

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1791

H. P. 1410

House of Representatives, April 7, 1975

Referred to Committee on Human Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Ault of Wayne.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Amend the Human Rights Act to Prevent Discrimination Against the Mentally Handicapped and to Clarify the Provisions in the Human Rights Act Regarding Physical Handicap.

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

Sec. 1. 5 MRSA § 4552, as last amended by PL 1973, c. 705, § 1, is further amended to read:

§ 4552. Policy

To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of such practices, so that corrective measures may, where possible, be promptly recommended and implemented, and prevent discrimination in employment, housing or access to public accommodations on account of race, color, sex, physical or mental handicap, religion, ancestry or national origin and in employment, discrimination on account of age.

Sec. 2. 5 MRSA § 4553, sub-§ 7-A is enacted to read:

7-A. Physical or mental handicap. "Physical or mental handicap" means any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and shall include, but is not limited to: epilepsy seizure disorders; any degree of paralysis; cerebral palsy, autism; mental retardation; amputation; lack of physical function or coordination; impairment of sight, hearing or speech; or physical reliance on a seeing eye dog, wheelchair or other remedial appliance or device; and also includes the

physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or, in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

Sec. 3. 5 MRSA § 4566, sub-§ 6, 2nd sentence, as last amended by PL 1973, c. 705, § 2, is further amended to read:

The commission may itself or it may empower these agencies and councils to study the problems of discrimination in all or specific fields of human relationships when based on race or color, sex, physical or mental handicap, religion or country of ancestral origin, and foster, through community effort or otherwise, good will among the groups and elements of the population of the State.

Sec. 4. 5 MRSA § 4566, sub-§ 10, as last amended by PL 1973, c. 705, § 3, is further amended to read:

10. Publications. To issue such publications and such results of investigations and research as in its judgment will tend to promote good will, and minimize or eliminate discrimination based on race or color, sex, physical or mental handicap, religion or country of ancestral origin;

Sec. 5. 5 MRSA § 4566, sub-§ 11, as last amended by PL 1973, c. 705, § 3, is further amended to read:

11. Reports. From time to time, but not less than once a year, to report to the Legislature and the Governor, describing the investigations, proceedings and hearings the commission has conducted and their outcome and the other work performed by it, and make recommendations for such further legislation or executive action concerning abuses and discrimination based on race or color, sex, physical or mental handicap, religion or country of ancestral origin, or other infringements on human rights or personal dignity, as may be desirable;

Sec. 6. 5 MRSA § 4571, as last amended by PL 1973, c. 705, § 5, is further amended to read:

§ 4571. Right to freedom from discrimination in employment

The opportunity for an individual to secure employment without discrimination because of race, color, sex, physical or mental handicap, religious creed, age, ancestry or national origin is recognized as and declared to be a civil right.

Sec. 7. 5 MRSA § 4572, sub-§ 1, ¶ A, as last amended by PL 1973, c. 705, § 6, is further amended to read:

A. For an employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, physical or mental handicap, religion, country of ancestral origin or age, or because of any such reason 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, or in the recruiting of individuals for employment or in hiring them, to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their race or color, sex, physical or mental handicap, religion, age or country of ancestral origin;

Sec. 8. 5 MRSA § 4572, sub-§ 1, ¶ B, as last amended by PL 1973, c. 705, § 6, is further amended to read:

B. For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of race or color, sex, physical or mental handicap, religion, age or country of ancestral origin or to comply with an employer's request for the referral of job applicants, if such request indicates either directly or indirectly that such employer will not afford full and equal employment opportunities to individuals regardless of their race or color, sex, physical or mental handicap, religion, age or country of ancestral origin;

Sec. 9. 5 MRSA § 4572, sub-§ 1, ¶ C, as last amended by PL 1973, c. 705, § 6, is further amended to read:

C. For any labor organization to exclude from apprenticeship or membership, or to deny full and equal membership rights, to any applicant for membership, because of race or color, sex, physical or mental handicap, religion, age or country of ancestral origin, or because of any such reason to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate in any manner with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organization or by a collective labor agreement or other contract, or to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of race or color, sex, physical or mental handicap, religion, age or country of ancestral origin or to cause or attempt to cause an employer to discriminate against an individual in violation of this section:

Sec. 10. 5 MRSA § 4572, sub-§ 1, ¶ D, sub-¶¶ (1), (2), (3), (4) and (5), as last amended by PL 1973, c. 705, § 6, are further amended to read:

(1) Elicit or attempt to elicit any information directly or indirectly pertaining to race or color, sex, physical or mental handicap, religion or country of ancestral origin, except where a physical or mental handicap is determined to be job related and some privileged information is necessary for a suitable job referral;

(2) Make or keep a record of race or color, sex, physical or mental handicap, religion or country of ancestral origin, except under physical or mental handicap, when an employer requires a physical or mental examination prior to employment, a privileged record of such an examination is permissible;

(3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, sex, physical or mental handicap, religion or country of ancestral origin, except under physical or mental handicap, where it can be determined by the employer that the job or jobs to be filled require such information for the wellbeing and safety of the individual; nor will this section prohibit any officially recognized agency from keeping necessary records in order to provide free services to individuals requiring rehabilitation or employment assistance;

(4) Print or publish or cause to be printed to be published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, sex, physical or mental handicap, religion or country of ancestral origin, except under physical or mental handicap when the text of such printed or published material strictly adheres to the provisions of this Act;

(5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, physical or mental handicap, religion or country of ancestral origin of such group;

Sec. 11. 5 MRSA § 4581, as last amended by PL 1973, c. 705, § 7, is further amended to read:

§ 4581. Decent housing

The opportunity for an individual to secure decent housing in accordance with his or her ability to pay, and without discrimination because of race, color, sex, physical or mental handicap, religious creed, ancestry or national origin is hereby recognized as and declared to be a civil right.

Sec. 12. 5 MRSA § 4582, as last amended by PL 1973, c. 705, § 8, is further amended to read:

§ 4582. Unlawful housing discrimination

It shall be unlawful housing discrimination, in violation of this Act:

For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the race or color, sex, physical or mental handicap, religion or country of origin of any prospective purchaser, occupant or tenant of such housing accommodation; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual such housing accommodation because of the race or color, sex, physical or mental handicap, religion or country of ancestral origin of such individual; or to issue any advertisement relating to the sale, rental or lease of such housing accommodation which indicates any preference, limitation, specification or discrimination based upon race or color, sex, physical or mental handicap, religion or country of ancestral origin; or to discriminate against any individual because of race or color, sex, physical or mental handicap, religion or country of ancestral origin in

the price, terms, conditions or privileges of the sale, rental or lease of any such housing accommodations or in the furnishing of facilities or services in connection therewith, or to evict or attempt to evict any tenant of any housing accommodation because of the race or color, sex, physical or mental handicap, religion or country of ancestral origin of such tenant;

For any real estate broker or real estate salesperson, or agent of one of them, to fail or refuse to show any applicant for a housing accommodation any such accommodation listed for sale, lease or rental, because of the race or color, sex, physical or mental handicap, religion or country of ancestral origin of such applicant or of any intended occupant of such accommodation, or to misrepresent, for the purpose of discriminating on account of the race or color, sex, physical or mental handicap, religion or country of ancestral origin of such applicant or intended occupant, the availability or asking price of a housing accommodation listed for sale, lease or rental; or for such a reason to fail to communicate to the person having the right to sell or lease such housing accommodation any offer for the same made by any applicant thereof; or in any other manner to discriminate against any applicant for housing because of race or color, sex, physical or mental handicap, religion or country of ancestral origin of such applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the race or color, sex, physical or mental handicap, religion or country of ancestral origin of any such applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their race or color, sex, physical or mental handicap, religion or country of ancestral origin, or when he knows or has reason to know that the person having the right to sell or lease such housing accommodation has made a practice of such discrimination since July 1, 1972;

For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of such person, to make or cause to be made any oral or written inquiry concerning the race or color, sex, physical or mental handicap, religion or country of ancestral origin of any individual seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodations; or to discriminate in the granting of such financial assistance, or in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance, against any applicant because of the race or color, sex, physical or mental handicap, religion or country of ancestral origin of such applicant or of the existing or prospective occupants or tenants.

Sec. 13. 5 MRSA § 4583, as last amended by PL 1973, c. 705, § 9, is further amended to read:

§ 4583. Application

Nothing in this Act shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person

having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting thereof or in the furnishings of facilities or services in connection therewith which are not based on the race, color, sex, physical or mental handicap, religion or country of ancestral origin of any prospective or actual purchaser, lessee, tenant or occupant thereof. Nothing in this Act contained shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations, to set standards and preferences, terms, conditions, limitations or specifications for the granting of such loans or financial assistance which are not based on the race, color, sex, physical or mental handicap, religion or country of ancestral origin of the applicant for such loan or financial assistance or, of any existing or prospective owner, lessee, tenant or occupant of such housing accommodation.

Sec. 13-A. 5 MRSA §4591, as last amended by PL 1973, c. 347, § 11, is further amended to read:

§ 4591. Equal access to public accommodations

The opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, physical or mental handicap, religious creed, ancestry or national origin is recognized as and declared to be a civil right.

Sec. 14. 5 MRSA § 4592, as last amended by PL 1973, c. 705, § 10, is further amended to read:

§ 4592. Unlawful public accommodations

It shall be unlawful public accommodations discrimination, in violation of this Act:

For any person being the owner, lessee, proprietor, manager, superintendent, agent or 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 handicap, religion or country of ancestral origin, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, or for such reason in any manner discriminate against any person in the price, terms or conditions upon which access to such accommodation, advantages, facilities and privileges may depend;

For any person to directly or indirectly publish, circulate, issue, display, post or mail any written, printed, painted or broadcast communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of race or color, sex, physical or mental handicap, religion or country of ancestral origin, or that the patronage or custom thereof of any person belonging to or purporting to be of any particular race or color, sex, physical or mental handicap, religion or country of ancestral origin is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele thereof is restricted to members of par-

ticular races or colores, sexes, physical **or mental** handicap, religions or countries of ancestral origin. The production of any such written, printed, painted or broadcast communication, notice or advertisement, purporting to relate to any such place, shall be presumptive evidence in any action that the same was authorized by its owner, manager or proprietor.

Nothing in this Act shall prohibit an employer from refusing to hire or discharging a physically **or mentally** handicapped employee, or subject an employer to any legal liability resulting from the refusing to employ or the discharge of a physically **or mentally** handicapped employee, where the employee, because of the physical **or mental** handicap, is unable to perform his or her duties or perform those duties in a manner which would not endanger the health or safety of the employee or the health or safety of others or to be at, remain or go to or from the place where the duties of employment are to be performed.

Sec. 15. 5 MRSA § 4612, sub-§ 4, ¶ A, as last amended by PL 1973, c. 705, § 11, is further amended to read:

A. Filing. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination or to members of a racial, color, sex, physical **or mental** handicap, religious, nationality group or age group if relief is not immediately granted; or if conciliation efforts under subsection 3 have not succeeded, the commission shall file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders.

STATEMENT OF FACT

The purpose of this bill is to guarantee mentally handicapped persons the fullest possible participation in the social and economic life of the State, to engage in remunerative employment and to secure housing accommodations as well as access to public accommodations of their choice.