

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

M  
R.S.

L.D. 1168

2

DATE: 6/23/95

(Filing No. H-604 )

4

6

**JUDICIARY**

8

10 Reproduced and distributed under the direction of the Clerk of  
12 the House.

12

14

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
117TH LEGISLATURE  
FIRST REGULAR SESSION**

16

18

20 COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168, Bill, "An  
Act to Implement the Recommendations of the People with  
Disabilities Access Commission"

22

24 Amend the bill by striking out everything after the enacting  
clause and before the statement of fact and inserting in its  
place the following:

26

28 **Sec. 1. 5 MRSA §4553, first ¶**, as enacted by PL 1971, c. 501,  
§1, is amended to read:

30

32 As used in this Act, unless the context or subchapter  
otherwise indicates, the following words shall have the following  
meanings+.

34

**Sec. 2. 5 MRSA §4553, sub-§§1-A, 1-B and 1-C** are enacted to  
read:

36

38 **1-A. Commercial facilities.** "Commercial facilities" means  
facilities that are intended for nonresidential use.

40

42 **1-B. Covered entity.** For purposes of subchapter III,  
"covered entity" means an employer, employment agency, labor  
organization or joint labor-management committee. For purposes  
of subchapter V, "covered entity" means any applicable private  
entity or public entity.

46

48 **1-C. Direct threat.** For purposes of subchapter III,  
"direct threat" means a significant risk to the health or safety  
of others that can not be eliminated by reasonable accommodation.

50

**Sec. 3. 5 MRSA §4553, sub-§2**, as enacted by PL 1971, c. 501,  
§1, is amended to read:

**COMMITTEE AMENDMENT**

R. S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2           **2. Discriminate.** "Discriminate" includes, without  
4 limitation, segregate or separate.

6 For purposes of subchapter III, "discriminate" also includes, as  
it relates to individuals with physical or mental disability:

8           A. Limiting, segregating or classifying a job applicant or  
10 employee in a way that adversely affects the opportunities  
or status of the applicant or employee because of the  
12 disability of the applicant or employee;

14           B. Participating in a contractual or other arrangement or  
relationship that has the effect of subjecting a covered  
16 entity's qualified applicant or employee with a disability  
to the discrimination prohibited by this Act. A  
18 relationship includes a relationship with an employment or  
referral agency, labor union, an organization providing  
20 fringe benefits to an employee of the covered entity or an  
organization providing training and apprenticeship programs;

22           C. Utilizing standards, criteria or methods of  
administration:

24                   (1) That have the effect of discrimination on the  
26 basis of disability; or

28                   (2) That perpetuate the discrimination of others who  
30 are subject to common administrative control;

32           D. Excluding or otherwise denying equal jobs or benefits to  
a qualified individual because of the known disability of an  
34 individual with whom the qualified individual is known to  
have a relationship or association;

36           E. Not making reasonable accommodations to the known  
38 physical or mental limitations of an otherwise qualified  
individual with a disability who is an applicant or  
40 employee, unless the covered entity can demonstrate that the  
accommodation would impose an undue hardship on the  
42 operation of the business of the covered entity;

44           F. Denying employment opportunities to a job applicant or  
employee who is an otherwise qualified individual with a  
46 disability, if the denial is based on the need of the  
covered entity to make reasonable accommodation to the  
48 physical or mental impairments of the employee or applicant;

50           G. Using qualification standards, employment tests or other  
selection criteria that screen out or tend to screen out an

P. of S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2 individual with a disability or a class of individuals with  
3 disabilities unless the standard, test or other selection  
4 criteria, as used by the covered entity, is shown to be  
5 job-related for the position in question and is consistent  
6 with business necessity; and

7 H. Failing to select and administer tests concerning  
8 employment in the most effective manner to ensure that, when  
9 the test is administered to a job applicant or employee who  
10 has a disability that impairs sensory, manual or speaking  
11 skills, the test results accurately reflect the skills,  
12 aptitude or any other factor of the applicant or employee  
13 that the test purports to measure, rather than reflecting  
14 the impaired sensory, manual or speaking skills of the  
15 employee or applicant, except when the skills are the  
16 factors that the test purports to measure.

17 **Sec. 4. 5 MRSA §4553, sub-§2-A**, as enacted by PL 1983, c. 578,  
18 §1, is amended to read:

19 **2-A. Educational institution.** "Educational institution"  
20 means any public school or educational program, any public  
21 post-secondary institution, any private school or educational  
22 program approved for tuition purposes if both male and female  
23 students are admitted and the governing body of each such school  
24 or program. For purposes related to disability-related  
25 discrimination, "educational institution" also means any private  
26 school or educational program approved for tuition purposes.  
27

28 **Sec. 5. 5 MRSA §4553, sub-§§3 and 4**, as enacted by PL 1971, c.  
29 501, §1, are amended to read:

30 **3. Employee.** "Employee" means an individual employed by an  
31 employer. "Employee" does not include any individual employed by  
32 his that individual's parents, spouse or child, except for  
33 purposes of disability-related discrimination, in which case the  
34 individual is considered to be an employee.  
35

36 **4. Employer.** "Employer" includes any person in this State  
37 employing any number of employees, whatever the place of  
38 employment of such the employees, and any person outside this  
39 State employing any number of employees whose usual place of  
40 employment is in this State; any person acting in the interest of  
41 any employer, directly or indirectly; and labor organizations,  
42 whether or not organized on a religious, fraternal or sectarian  
43 basis, with respect to their employment of employees;--but,  
44 "Employer" does not include a religious or fraternal corporation  
45 or association, not organized for private profit and in fact not  
46 conducted for private profit, with respect to employment of its  
47 members of the same religion, sect or fraternity, except for  
48  
49  
50

R 9 S.

2 purposes of disability-related discrimination, in which case the  
3 corporation or association is considered to be an employer.

4 **Sec. 6. 5 MRSA §4553, sub-§7-B** is enacted to read:

6 **7-B. Person with physical or mental disability.** "Person  
7 with physical or mental disability" or "individual with a  
8 physical or mental disability" means a person who:

10 A. Has a physical or mental disability;

12 B. Has a record of a physical or mental disability; or

14 C. Is regarded as having a physical or mental disability.

16 **Sec. 7. 5 MRSA §4553, sub-§8**, as amended by PL 1991, c. 109,  
18 is repealed and the following enacted in its place:

20 **8. Place of public accommodation.** "Place of public  
21 accommodation" means a facility, operated by a public or private  
22 entity, whose operations fall within at least one of the  
23 following categories:

24 A. An inn, hotel, motel or other place of lodging, whether  
25 conducted for the entertainment or accommodation of  
26 transient guests or those seeking health, recreation or rest;

28 B. A restaurant, eating house, bar, tavern, buffet, saloon,  
29 soda fountain, ice cream parlor or other establishment  
30 servicing or selling food or drink;

32 C. A motion picture house, theater, concert hall, stadium,  
33 roof garden, airdrome or other place of exhibition or  
34 entertainment;

36 D. An auditorium, convention center, lecture hall or other  
37 place of public gathering;

38 E. A bakery, grocery store, clothing store, hardware store,  
39 shopping center, garage, gasoline station or other sales or  
40 rental establishment;

42 F. A laundromat, dry cleaner, bank, barber shop, beauty  
43 shop, travel service, shoe repair service, funeral parlor,  
44 gas station, office of an accountant or lawyer, pharmacy,  
45 insurance office, professional office of a health care  
46 provider, hospital, dispensary, clinic, bathhouse or other  
47 service establishment;  
48

RWS

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

- 2        G. All public conveyances operated on land or water or in  
       the air as well as a terminal, depot or other station used  
       for specified public transportation;
- 4
- 6        H. A museum, library, gallery or other place of public  
       display or collection;
- 8
- 10       I. A park, zoo, amusement park, race course, skating rink,  
       fair, bowling alley, golf course, golf club, country club,  
       gymnasium, health spa, shooting gallery, billiard or pool  
       parlor, swimming pool, seashore accommodation or boardwalk  
       or other place of recreation, exercise or health;
- 12
- 14       J. A nursery, elementary, secondary, undergraduate or  
       postgraduate school or other place of education;
- 16
- 18       K. A day-care center, senior citizen center, homeless  
       shelter, food bank, adoption agency or other social service  
       center establishment;
- 20
- 22       L. Public elevators of buildings occupied by 2 or more  
       tenants or by the owner and one or more tenants;
- 24
- 26       M. A municipal building, courthouse, town hall or other  
       establishment of the State or a local government; and
- 28       N. Any establishment that in fact caters to, or offers its  
       goods, facilities or services to, or solicits or accepts  
       patronage from, the general public.

30  
 32       When a place of public accommodation is located in a private  
 34       residence, the portion of the residence used exclusively as a  
 36       residence is not covered by this subchapter, but that portion  
 38       used exclusively in the operation of the place of public  
 40       accommodation or that portion used both for the place of public  
 42       accommodation and for the residential purposes is covered by this  
 44       subchapter. The covered portion of the residence extends to  
 46       those elements used to enter the place of public accommodation,  
 48       and those exterior and interior portions of the residence  
       available to or used by customers or clients, including rest  
       rooms.

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

**8-A. Private entity.** "Private entity" means any entity  
other than a public entity.

# COMMITTEE AMENDMENT

A. of S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2 8-B. Public accommodation. "Public accommodation" means a  
public or private entity that owns, leases, leases to or operates  
4 a place of public accommodation.

6 8-C. Public entity. "Public entity" means:

8 A. The State or any local government;

10 B. Any department, agency, special purpose district or  
other instrumentality of the State, 2 or more states or a  
12 local government; and

14 C. A state, local or private commuter authority as defined  
in the federal Rail Passenger Service Act, Section 103 (8).

16 8-D. Qualified individual with a disability. "Qualified  
individual with a disability" applies to only:

18 A. Subchapter III (employment); and

20 B. Subchapter V (public accommodations) with regard to  
22 public entities only.

24 For purposes of subchapter III, "qualified individual with a  
26 disability" means an individual with a physical or mental  
disability who, with or without reasonable accommodation, can  
28 perform the essential functions of the employment position that  
the individual holds or desires.

30 For purposes of subchapter V, "qualified individual with a  
32 disability" means an individual with a disability who, with or  
without reasonable modification to rules, policies or practices,  
34 the removal of architectural, communication or transportation  
barriers or the provision of auxiliary aids and services, meets  
36 the essential eligibility requirements for the receipt of  
services or the participation in programs or activities provided  
by a public entity.

38 9-A. Reasonable accommodation. For purposes of subchapter  
40 III, "reasonable accommodation" may include, but is not limited  
to:

42 A. Making existing facilities used by employees readily  
44 accessible to and usable by individuals with disabilities;  
and

46 B. Job restructuring, part-time or modified work schedules,  
48 reassignment to a vacant position, acquisition or  
modification of equipment or devices, appropriate adjustment  
50 or modifications of examinations, training materials or

R. S.

- 2           policies, the provision of qualified readers or interpreters  
3           and other similar accommodations for individuals with  
4           disabilities.
- 6           9-B. Undue hardship; undue burden. "Undue hardship" or  
7           "undue burden" mean an action requiring undue financial or  
8           administrative hardship. In determining whether an action would  
9           result in an undue hardship, factors to be considered include:
- 10           A. The nature and cost of the accommodation needed under  
11           this Act;
- 12           B. The overall financial resources of the facility or  
13           facilities involved in the action, the number of persons  
14           employed at the facility, the effect on expenses and  
15           resources or the impact otherwise of the action upon the  
16           operation of the facility;
- 17           C. The overall financial resources of the covered entity,  
18           the overall size of the business of a covered entity with  
19           respect to the number of its employees and the number, type  
20           and location of its facilities;
- 21           D. The type of operation or operations of the covered  
22           entity, including the composition, structure and functions  
23           of the work force of the entity, the geographic  
24           separateness, administrative or fiscal relationship of the  
25           facility or facilities in question to the covered entity;
- 26           E. All the resources available to meet the costs of the  
27           accommodation, including any government funding or other  
28           grants available for making public accommodations and places  
29           of employment accessible;
- 30           F. The extent to which current costs of accommodations have  
31           been minimized by past efforts to provide equal access to  
32           persons with disabilities;
- 33           G. The extent to which resources spent on improving  
34           inaccessible equipment or service could have been spent on  
35           making an accommodation so that service or equipment is  
36           accessible to individuals with disabilities, as well as to  
37           individuals without disabilities;
- 38           H. Documented good faith efforts to explore less  
39           restrictive or less expensive alternatives;
- 40           I. The availability of equipment and technology for the  
41           accommodation;
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50



11/2/83

2 J. Whether an accommodation would result in a fundamental  
change in the nature of the public accommodation;

4 K. Efforts to minimize costs by spreading costs over time;  
and

6 L. The extent to which resources saved by failing to make  
8 an accommodation for persons who have disabilities could  
10 have been saved by cutting costs in equipment or services  
for the general public.

12 "Undue hardship" or "undue burden" is a higher standard than  
14 "readily achievable" and requires a greater level of effort on  
the part of the public accommodation.

16 **Sec. 9. 5 MRSA §4554** is enacted to read:

18 **§4554. Construction**

20 1. Relationship to other laws. Nothing in this Act may be  
22 construed to invalidate or limit the remedies, rights and  
24 procedures of any law of any state or political subdivision of  
26 any state or jurisdiction that provides greater or equal  
28 protection for the rights of individuals with disabilities than  
are afforded by this Act. Nothing in this Act may be construed  
to preclude the prohibition of, or the imposition of restrictions  
on, smoking in places of employment covered by subchapter III or  
in transportation or places of public accommodation covered by  
subchapter V.

30 2. Insurance. Subchapters III and V of this Act may not be  
32 construed to prohibit or restrict, with regard to individuals  
with disabilities:

34 A. An insurer, hospital, medical service company, health  
36 maintenance organization or any agent or entity that  
38 administers benefit plans or similar organizations from  
underwriting risks, classifying risks or administering risks  
that are based on or not inconsistent with state law;

40 B. A person or organization covered by this Act from  
42 establishing, sponsoring, observing or administering the  
44 terms of a bona fide benefit plan that are based on  
underwriting risks, classifying risks or administering risks  
that are based on or not inconsistent with state law; or

46 C. A person or organization covered by this Act from  
48 establishing, sponsoring, observing or administering the  
terms of a bona fide employee benefit plan that is not  
50 subject to state laws that regulate insurance.

R 45

2 Paragraphs A, B and C may not be used as a subterfuge to evade  
3 the requirements of subchapters III and V.

4  
5 3. Accommodations and services. Nothing in this Act may be  
6 construed to require an individual with a disability to accept an  
7 accommodation, aid, service, opportunity or benefit that the  
8 individual chooses not to accept.

10 **Sec. 10. 5 MRSA §4555** is enacted to read:

12 **§4555. Application**

14 This Act does not apply to the issuance, denial, suspension,  
15 revocation or restriction of driver's licenses by the Secretary  
16 of State until April 1, 1996.

18 **Sec. 11. 5 MRSA §4566-A** is enacted to read:

20 **§4566-A. Certification and conformity with rules**

22 1. Certification of state law. The commission shall take  
23 all steps required under 29 Code of Federal Regulations, Part 36,  
24 Subpart F to request federal certification that the State's laws  
25 concerning accessibility and usability of places of public  
26 accommodation meet or exceed the minimum requirements of the  
27 federal Americans with Disabilities Act of 1990. These steps  
28 include issuing public notice of an intent to file, conducting a  
29 public hearing on record and preparing and filing with the United  
30 States Department of Justice the request for certification. If  
31 the commission determines that no significant portion of the law  
32 is certifiable, the commission may cease its attempts to obtain  
33 certification and shall report its determinations to the joint  
34 standing committee of the Legislature having jurisdiction over  
35 judiciary matters. The report must include recommendations on  
36 changes to the law as necessary to achieve certification of a  
37 significant portion of the law.

38  
39 2. Conformity of rules relating to special use areas. The  
40 commission shall amend its rules relating to accessibility of  
41 places of public accommodation to include standards contained in  
42 the regulations adopted pursuant to Titles I, II, and III of the  
43 Americans with Disabilities Act of 1990 and the federal Americans  
44 with Disabilities Act of 1990 Accessibility Guidelines, 29 Code  
45 of Federal Regulations, Part 36, Subpart F, relating to  
46 restaurants and cafeterias, medical care facilities, business and  
47 mercantile establishments, libraries, accessible transient  
48 lodging and other places of public accommodation, but only to the  
49 extent that those standards provide greater accessibility than  
50 any comparable standards contained in current state law or rules.

R. 2/8

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

Sec. 12. 5 MRSA §4572, sub-§1, ¶D, as amended by PL 1991, c. 885, Pt. E, §7 and affected by §47, is further amended to read:

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

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

(2) Make or keep a record of race or color, sex, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter V-B, except under physical or mental disability when an employer requires a physical or mental examination prior to employment, a privileged record of that examination is permissible if made and kept in compliance with this Act;

(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 disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter V-B, ~~except under physical or mental disability when it can be determined by the employer that the job or jobs to be filled require that information for the well-being and safety of the individual.~~ This section does not prohibit any officially recognized government agency from keeping necessary records permitted to be kept under this Act in order to provide free services to individuals requiring requesting rehabilitation or employment assistance;

R & S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

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

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

24 **Sec. 13. 5 MRSA §4572, sub-§2 is enacted to read:**

26 **2. Unlawful discrimination against qualified individual**  
28 **with a disability.** A covered entity may not discriminate against  
30 a qualified individual with a disability because of the  
32 disability of the individual in regard to job application  
34 procedures, the hiring, advancement or discharge of employees,  
36 employee compensation, job training and other terms, conditions  
38 and privileges of employment. A qualified individual with a  
disability, by reason of that disability, may not be excluded  
from participation in or be denied the benefits of the services,  
programs or activities of a public covered entity, or be  
subjected to discrimination by any such covered entity relating  
to job application procedures, the hiring, advancement or  
discharge of employees, employee compensation, job training and  
other terms, conditions and privileges of employment.

40 A. The prohibition of this subsection against  
42 discrimination includes medical examinations and inquiries.

44 B. Except as provided in paragraph C, a covered entity may  
46 not conduct a medical examination or make inquiries of a job  
48 applicant as to whether the applicant is an individual with  
a disability or as to the nature or severity of the  
disability. A covered entity may make preemployment  
inquiries into the ability of an applicant to perform  
job-related functions.

50

R.S.

2 C. A covered entity may require a medical examination after  
4 an offer of employment has been made to a job applicant and  
6 prior to the commencement of the employment duties of the  
8 applicant and may condition an offer of employment on the  
10 results of the examination, if:

12 (1) All entering employees are subjected to the same  
14 examination regardless of disability;

16 (2) Information obtained regarding the medical  
18 condition or history of the applicant is collected and  
20 maintained on separate forms and in separate medical  
22 files and is treated as a confidential medical record,  
24 except that:

26 (a) Supervisors and managers may be informed  
28 regarding necessary restrictions on the work or  
30 duties of the employee and necessary  
32 accommodations;

34 (b) First aid and safety personnel may be  
36 informed, when appropriate, if the disability  
38 might require emergency treatment; and

40 (c) Government officials investigating compliance  
42 with this Act are provided relevant information on  
44 request; and

46 (3) The results of the examination are used only in  
48 accordance with this Act.

D. A covered entity may not require a medical examination  
and may not make inquiries of an employee as to whether the  
employee is an individual with a disability or as to the  
nature or severity of the disability, unless the examination  
or inquiry is shown to be job-related and consistent with  
business necessity.

E. A covered entity may conduct voluntary medical  
examinations, including voluntary medical histories, that  
are part of an employee health program available to  
employees at that work site. A covered entity may make  
inquiries into the ability of an employee to perform  
job-related functions. Information obtained under this  
paragraph regarding the medical condition or history of an  
employee is subject to the requirements of paragraph C,  
subparagraphs (2) and (3).

2013

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

F. For purposes of this subsection, a test to determine the illegal use of drugs may not be considered a medical examination.

(1) A covered entity:

(a) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) May require that employees may not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(c) May require that employees behave in conformance with the requirements established under the federal Drug-free Workplace Act of 1988, 41 United States Code, Section 701 et seq.; and

(d) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which that entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee; provided that an employer shall make reasonable accommodation to an alcoholic or drug user who is seeking treatment or has successfully completed treatment.

**Sec. 14. 5 MRSA §4572-A, sub-§4**, as enacted by PL 1979, c. 79, is amended to read:

**4. Employer not responsible for additional benefits.**

Nothing in this section shall may be construed to mean that an employer, employment agency or labor organization is required to provide sick leave, a leave of absence, medical benefits or other benefits to a woman because of pregnancy or other medical conditions which that result from pregnancy, if this the employer, employment agency or labor organization does not also provide sick leaves, leaves of absence, medical benefits or other benefits for his the employer's other employees and is not otherwise required to provide those leaves or benefits under other state or federal laws.

**Sec. 15. 5 MRSA §4573, sub-§1-A, ¶B**, as amended by PL 1991, c. 99, §8, is further amended to read:

B. Observe the terms of any bona fide employee benefit plan such as a retirement, pension or insurance plan which that does not evade or circumvent the purposes of this chapter

RMS

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

and which that complies with the Federal Age Discrimination in Employment Act, 29 United States Code, Section 621, as amended and the federal Americans with Disabilities Act, 42 United States Code, Section 12101, et seq., and federal administrative interpretations provided that:

(1) No employee benefit plan requires or permits any employer to refuse or fail to hire an applicant for employment, including those exempted from the Age Discrimination in Employment Act, 29 United States Code, Section 621, as amended, because of the age of the individual; and

(2) No employee benefit plan requires or permits the denial or termination of employment of any individual including those exempted from the Age Discrimination in Employment Act, 29 United States Code, Section 621, as amended, because of the age of the individual or after completion of a specified number of years of service.

**Sec. 16. 5 MRSA §4573, sub-§2,** as amended by PL 1991, c. 99, §9, is further amended to read:

**2. Records.** After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying them, provided the record is intended and used in good faith solely for identification, and not for the purpose of discrimination in violation of this Act. Records of features regarding physical or mental disability that are collected must be collected and maintained on separate forms and in separate files and be treated as confidential records;

**Sec. 17. 5 MRSA §4573, sub-§3,** as amended by PL 1991, c. 99, §10, is further amended to read:

**3. Required records.** To record any data required by law, or by the rules and regulations of any state or federal agency, provided the records are recorded and kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this Act; ~~and~~

**Sec. 18. 5 MRSA §4573, sub-§4,** as amended by PL 1991, c. 484, §3, is repealed.

**Sec. 19. 5 MRSA §4573, sub-§5,** as enacted by PL 1991, c. 484, §4, is amended to read:

**5. Federal Indian policy.** Nothing in this Act may be construed to prohibit any employment policy or action that is

R 21 S

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

permitted under 42 United States Code, Section 2000e-2(i) (1982) of the federal Equal Employment Opportunity Act governing employment of Indians; and

Sec. 20. 5 MRSA §4573, sub-§6 is enacted to read:

6. Infectious and communicable diseases. Assignment of individuals with an infectious or communicable disease is governed by the following.

A. In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the United States Secretary of Health and Human Services under the federal Americans with Disabilities Act, Title I, Section 103(d)(1), and which can not be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign the individual a job involving food handling.

B. Nothing in this Act may be construed to preempt, modify or amend any state, county or local law, ordinance, rule or regulation applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which can not be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the United States Secretary of Health and Human Services.

Sec. 21. 5 MRSA §4573-A is enacted to read:

§4573-A. Defenses

1. General provisions. It is a defense to a charge of discrimination under this subchapter that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance can not be accomplished by reasonable accommodation, as required by this subchapter.

2. Religious entities. This subchapter does not prohibit a religious corporation, association, educational institution or society from giving preference in employment to individuals of its same religion to perform work connected with the carrying on by the corporation, association, educational institution or society of its activities. Under this subchapter, a religious



RWS

2 organization may require that all applicants and employees  
3 conform to the religious tenets of that organization.

4 **Sec. 22. 5 MRSA §4592, sub-§§1 and 2**, as amended by PL 1991, c.  
5 99, §22, are further amended to read:

6  
7 **1. Denial of public accommodations.** For any public  
8 accommodation or any person who is the owner, lessor, lessee,  
9 proprietor, operator, manager, superintendent, agent or employee  
10 of any place of public accommodation to directly or indirectly  
11 refuse, discriminate against or in any manner withhold from or  
12 deny the full and equal enjoyment to any person, on account of  
13 race or color, sex, physical or mental disability, religion,  
14 ancestry or national origin, any of the accommodations,  
15 advantages, facilities, goods, services or privileges of public  
16 accommodation, or in any manner discriminate against any person  
17 in the price, terms or conditions upon which access to  
18 accommodation, advantages, facilities, goods, services and  
19 privileges may depend.

20  
21 For purposes of this subsection, unlawful discrimination also  
22 includes, but is not limited to:

23  
24 A. The imposition or application of eligibility criteria  
25 that screen out or tend to screen out an individual with a  
26 disability or any class of individuals with disabilities  
27 from fully and equally enjoying any goods, services,  
28 facilities, privileges, advantages or accommodations, unless  
29 the criteria can be shown to be necessary for the provision  
30 of the goods, services, facilities, privileges, advantages  
31 or accommodations being offered;

32  
33 B. A failure to make reasonable modifications in policies,  
34 practices or procedures, when modifications are necessary to  
35 afford the goods, services, facilities, privileges,  
36 advantages or accommodations to individuals with  
37 disabilities, unless, in the case of a private entity, the  
38 private entity can demonstrate that making the modifications  
39 would fundamentally alter the nature of the goods, services,  
40 facilities, privileges, advantages or accommodations;

41  
42 C. A failure to take steps that may be necessary to ensure  
43 that no individual with a disability is excluded, denied  
44 services, segregated or otherwise treated differently than  
45 other individuals because of the absence of auxiliary aids  
46 and services, unless, in the case of a private entity, the  
47 private entity can demonstrate that taking those steps would  
48 fundamentally alter the nature of the good, service,  
49 facility, privilege, advantage or accommodation being  
50 offered or would result in an undue burden;

R. 4. 8.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2 D. A private entity's failure to remove architectural  
4 barriers and communication barriers that are structural in  
6 nature in existing facilities and transportation barriers in  
8 existing vehicles and rail passenger cars used by an  
10 establishment for transporting individuals, not including  
barriers that can be removed only through the retrofitting  
of vehicles or rail passenger cars by the installation of a  
hydraulic or other lift, where the removal is readily  
achievable;

12 When the entity can demonstrate that the removal of a  
14 barrier under this paragraph is not readily achievable, a  
16 failure to make the goods, services, facilities, privileges,  
advantages or accommodations available through alternative  
methods if alternative methods are readily achievable; and

18 E. A qualified individual with a disability, by reason of  
20 that disability, being excluded from participation in or  
22 being denied the benefits of the services, programs or  
activities of a public entity, or being subjected to  
discrimination by any such entity;

24 **2. Communication, notice or advertisement.** For any person  
26 to directly or indirectly publish, display or communicate any  
28 notice or advertisement to the effect that any of the  
30 accommodations, advantages, facilities and privileges of any  
32 place of public accommodation are refused, withheld from or  
34 denied to any person on account of race or color, sex, physical  
36 or mental disability, religion, ancestry or national origin, or  
38 that the patronage or custom of any person belonging to or  
40 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

42 **Sec. 23. 5 MRSA §4592, sub-§3, ¶¶B and C,** as enacted by PL  
44 1989, c. 301, are amended to read:

46 B. That contains no more than 8 5 rooms available to be let  
to lodgers; and

48 C. In which the owner resides on the premises.;

50 **Sec. 24. 5 MRSA §4592, sub-§§4 to 6** are enacted to read:

R 418

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

**4. Participation.** For a covered entity:

A. To subject an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations of that entity;

B. To afford an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage or accommodation in a manner that is not equal to that afforded to other individuals; and

C. To provide an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, with a good, service, facility, privilege, advantage or accommodation that is different or separate from that provided to other individuals, unless this action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage or accommodation or other opportunity that is as effective as that provided to others.

For purposes of this subsection, the term "individual" or "class of individuals" refers to the clients or customers of the covered public accommodation that enters into a contractual, licensing or other arrangement;

**5. Integrated setting; programs or activities not separate or different.** For a covered entity to not afford goods, services, facilities, privileges, advantages and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability may not be denied the opportunity to participate in programs or activities that are not separate or different;

**6. Association.** For a covered entity to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an

individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association; and

**7. Administrative methods.** For an individual or an entity, directly or through contractual or other arrangements, to utilize standards or criteria or methods of administration:

A. That have the effect of discrimination on the basis of disability; or

B. That perpetuate the discrimination of others who are subject to common administrative control.

**Sec. 25. 5 MRSA §4593, sub-§§1 and 2,** as amended by PL 1991, c. 99, §23, are further amended to read:

**1. Public accommodations.** ~~Nothing in section 4591 or 4592 related to equal access to public accommodations or indirectly denying access to persons with physical disability applies to existing structures, structures under construction or proposed construction submitted for bid before September 1, 1974.~~ For any building or facility constructed specifically as a place of public accommodation on or after September 1, 1974, but before January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceeds ~~exceed~~ \$250,000 and the remodeling or enlarging is begun before January 1, 1982, the following standards of construction must be met.

A. There must be at least one public walk not less than 40 inches wide with a slope not greater than one foot rise in 12 feet leading directly to a primary entrance. However, after April 1, 1977, the public walk must be not less than 48 inches wide.

B. There must be a door at the primary entrance with a clear opening of not less than 32 inches and operable by a single effort. If doors at a primary entrance are in a series, they must have a space between them of not less than 84 inches measured from their closed positions; and each must open in the same direction so that swings do not conflict.

C. Rest room facilities must have at least one stall that is not less than 4 feet wide, 5 feet in depth, a 32-inch wide door that swings out or slides, handrails on each side mounted 33 inches from the floor, and a water closet with a seat 20 inches high.

RWS

2 D. Doors that are not intended for normal use, and that are  
dangerous if a blind person were to enter or exit by them,  
4 must be made identifiable to touch by knurling the handle or  
knob.

6 E. There must be parking spaces designated for persons with  
physical disability set aside in adequate number and clearly  
8 marked for use only by the disabled. Set aside in adequate  
number means that, for every 25 parking spaces made  
10 available to the public on a public or private parking lot,  
at least one of those spaces must be made available in an  
12 appropriate location for parking exclusively used by persons  
with physical disability.

14 In any building designed and constructed specifically for public  
16 accommodations, the bathroom facilities and all accompanying  
fixtures must be arranged to permit access and use by a person in  
18 a wheelchair in at least 1% of the living units. The units must  
be constructed on ground level and must comply with paragraph C.

20 ~~2. Places of employment. Existing places of employment or  
22 structures to be used for this purpose currently under  
construction or where proposed construction has been submitted  
24 for bid before September 1, 1974, are exempt from the  
26 requirements of this chapter as they relate to accessibility for  
persons with physical disability. For any building or facility  
28 constructed specifically as a place of employment on or after  
September 1, 1974, but before January 1, 1982, or when the  
30 estimated total costs for remodeling or enlarging an existing  
building exceeds \$100,000, and the remodeling or enlarging is  
32 begun before January 1, 1982, the public accommodation provisions  
relating to walks, entries, restroom facilities and doors apply.~~

34 **Sec. 26. 5 MRSA §4594-E**, as corrected by RR 1993, c. 2, §4,  
is repealed.

36 **Sec. 27. 5 MRSA §4594-F** is enacted to read:

38 **§4594-F. Access to places of public accommodation and commercial**  
40 **facilities; standards**

42 **1. Definitions.** As used in this section, unless the  
context otherwise indicates, the following terms have the  
44 following meanings.

46 **A. "Alteration"** means a change to a place of public  
accommodation or a commercial facility that affects or could  
48 affect the usability of the building or facility or any part  
of the building or facility, including, but not limited to,  
50 reconstruction, remodeling, rehabilitation, historic

R of S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

- 2 restoration, changes or rearrangement in structural parts or  
3 elements and changes or rearrangement in the plan  
4 configuration of walls and full-height partitions.
- 6 B. "Builder" means the applicant for a building permit in a  
7 municipality that requires such permits or the owner of a  
8 property in a municipality that does not require building  
9 permits.
- 12 C. "Design professional" means an architect or professional  
13 engineer registered to practice under Title 32.
- 16 D. "Facility" means all or any portion of buildings,  
17 structures, sites, complexes, equipment, rolling stock or  
18 other conveyances, roads, walks, passageways, parking lots  
19 or other real or personal property, including the site where  
20 the building, property, structure or equipment is located.
- 22 E. "Historic preservation programs" means programs  
23 conducted by a public or private entity that have  
24 preservation of historic properties as a primary purpose.
- 26 F. "Historic properties" means those properties that are  
27 listed or eligible for listing in the National Register of  
28 Historic Places or the State of Maine Register of Historic  
29 Places.
- 32 G. "Maximum extent feasible" applies to the occasional case  
33 when the nature of an existing facility makes it virtually  
34 impossible to comply fully with applicable accessibility  
35 standards through a planned alteration. In these  
36 circumstances, the alteration must provide the maximum  
37 physical accessibility feasible. Any altered features of  
38 the facility that can be made accessible must be made  
39 accessible. If providing accessibility in conformance with  
40 this section to individuals with certain disabilities would  
41 not be feasible, the facility must be made accessible to  
42 persons with other types of disabilities.
- 44 H. "New construction" includes, but is not limited to, the  
45 design and construction of facilities for first occupancy  
46 after January 1, 1996 or an alteration affecting at least  
47 80% of the space of the internal structure of facilities  
48 after January 1, 1996.
- 50 I. "Readily achievable" means easily accomplishable and  
able to be carried out without much difficulty or expense.  
In determining whether an action is readily achievable,  
factors to be considered include:

R 4/9

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

- 2           (1) The nature and cost of the action needed under this subchapter;
- 4           (2) The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or other impacts of the action on the operation of the facility;
- 6           (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees and the number, type and location of its facilities; and
- 8           (4) The type of operation or operations of the covered entity, including the composition, structure and functions of the entity's work force, the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity.

22           J. "Standards of construction" means the standards set forth in the federal Americans with Disabilities Act Accessibility Guidelines, "ADAAG," standards. The ADAAG standards of construction replace ANSI standards and provide the architectural standards of construction.

28           2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation or place of employment on or after January 1, 1996 or to any alterations of an existing place of public accommodation or place of employment when the alteration is begun after January 1, 1996.

34           3. Application. Facilities subject to this section must meet the following standards.

38           A. Places of employment or public accommodation and additions to those places constructed on or after January 1, 1996, must meet the standards of construction, including, but not limited to, the 5 parts of construction in paragraph B, subparagraph (2).

44           B. Alterations are governed by the following.

- 46           (1) Any alteration to a place of public accommodation, commercial facility or place of employment on or after January 1, 1996 must be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by

# COMMITTEE AMENDMENT

REVISED

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2 individuals with disabilities, including individuals  
3 who use wheelchairs. If existing elements, spaces or  
4 common areas are altered, then each altered element,  
5 space or area must comply with the applicable  
6 provisions of the standards of construction.

8 (2) This subparagraph applies to only buildings  
9 remodeled or renovated or to any alterations if the  
10 estimated total costs for remodeling or renovating or  
11 for alterations to an existing building exceed \$100,000.

12 (a) Except for repairs undertaken in accordance  
13 with the rules adopted pursuant to subsection 4,  
14 when the proposed alteration substantially affects  
15 that portion of the building normally accessible  
16 to the public, a place of employment or public  
17 accommodation altered on or after January 1, 1996  
18 must meet the following 5 parts of the standards  
19 of construction or as otherwise indicated:

20 (i) 4.3 accessible routes;

22 (ii) 4.13 doors;

24 (iii) Tactile warnings on doors to hazardous  
25 areas. Doors that lead to areas that might  
26 prove dangerous to a blind person, for  
27 example, doors to loading platforms, boiler  
28 rooms, stages and the like, must be made  
29 identifiable to the touch by a textured  
30 surface on the door handle, knob, pull or  
31 other operating hardware. This textured  
32 surface may be made by knurling or roughening  
33 or by a material applied to the contact  
34 surface. Textured surfaces may not be  
35 provided for emergency exit doors or any  
36 doors other than those to hazardous areas;

38 (iv) Parking spaces for use by persons with  
39 physical disabilities pursuant to 4.1.2 of  
40 the standards of construction; and

42 (v) 4.17 toilet stalls, at least one of  
43 which must be a standard toilet stall  
44 configuration pursuant to ADAAG figure  
45 30(a). Any additional toilet stalls within  
46 the same toilet room may be either standard  
47 stall configuration, ADAAG figure 30(a) or  
48 alternate stall configuration ADAAG figure  
49 30(b).



19 of 19

2                   (b) In addition to the 5 parts of the standards  
4                   of construction specified in division (a), each of  
6                   which must be met regardless of the cost of the 5  
8                   parts of the standards, when the entity is  
10                   undertaking an alteration that affects or could  
12                   affect usability of or access to an area of the  
14                   facility containing a primary function, the entity  
16                   shall also make the alterations in such a manner  
18                   that, to the maximum extent feasible, the path of  
20                   travel to the altered area and the bathrooms,  
                    telephones and drinking fountains serving the  
                    altered area are readily accessible to and usable  
                    by individuals with disabilities where such  
                    alterations to the path of travel or the  
                    bathrooms, telephones and drinking fountains  
                    serving the altered area to the extent that the  
                    costs to provide an accessible path of travel do  
                    not exceed 20% of the cost of the alteration to  
                    the primary function area.

22                   If the cost to provide an accessible path of  
24                   travel to the altered area exceeds 20% of the  
26                   costs of the alteration to the primary function  
28                   area, the path of travel must be made accessible  
                    to the extent that it can be made accessible  
                    without incurring disproportionate costs.

30                   In determining whether the 20% cost figure has  
32                   been met, the following analysis must be used.  
34                   The analysis must include an evaluation of whether  
36                   the following elements of access have been  
                    provided, using the following order of priority,  
                    before costing 20%, regardless of other elements  
                    of access that may have been provided which may  
                    affect the path of travel:

- 38                   (i) An accessible entrance;
- 40                   (ii) An accessible route to the altered area;
- 42                   (iii) At least one accessible restroom for  
44                   each sex or a single unisex restroom;
- 46                   (iv) Accessible telephones;
- 48                   (v) Accessible drinking fountains; and
- 50                   (vi) When possible, additional accessible  
                    elements such as parking, storage and alarms.

R 4/3

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(3) This subparagraph applies to only buildings remodeled or renovated or to any alterations if the estimated total costs for remodeling or renovating or for alterations to an existing building do not exceed \$100,000. When the entity is undertaking an alteration that affects or could affect usability or access to an area of the facility containing a primary function, the entity shall make the alterations in a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, where the alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope.

C. This subsection may not be construed to require the installation of an elevator for a facility that is less than 3 stories in height or has less than 3,000 square feet per story unless the facility is a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot or other station used for specified public transportation or an airport passenger terminal or a facility covered by Title II of the Americans With Disabilities Act or unless the United States Attorney General determines that a particular category of facility requires the installation of elevators based on the usage of the facility.

4. Curb ramps. Curb ramps or other slopes are required in the following situations.

A. Newly constructed or altered streets, roads and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway.

B. Newly constructed or altered street-level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads or highways.

A 4 3

2 5. Rules. The commission shall adopt, alter and amend  
3 rules designed to make facilities under this section accessible  
4 to, functional for and safe for use by persons with physical or  
5 mental disabilities in accordance with subsections 3 and 4 and  
6 shall adopt, alter and amend rules designed to enforce this  
7 section. The commission may repeal only those rules contrary to  
8 this chapter. The commission shall also adopt rules concerning  
9 procedures and requirements for alterations that will threaten or  
10 destroy the historic significance of qualified historic buildings  
11 and facilities as defined in 4.1.7(1) and (2) of the Uniform  
12 Federal Accessibility Standards, maintaining, at a minimum, the  
13 procedures and requirements established in 4.1.7(1) and (2) of  
14 the Uniform Federal Accessibility Standards.

15 6. Certification; inspection. The builder of a facility to  
16 which this section applies must obtain a certification from a  
17 design professional that the plans meet the standards of  
18 construction required by this section if the costs of the  
19 construction or alterations are at least \$50,000. The builder  
20 shall provide the certification to the Office of the State Fire  
21 Marshal with the plans of the facility. The builder shall also  
22 provide the certification to the municipality where the facility  
23 exists or will be built.

24 7. Training, education and assistance. The commission and  
25 the Office of the State Fire Marshal, with input from  
26 organizations representing individuals with disabilities, shall  
27 develop, as necessary, information packets, lectures, seminars  
28 and educational forums on barrier-free design for the purpose of  
29 increasing the awareness and knowledge of owners, architects,  
30 design professionals, code enforcers, building contractors,  
31 individuals with disabilities and other interested parties.

32 8. Mandatory plan review; certification; inspection.  
33 Builders of newly constructed public buildings shall submit plans  
34 to the Office of the State Fire Marshal to ensure that the plans  
35 meet the standards of construction required by subsections 3 and  
36 4.

37 A. For purposes of this subsection, "public building" means  
38 any building or structure constructed, operated or  
39 maintained for use by the general public, including, but not  
40 limited to, all building or portions of buildings used for:

- 41 (1) State, municipal or county purposes;
- 42 (2) Education;
- 43 (3) Health care;
- 44 (4) Public assembly;

A of 9

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50  
52

(5) A hotel, motel or inn;

(6) A restaurant;

(7) Business occupancy; or

(8) Mercantile establishments occupying more than 3000 square feet.

B. The municipal authority having jurisdiction to issue building permits may not issue a building permit unless the Office of the State Fire Marshal approves the plans and certifies that the public building covered by this subsection meets the standards of construction required by this section. If, however, no decision is rendered within 2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the building permit request directly to the municipality with an attestation from the design professional that the plans meet the standards of construction.

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

9. Voluntary plan review. Builders of facilities not governed by subsection 8 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsections 3 and 4.

10. Waivers; variance. Builders of facilities governed by subsection 8 that are private entities, when the facilities are not to be owned or operated by, or leased to or by, a public entity, may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If a representative of the Office of the State Fire Marshal determines, in cases covered by mandatory plan review pursuant to subsection 8, that compliance with this section and its rules is structurally impracticable, 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 the variance or waiver to justify its allowance.

R.G.S.

2 11. Appeals relating to mandatory plan reviews. Decisions  
3 of the State Fire Marshal on requests for waivers or variances in  
4 cases covered by mandatory plan review under subsection 8 are  
5 subject to review in Superior Court upon petition of the  
6 aggrieved party within 30 days after the issuance of the decision  
7 for which review is sought. The court may enter an order  
8 enforcing, modifying or setting aside the decision of the State  
9 Fire Marshal, or it may remand the proceeding to the State Fire  
10 Marshal for further action as the court may direct.

11 12. Fees. The Office of the State Fire Marshal shall  
12 establish fees for reviews, waivers or variances under this  
13 section. The Office of the State Fire Marshal shall pay all fees  
14 to the Treasurer of State to be used to carry out this chapter.  
15 Any balance of these fees does not lapse but is carried forward  
16 as a continuing account to be expended for the same purposes in  
17 the following fiscal years.

18 **Sec. 28. 5 MRSA §4611**, as enacted by PL 1977, c. 259, §2, is  
19 amended to read:

20 **§4611. Complaint**

21 Any person who believes he that the person has been subject  
22 to unlawful discrimination, or any employee of the commission,  
23 may file a complaint under oath with the commission stating the  
24 facts concerning the alleged discrimination, provided that such  
25 complaints shall must be filed with the commission not more than  
26 6 months after the alleged act of unlawful discrimination. In  
27 addition, any person may file a complaint pursuant to section  
28 4632.

29 **Sec. 29. 5 MRSA §4613, sub-§2, ¶D** is enacted to read:

30 D. The obtaining of an approval of a plan certified by the  
31 Office of the State Fire Marshal under section 4594-F,  
32 subsection 8 or 9 is rebuttable evidence that the plan does  
33 meet or exceed the minimum requirements of section 4594-F,  
34 subsection 8 or 9.

35 **Sec. 30. 5 MRSA §4622, sub-§1**, as amended by PL 1993, c. 327,  
36 §§3 and 4, is further amended to read:

37 **1. Limitation.** No attorneys' fees under section 4614 and no  
38 civil penal damages under section 4613 may be awarded to a  
39 plaintiff in a civil action under this Act unless the plaintiff  
40 alleges and establishes that, prior to the filing of the civil  
41 action, the plaintiff first filed a complaint with the commission  
42 and the commission either:

R & S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2 A. Dismissed the case under section 4612, subsection 2;

4 B. Failed, within 90 days after finding reasonable grounds  
6 to believe that unlawful discrimination occurred, to enter  
8 into a conciliation agreement to which the plaintiff was a  
10 party; or

12 C. Issued a right-to-sue letter under section 4612,  
14 subsection 6 and the action was brought by the aggrieved  
16 person not more than 2 years after the act of unlawful  
18 discrimination of which the complaint was made as provided  
20 in section 4613, subsection 2, paragraph C.

22 This subsection does not apply to or limit any remedies for civil  
24 actions filed under subchapter V if one or more additional causes  
26 of action are alleged in the same civil action that do not  
28 require exhaustion of administrative remedies.

30 **Sec. 31. Resolve 1993, c. 73, §1, sub-§§2 and 3** are amended to read:

32 2. Recommend changes in state laws and rules needed to  
34 ensure that compliance with state law will meet at least the  
36 minimum requirements of federal law, so that state law can be  
38 certified by the United States Department of Justice as complying  
40 with the federal Americans with Disabilities Act of 1990 and, in  
42 part, so that, with respect to standards of construction relating  
44 to access for people with disabilities, businesses may have a  
46 more efficient and cost-effective process and a "one-stop  
shopping" location at the Office of State Fire Marshal for review  
and approval of construction plans with respect to both state and  
federal access laws; and

3. Plan for implementation, including development of  
resources and financing, to meet the needs of people with  
disabilities and the needs of businesses and others required to  
comply with the laws pertaining to access for persons with  
disabilities; ~~and-be-it-further~~

38 **Sec. 32. Resolve 1993, c. 73, §1, sub-§§4 and 5** are enacted to read:

40 4. Study and propose legislation concerning providing  
42 vertical access through elevators or other effective means,  
44 taking into account federal requirements, current state  
46 requirements and requirements under state law in effect June 1,  
1995; and

H. of S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

5. Study the issuance, denial, suspension, revocation and restriction of driver's licenses by the Secretary of State, taking into account federal requirements; and be it further

**Sec. 33. Resolve 1993, c. 73, §2, first ¶** is amended to read:

**Sec. 2. Initial appointment. Resolved:** That the commission consists of 17 members appointed in the following manner:

**Sec. 34. Resolve 1993, c. 73, §2-A** is enacted to read:

**Sec. 2-A. Additional appointment. Resolved:** That 2 additional members are appointed after June 1, 1995 in the following manner:

1. One member from an organization representing municipalities, appointed by the Governor; and

2. The Secretary of State or the Secretary of State's designee.

The additional appointments must be made within 10 days of the effective date of this section; and be it further

**Sec. 35. Resolve 1993, c. 73, §7** is amended to read:

**Sec. 7. Report. Resolved:** That the commission shall present its interim findings and any recommended legislation to the joint standing committee of the Legislature having jurisdiction over judiciary matters, the Chair of the Legislative Council and the Executive Director of the Legislative Council by February 1, 1995. The commission shall present final findings and recommendations to the Second Regular Session of the 117th Legislature and the joint standing committee of the Legislature having jurisdiction over judiciary matters by January 15, 1996; and be it further

**Sec. 36. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1995-96                      1996-97

**PUBLIC SAFETY,  
DEPARTMENT OF**

**Office of the State  
Fire Marshal**

R. W. S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2	Positions - Other Count	(4.0)	(4.0)
	Personal Services	\$113,757	\$155,188
	All Other	35,565	36,000
4	Capital Expenditures	63,600	

6 Allocates funds for 4  
 8 additional Fire Protection  
 Specialist Assistant  
 10 positions and general  
 12 operating expenses to handle  
 to additional mandatory plan  
 reviews.

14 **DEPARTMENT OF PUBLIC  
 SAFETY**

16	<b>TOTAL</b>	<u>\$212,922</u>	<u>\$191,188</u>
----	--------------	------------------	------------------

18 **Sec. 37. Retroactivity.** That section of this Act that amends  
 20 Resolve 1993, chapter 73, section 7 applies retroactively to  
 February 1, 1995.'

22 Further amend the bill by inserting at the end before the  
 24 statement of fact the following:

26 **FISCAL NOTE**

28		<b>1995-96</b>	<b>1996-97</b>
----	--	----------------	----------------

30 **APPROPRIATIONS/ALLOCATIONS**

32	Other Funds	\$212,922	\$191,188
----	-------------	-----------	-----------

34 **REVENUES**

36	Other Funds	\$220,000	\$250,000
----	-------------	-----------	-----------

38 The Office of the State Fire Marshal within the Department  
 40 of Public Safety will require additional Other Special Revenue  
 42 allocations of \$212,922 and \$191,188 in fiscal years 1995-96 and  
 1996-97, respectively, for 4 additional Fire Protection  
 Specialist Assistant positions and general operating expenses to  
 handle the additional mandatory plan reviews.

44 The fee collected from the plan review process will increase  
 46 dedicated revenue to the Office of the State Fire Marshal within  
 the Department of Public Safety by approximately \$220,000 and  
 48 \$250,000 in fiscal years 1995-96 and 1996-97, respectively.

50 The Bureau of Motor Vehicles within the Department of the

**COMMITTEE AMENDMENT**



A.S.

2 Secretary of State will incur some minor additional costs to  
participate as a member on the People with Disabilities Access  
4 Commission. These costs can be absorbed within the bureau's  
existing budgeted resources.

6 This bill may increase the number of civil suits filed in  
the court system. The additional workload and administrative  
8 costs associated with the minimal number of new cases filed can  
be absorbed within the budgeted resources of the Judicial  
10 Department. The collection of additional filing fees may also  
increase General Fund revenue by minor amounts.

12 The net effect of this bill on the number of cases filed  
14 with the Maine Human Rights Commission is insignificant.'

16 **STATEMENT OF FACT**

18 The intent of this bill as amended is to harmonize the  
20 provisions of the federal Americans with Disabilities Act with  
those of the preexisting Maine Human Rights Act by adopting  
22 whichever provisions of either law provide more access for people  
with disabilities without otherwise creating or imposing new  
24 standards. The exception is in the case of elevators in which  
the Americans with Disabilities Act version, adopted in this  
26 amendment, provides less access because it does not require  
elevators for buildings under 3 stories while current Maine law  
28 does.

30 This amendment makes the following changes to the bill.

32 1. It deletes the separate definition of  
"disability-related discrimination" in section 2 of the bill  
34 because it is inaccurate. Disability-related discrimination  
relates to a person with physical or mental disability, as  
36 defined in section 6 of the bill. It covers people who have a  
physical or mental disability, people who have a record of a  
38 physical or mental disability and people who are regarded as  
having a physical or mental disability.

40 2. It amends the definition of "employee" to include  
42 individuals employed by their families for the purpose of  
disability-related discrimination.

44 3. It corrects format to make clear that "qualified  
46 individual with a disability" applies to public accommodations  
with regard to public entities only and to employment in all  
48 situations.

A. 9. S.

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

- 2 4. It adds a section on construction of the Maine Human  
Rights Act. It allows insurance practices with the Maine  
Insurance Code and the federal Employee Retirement Income  
4 Security Act.
- 6 5. It provides that the Maine Human Rights Act does not  
apply to the issuance, denial, suspension, revocation or  
8 restriction of driver's licenses by the Secretary of State until  
April 1, 1996.
- 10 6. It clarifies that the Maine Human Rights Commission must  
12 adopt rules to include the federal standards for the  
"fundamental-alteration" defense, thus making that defense to a  
14 claim of discrimination available to municipal, county and state  
governments.
- 16 7. It corrects a reference to "covered entities."
- 18 8. It corrects internal references concerning medical exam  
20 requirements.
- 22 9. It corrects citations to federal statutes and  
regulations.
- 24 10. It provides that an employer may raise as a defense to  
26 accusations of discrimination that qualification standards, tests  
or selection criteria were job-related and consistent with  
28 business necessity and that a reasonable accommodation would not  
be sufficient.
- 30 11. It clarifies that a covered entity may not subject an  
32 individual or a class, on the basis of disability, to a denial of  
the opportunity to participate in or benefit from the goods,  
34 services, facilities, privileges, advantages or accommodations of  
the entity.
- 36 12. It clarifies wording and corrects format.
- 38 13. It clarifies that specific alterations, not repairs,  
40 must meet certain construction and accessibility standards.
- 42 14. It changes the requirement for vertical access in  
current law. An elevator is not required under this amendment if  
44 the facility is under 3 stories or has less than 3,000 square  
feet on each story. Elevators are required under this amendment  
46 for 2-story shopping centers, shopping malls, professional  
offices of health care providers or facilities covered by Title  
48 II of the Americans with Disabilities Act. In addition, the  
United States Attorney General may require elevators for  
50 particular categories of facilities that are under 3 stories  
based on the usage of the facility.

AWS

COMMITTEE AMENDMENT "A" to H.P. 837, L.D. 1168

2           15. It expands mandatory plan review to cover all public  
3 buildings. Anyone constructing a new public building must first  
4 have the plans approved by the State Fire Marshal's office. The  
5 fees collected for the reviews will pay for 4 additional Fire  
6 Protection Specialist Assistants and general operating costs.  
7 "Public buildings" are buildings or structures constructed,  
8 operated or maintained for use by the general public.

10           16. It deletes language relating to the preemption of  
11 municipal and other local government standards.

12           17. It clarifies that the State Fire Marshal's office shall  
13 adopt fees for waivers and variances as well as reviews.

14           18. It extends the People with Disabilities Access  
15 Commission to January 15, 1996, adds 2 new members to bring the  
16 total membership to 19 and adds 2 additional duties to the  
17 commission's charge. The 2 new members represent municipalities  
18 and the Secretary of State. The expanded duties are to study  
19 drivers' licensing and the use of elevators in buildings of fewer  
20 than 3 stories.  
21  
22