goods, services, accommodation, advantages, facilities and
privileges may depend;

28 **2. Communication, notice or advertisement.** For any person
to directly or indirectly publish, display or communicate any
notice or advertisement to the effect that any of the
accommodations, advantages, facilities and privileges of any
place of public accommodation are refused, withheld from or
denied to any person on account of race or color, sex, physical
or mental disability, religion, ancestry or national origin, or
that the patronage or custom of any person belonging to or
purporting to be of any particular race or color, sex, physical
or mental disability, religion, ancestry or national origin is
unwelcome, objectionable or not acceptable, desired or solicited,
or that the clientele is restricted to any particular race or
color, physical or mental disability, religion, ancestry or
national origin. The production of any communication, notice or
advertisement purporting to relate to any place of accommodation
is presumptive evidence in any action that the action was
authorized by its owner, manager or proprietor; and

32 **3. Denial of lodging; children, exception.** For any person
34 who is the owner, lessee, proprietor, manager, superintendent,
36 agent or employee of any public accommodation for lodging to
38 directly or indirectly refuse or withhold from or deny to any
40 person that lodging on the grounds that the person is accompanied
42 by a child or children who will occupy the unit, unless the total

2 number of persons seeking to occupy the unit exceeds the number
permitted by local ordinances or reasonable standards relating to
4 health, safety or sanitation.

6 This subsection does not apply to the owner of a lodging place:

8 A. That serves breakfast;

10 B. That contains no more than 8 rooms available to be let
to lodgers; and

12 C. In which the owner resides on the premises.

14 4. Failure to remove barriers. For any person who is the
owner, lessee, proprietor, manager, superintendent, agent or
16 employee of any place of public accommodation to fail to remove,
where removal is readily achievable:

18 A. Architectural barriers and communication barriers that
20 are structural in nature in facilities existing on the
effective date of this subsection; and

22 B. Transportation barriers in vehicles and rail passenger
24 cars that exist on the effective date of this subsection
26 used by an establishment for transporting individuals, not
including barriers that can only be removed through the
28 retrofitting of vehicles or rail passenger cars by the
installation of a hydraulic or other lift;

30 5. Failure to provide alternative methods. Where removal
of barriers required in subsection 4 is not readily achievable,
32 for any person who is the owner, lessee, proprietor, manager,
superintendent, agent or employee of any place of public
34 accommodation to fail to make goods, services, facilities,
privileges, advantages or accommodations available through
36 alternative methods if such methods are readily achievable;

38 6. Auxiliary aids and services. For any person who is the
owner, lessee, proprietor, manager, superintendent, agent or
40 employee of any place of public accommodation to fail to take
such steps as may be necessary to ensure that an individual with
42 a disability is not excluded, denied services, segregated or
otherwise treated differently than other individuals because of
44 the absence of auxiliary aids and services, unless the entity can
demonstrate that taking such steps would fundamentally alter the
46 nature of the good, service, facility, privilege, advantage or
accommodation being offered or would result in an undue hardship;

48 7. Surcharge for compliance. For any person who is the
50 owner, lessee, proprietor, manager, superintendent, agent or

2 employee of any place of public accommodation to impose a
3 surcharge on a person with a disability or on a group of persons
4 with disabilities to cover the cost of measures, such as the
5 provision of auxiliary aids and services, barrier removal,
6 alternatives to barrier removal or reasonable modifications to
7 policies, practices or procedures, that are required to provide
8 the individual or a group with the nondiscriminatory treatment
9 required by this subchapter; and

10 **8. Association.** For any person who is the owner, lessee,
11 proprietor, manager, superintendent, agent or employee of any
12 place of public accommodation to exclude or otherwise deny equal
13 goods, facilities, privileges, advantages, accommodations or
14 other opportunities to an individual or an entity because of the
15 known disability of another individual with whom the individual
16 or entity is known to have a relationship or association.

17 **Sec. 9. 5 MRSA §4594-D, sub-§7,** as amended by PL 1993, c. 410,
18 Pt. X, §2, is further amended to read:

19 **7. Mandatory plan review; certification; inspection.**
20 Builders of ~~the following~~ newly constructed ~~facilities~~ places of
21 public accommodation must submit plans to the Office of the State
22 Fire Marshal to ensure that the plans meet the standards of
23 construction required by subsection 3+.

24 A. ~~Restaurants;~~

25 B. ~~Motels, hotels and inns;~~

26 C. ~~State, municipal and county buildings; and~~

27 D. ~~Schools, elementary and secondary.~~

28 Fees for reviews are established by the Office of the State Fire
29 Marshal.

30 No building permit may be issued by the municipal authority
31 having jurisdiction to issue these permits unless the Office of
32 the State Fire Marshal approves the plans and certifies that the
33 facility covered by the mandatory plan review meets the standards
34 of construction required by this section; if, however, no
35 decision is rendered within 2 weeks of submission to the Office
36 of the State Fire Marshal, the builder may submit the building
37 permit request directly to the municipality with an attestation
38 that the plans meet the standards of construction.

39 If officials of the municipality in which ~~the facility~~ a
40 restaurant; a motel, hotel or inn; a state, municipal or county
41 building; or an elementary or secondary school is constructed,
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renovated, remodeled or enlarged inspect buildings that building
for compliance with construction standards, that inspection must
include an inspection for compliance with the certified plans.
The municipal officials shall require that the such a facility
be inspected for compliance with construction standards before
the municipal officials permit the facility to be occupied.

Sec. 10. 5 MRSA §4594-D, sub-§8, as enacted by PL 1989, c.
795, is repealed.

Sec. 11. 5 MRSA §4594-D, sub-§9, as amended by PL 1993, c.
450, §1, is further amended to read:

9. **Waivers; variance.** Builders of ~~facilities-governed-by~~
~~subsection--7~~ restaurants; motels, hotels or inns; state,
municipal or county buildings; or elementary or secondary schools
may file a petition with the State Fire Marshal requesting a
waiver or variance of the standards of construction. If the
representative of the Office of the State Fire Marshal determines
in ~~eases--covered-by-mandatory-plan--review~~ such a case that
compliance with this section and its rules is not technologically
feasible or would result in excessive and unreasonable costs
without any substantial benefit to persons with physical
disability, the State Fire Marshal may provide for modification
of, or substitution for, these standards. In all petitions for
variance or waiver, the burden of proof is on the party
requesting a variance or waiver to justify its allowance.

Requests for waivers or variances ~~for--buildings--covered--by~~
~~mandatory--plan--review~~ under this subsection are heard by a
designee of the Office of the State Fire Marshal. A decision
must be provided in writing to the party requesting the waiver or
variance.

Sec. 12. 5 MRSA §4595-D, sub-§10, as amended by PL 1993, c.
410, Pt. X, §3, is further amended to read:

10. **Appeals.** Decisions of the State Fire Marshal on
requests for waivers or variances ~~in-cases-covered-by-mandatory~~
~~plan-review~~ under this section are subject to review in Superior
Court upon petition of the aggrieved party within 30 days after
the issuance of the decision for which review is sought. The
court may enter an order enforcing, modifying or setting aside
the decision of the State Fire Marshal, or it may remand the
proceeding to the State Fire Marshal for such further action as
the court may direct.

Sec. 13. 5 MRSA §4594-D, sub-§11, as enacted by PL 1989, c.
795, is repealed.

2 The bill amends the employment subchapter of the Maine Human
Rights Act to require employers to make reasonable accommodation
4 to the physical or mental limitations of an otherwise qualified
individual, unless the employer can demonstrate that no such
6 accommodation exists or that accommodation would impose an undue
hardship on the employer's business. The requirement to make
8 reasonable accommodation is currently contained in the Maine
Human Rights Commission's rules; the bill codifies the rules and
10 adds definitions for the terms "reasonable accommodation" and
"undue hardship."

12 The bill amends the public accommodations subchapter of the
Maine Human Rights Act to prohibit discrimination in the
14 provision of goods and services of a public accommodation.
Current law prohibits discrimination only in the "accommodations,
16 advantages, facilities or privileges" of public accommodation.

18 The bill amends the public accommodations subchapter of the
Maine Human Rights Act to require removal of architectural
20 barriers, structural communications barriers and transportation
barriers in existing facilities, where removal is readily
22 achievable, and to provide alternative means of access where
removal is not readily achievable. Current law regulates only
24 new construction and alterations of facilities. The bill also
defines "readily achievable."

26 The bill amends the public accommodations subchapter of the
Maine Human Rights Act to require the provision of auxiliary aids
28 and services, such as interpreters, equipment and devices; adds a
definition of auxiliary aids and services; and prohibits a person
30 from adding a surcharge to any public accommodation to cover the
cost of an auxiliary aid or service, barrier removal or other
32 actions taken to comply with the public accommodations
antidiscrimination provisions.

36 The bill amends the public accommodations subchapter to
require builders of all public accommodations to obtain
38 certification from the Office of the State Fire Marshal that the
plans comply with state accessibility standards. Currently, only
40 builders of schools, restaurants, government buildings and
motels, hotels and inns must obtain certification. Variances
42 could only be granted to buildings that currently qualify to
apply for a variance, and municipal officials would only be
44 required to inspect for compliance in buildings currently subject
to that requirement.

46 The bill amends the employment and public accommodations
48 subchapters of the Maine Human Rights Act to prohibit
discrimination against a person based on the known disability of

2 another person with whom the person is known to have an
3 association or relationship.

4 The bill repeals the definition of physical or mental
5 disability and replaces it with the definition found in the
6 federal Americans with Disabilities Act of 1990. This definition
7 is the same as the definition found in the Maine Human Rights
8 Commission's rules, except that cardiovascular, reproductive and
9 digestive system impairments are added.

10 The bill requires the Maine Human Rights Commission to
11 pursue federal certification that the State's construction
12 standards for accessible buildings of public accommodation are at
13 least as stringent as the standards in the federal Americans with
14 Disabilities Act of 1990. If the state law is certified and a
15 person complies with state law, the certification can be used as
16 rebuttable evidence that the person complied with a law that
17 meets or exceeds the requirements of the Americans with
18 Disabilities Act of 1990.

19 Finally, the bill requires the Maine Human Rights Commission
20 to amend their accessibility rules to include federal standards
21 relating to special use areas, such as medical care
22 establishments and restaurants, to the extent the federal
23 standards provide greater accessibility, and to review
24 transportation access rules and determine whether federal
25 protections should be added to state law or rules.

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34 This document has not yet been reviewed to determine the
need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.