

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1313

H.P. 945

House of Representatives, April 24, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative O'GARA of Westbrook.

Cosponsored by Representative FARNSWORTH of Hallowell, Representative CONLEY of Portland and Senator ANDREWS of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

**An Act Relating to Discrimination by Licensing Agencies which Affect
Employment Eligibility or Professional Status.**



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

3 **Sec. 1. 5 MRSA §4553, sub-§11 is enacted to read:**

5 **11. Licensing agency.** "Licensing agency" means any state
7 board, agency or authority in the State which has the authority
9 to grant licenses or certificates which are prerequisites to
11 employment eligibility or professional status.

13 **Sec. 2. 5 MRSA §4572, sub-§1, ¶¶D and E, as amended by PL 1987,**
15 **c. 782, §1, are further amended to read:**

17 **D. For any employer or employment agency or labor**
19 **organization, prior to employment or admission to membership**
21 **of any individual, to:**

23 (1) Elicit or attempt to elicit any information
25 directly or indirectly pertaining to race or color,
27 sex, physical or mental handicap, religion, age,
29 ancestry or national origin, or any previous assertion
31 of a claim or right under Title 39, or any previous
33 actions which are protected under Title 26, chapter 7,
35 subchapter V-B, except where a physical or mental
37 handicap is determined by the employer, employment
39 agency or labor organization to be job related; or
41 where some privileged information is necessary for an
43 employment agency or labor organization to make a
45 suitable job referral;

47 (2) Make or keep a record of race or color, sex,
49 physical or mental handicap, religion, age, ancestry or
51 national origin or any previous assertion of a claim or
 right under Title 39, or any previous actions which are
 protected under Title 26, chapter 7, subchapter V-B,
 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, age,
 ancestry or national origin or any previous assertion
 of a claim or right under Title 39, or any previous
 actions which are protected under Title 26, chapter 7,
 subchapter V-B, 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 well-being and safety of the
 individual; nor will this section prohibit any
 officially recognized agency from keeping necessary

1 records in order to provide free services to
3 individuals requiring rehabilitation or employment
assistance;

5 (4) Print or publish or cause to be printed or
7 published any notice or advertisement relating to
employment or membership indicating any preference,
9 limitation, specification or discrimination based upon
ancestry or national origin or any previous assertion
11 of a claim or right under Title 39, or any previous
actions which are protected under Title 26, chapter 7,
13 subchapter V-B, except under physical or mental
handicap when the text of such printed or published
15 material strictly adheres to this Act; or

17 (5) Establish, announce or follow a policy of denying
or limiting, through a quota system or otherwise,
19 employment or membership opportunities of any group
because of the race or color, sex, physical or mental
21 handicap, religion, age, ancestry, national origin or
the previous assertion of a claim or right under Title
23 39, or because of previous actions which are protected
under Title 26, chapter 7, subchapter V-B, of such
25 group; or

27 E. For an employer or employment agency or labor
organization to discriminate in any manner against any
29 individual because they have opposed any practice which
would be a violation of this Act, or because they have made
31 a charge, testified or assisted in any manner in any
investigation, proceeding or hearing under this Act; or

33 **Sec. 3. 5 MRSA §4572, sub-§1, ¶F** is enacted to read:

35 F. For any licensing agency to fail or refuse to grant a
37 license to or otherwise discriminate against any individual
because of race or color, sex, physical or mental handicap,
39 religion, ancestry or national origin, age, or because of
the applicant's previous assertion of a claim or right under
41 Title 39, or because of previous actions taken by the
applicant which are protected under Title 26, chapter 7,
43 subchapter V-B, except with regard to physical or mental
handicap, where the absence of the physical or mental
45 handicap is a bona fide occupational qualification, or the
presence of the physical or mental handicap renders the
47 individual unable to perform the duties of the employment
requiring the license, or perform those duties in a manner
49 which would not endanger the health or safety of the
individual or the health or safety of others; or to print or
51 circulate or cause to be printed or circulated any
publication, or to make any nonjob-related inquiry, either

1 verbal or through the use of an application form, which
2 expresses, directly or indirectly, any limitation,
3 specification or discrimination as to race or color, sex,
4 physical or mental handicap, religion, ancestry or national
5 origin or age, or any previous assertion of a claim or right
6 under Title 39, or any previous actions taken by the
7 applicant which are protected under Title 26, chapter 7,
8 subchapter V-B, except with regard to physical or mental
9 handicap, a licensing agency may make, in connection with
10 prospective licensure or certification, an inquiry as to, or
11 a request for information regarding, the physical fitness of
12 applicants if that inquiry or request for information is
13 directly related to and pertinent to the license or the
14 licensed position the applicant is applying for; or to
15 discriminate against any individual because that individual
16 has opposed any practice which would be a violation of this
17 Act, or because that individual has made a charge, testified
18 or assisted in any manner in any investigation, proceeding
19 or hearing under this Act.

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STATEMENT OF FACT

25 Recently, the Maine Law Court ruled that in spite of a Maine
26 Human Rights Commission rule to the contrary, the Maine Human
27 Rights Act does not prohibit state licensing agencies from
28 discriminating against persons with handicaps when they consider
29 whether to grant licenses which are prerequisites to employment.
30 The Maine Human Rights Act currently prohibits employers,
31 employment agencies and labor organizations from discriminating
32 in employment because of physical or mental handicap. This bill
33 makes licensing agencies subject to the same prohibition.