

MAINE STATE LEGISLATURE

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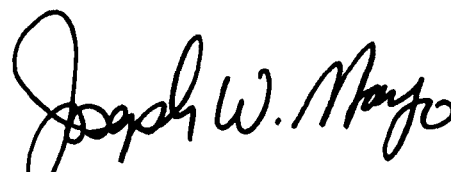
H.P. 837

House of Representatives, April 4, 1995

**An Act to Implement the Recommendations of the People with
Disabilities Access Commission.**

Reported by Representative TREAT for the People with Disabilities Access Commission pursuant to Resolve 1993, chapter 73, section 7.

Reference to the Joint Standing Committee on Committee on Judiciary suggested and printing ordered under Joint Rule 20.


JOSEPH W. MAYO, Clerk

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

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

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

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

14 **1-A. Commercial facilities.** "Commercial facilities" means
facilities that are intended for nonresidential use.

16 **1-B. Covered entity.** For purposes of subchapter III,
18 "covered entity" means an employer, employment agency, labor
organization or joint labor-management committee. For purposes
20 of subchapter V, "covered entity" means any applicable private
entity or public entity.

22 **1-C. Direct threat.** For purposes of subchapter III,
24 "direct threat" means a significant risk to the health or safety
of others that can not be eliminated by reasonable accommodation.

26 **1-D. Disability-related discrimination.** For the purposes
of subchapter III, "disability-related discrimination" means
28 discrimination on the basis of physical or mental disability.

30 **Sec. 3. 5 MRSA §4553, sub-§2**, as enacted by PL 1971, c. 501,
32 §1, is amended to read:

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

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

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

44 B. Participating in a contractual or other arrangement or
relationship that has the effect of subjecting a covered
46 entity's qualified applicant or employee with a disability
to the discrimination prohibited by this Act. A
48 relationship includes a relationship with an employment or
referral agency, labor union, an organization providing

2 fringe benefits to an employee of the covered entity or an
3 organization providing training and apprenticeship programs;

4 C. Utilizing standards, criteria or methods of
5 administration;

6 (1) That have the effect of discrimination on the
7 basis of disability; or

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

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

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

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

25 G. Using qualification standards, employment tests or other
26 selection criteria that screen out or tend to screen out an
27 individual with a disability or a class of individuals with
28 disabilities unless the standard, test or other selection
29 criteria, as used by the covered entity, is shown to be
30 job-related for the position in question and is consistent
31 with business necessity; and

32 H. Failing to select and administer tests concerning
33 employment in the most effective manner to ensure that, when
34 the test is administered to a job applicant or employee who
35 has a disability that impairs sensory, manual or speaking
36 skills, the test results accurately reflect the skills,
37 aptitude or any other factor of the applicant or employee
38 that the test purports to measure, rather than reflecting
39 the impaired sensory, manual or speaking skills of the
40 employee or applicant, except when the skills are the
41 factors that the test purports to measure.

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

4 **2-A. Educational institution.** "Educational institution"
6 means any public school or educational program, any public
post-secondary institution, any private school or educational
8 program approved for tuition purposes if both male and female
students are admitted and the governing body of each such school
10 or program. For purposes related to disability-related
discrimination, "educational institution" also means any private
school or educational program approved for tuition purposes.

12 **Sec. 5. 5 MRSA §4553, sub-§§3 and 4**, as enacted by PL 1971, c.
14 501, §1, are amended to read:

16 **3. Employee.** "Employee" means an individual employed by an
employer. "Employee" does not include any individual employed by
18 his that individual's parents, spouse or child.

20 **4. Employer.** "Employer" includes any person in this State
employing any number of employees, whatever the place of
22 employment of such the employees, and any person outside this
State employing any number of employees whose usual place of
24 employment is in this State; any person acting in the interest of
any employer, directly or indirectly; and labor organizations,
26 whether or not organized on a religious, fraternal or sectarian
basis, with respect to their employment of employees;--but.
28 "Employer" does not include a religious or fraternal corporation
or association, not organized for private profit and in fact not
conducted for private profit, with respect to employment of its
30 members of the same religion, sect or fraternity, except for
32 purposes of disability-related discrimination, in which case the
corporation or association is considered to be an employer.

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

36 **7-B. Person with physical or mental disability.** "Person
38 with physical or mental disability" or "individual with a
physical or mental disability" means a person who:

40 A. Has a physical or mental disability;

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

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

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

2 8. Place of public accommodation. "Place of public
3 accommodation" means a facility, operated by a public or private
4 entity, whose operations fall within at least one of the
5 following categories:

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

10 B. A restaurant, eating house, bar, tavern, buffet, saloon,
11 soda fountain, ice cream parlor or other establishment
12 selling or serving food or drink;

14 C. A motion picture house, theater, concert hall, stadium,
15 roof garden, airdrome or other place of exhibition or
16 entertainment;

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

20 E. A bakery, grocery store, clothing store, hardware store,
21 shopping center, garage, gasoline station or other sales or
22 rental establishment;

24 F. A laundromat, dry cleaner, bank, barber shop, beauty
25 shop, travel service, shoe repair service, funeral parlor,
26 gas station, office of an accountant or lawyer, pharmacy,
27 insurance office, professional office of a health care
28 provider, hospital, dispensary, clinic, bathhouse or other
29 service establishment;

32 G. All public conveyances operated on land or water or in
33 the air as well as a terminal, depot or other station used
34 for specified public transportation;

36 H. A museum, library, gallery or other place of public
37 display or collection;

38 I. A park, zoo, amusement park, race course, skating rink,
39 fair, bowling alley, golf course, golf club, country club,
40 gymnasium, health spa, shooting gallery, billiard or pool
41 parlor, swimming pool, seashore accommodation or boardwalk
42 or other place of recreation, exercise or health;

44 J. A nursery, elementary, secondary, undergraduate or
45 postgraduate school or other place of education;

48 K. A day-care center, senior citizen center, homeless
49 shelter, food bank, adoption agency or other social service
50 center establishment;

2 L. Public elevators of buildings occupied by 2 or more
3 tenants or by the owner and one or more tenants;

4 M. A municipal building, courthouse, town hall or other
5 establishment of the State or a local government; and

6 N. Any establishment that in fact caters to, or offers its
7 goods, facilities or services to, or solicits or accepts
8 patronage from, the general public.

9 When a place of public accommodation is located in a private
10 residence, the portion of the residence used exclusively as a
11 residence is not covered by this subchapter, but that portion
12 used exclusively in the operation of the place of public
13 accommodation or that portion used both for the place of public
14 accommodation and for the residential purposes is covered by this
15 subchapter. The covered portion of the residence extends to
16 those elements used to enter the place of public accommodation,
17 and those exterior and interior portions of the residence
18 available to or used by customers or clients, including rest
19 rooms.

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

22 **8-A. Private entity.** "Private entity" means any entity
23 other than a public entity.

24 **8-B. Public accommodation.** "Public accommodation" means a
25 public or private entity that owns, leases, leases to or operates
26 a place of public accommodation.

27 **8-C. Public entity.** "Public entity" means:

28 A. The State or any local government;

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

32 C. A state, local or private commuter authority as defined
33 in the federal Rail Passenger Service Act, Section 103,
34 Subsection 8.

35 **8-D. Qualified individual with a disability.** "Qualified
36 individual with a disability" applies to only subchapter III
37 (employment) and subchapter V (public accommodations) with regard
38 to public entities only.

39

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

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

15 9-A. Reasonable accommodation. For purposes of subchapter
16 III, "reasonable accommodation" may include, but is not limited
17 to:

18
19 A. Making existing facilities used by employees readily
20 accessible to and usable by individuals with disabilities;
21 and

22
23 B. Job restructuring, part-time or modified work schedules,
24 reassignment to a vacant position, acquisition or
25 modification of equipment or devices, appropriate adjustment
26 or modifications of examinations, training materials or
27 policies, the provision of qualified readers or interpreters
28 and other similar accommodations for individuals with
29 disabilities.

30
31 9-B. Undue hardship; undue burden. "Undue hardship" or
32 "undue burden" mean an action requiring undue financial or
33 administrative hardship. In determining whether an action would
34 result in an undue hardship, factors to be considered include:

35
36 A. The nature and cost of the accommodation needed under
37 this Act;

38
39 B. The overall financial resources of the facility or
40 facilities involved in the action, the number of persons
41 employed at the facility, the effect on expenses and
42 resources or the impact otherwise of the action upon the
43 operation of the facility;

44
45 C. The overall financial resources of the covered entity,
46 the overall size of the business of a covered entity with
47 respect to the number of its employees and the number, type
48 and location of its facilities;

50

2 D. The type of operation or operations of the covered
3 entity, including the composition, structure and functions
4 of the work force of the entity, the geographic
5 separateness, administrative or fiscal relationship of the
6 facility or facilities in question to the covered entity;

7 E. All the resources available to meet the costs of the
8 accommodation, including any government funding or other
9 grants available for making public accommodations and places
10 of employment accessible;

11 F. The extent to which current costs of accommodations have
12 been minimized by past efforts to provide equal access to
13 persons with disabilities;

14 G. The extent to which resources spent on improving
15 inaccessible equipment or service could have been spent on
16 making an accommodation so that service or equipment is
17 accessible to individuals with disabilities, as well as to
18 individuals without disabilities;

19 H. Documented good faith efforts to explore less
20 restrictive or less expensive alternatives;

21 I. The availability of equipment and technology for the
22 accommodation;

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

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

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

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

34 Sec. 9. 5 MRSA §4566-A is enacted to read:

35 **§4566-A. Certification and conformity with rules**

36 1. Certification of state law. The commission shall take
37 all steps required under 29 Code of Federal Regulations, Part 36,
38 Subpart F to request federal certification that the State's laws
39 concerning accessibility and usability of places of public
40 accommodation are consistent with the requirements of the
41 American with Disabilities Act, 29 Code of Federal Regulations,
42 Part 36, Subpart F.

2 accommodation meet or exceed the minimum requirements of the
3 federal Americans with Disabilities Act of 1990. These steps
4 include issuing public notice of an intent to file, conducting a
5 public hearing on record and preparing and filing with the United
6 States Department of Justice the request for certification. If
7 the commission determines that no significant portion of the law
8 is certifiable, the commission may cease its attempts to obtain
9 certification and shall report its determinations to the joint
10 standing committee of the Legislature having jurisdiction over
11 judiciary matters. The report must include recommendations on
12 changes to the law as necessary to achieve certification of a
13 significant portion of the law.

14 2. Conformity of rules relating to special use areas. The
15 commission shall amend its rules relating to accessibility of
16 places of public accommodation to include standards contained in
17 the federal Americans with Disabilities Act of 1990 Accessibility
18 Guidelines, 29 Code of Federal Regulations, Part 36, Subpart F,
19 relating to restaurants and cafeterias, medical care facilities,
20 business and mercantile establishments, libraries, accessible
21 transient lodging and other places of public accommodation, but
22 only to the extent that those standards provide greater
23 accessibility than any comparable standards contained in current
24 state law or rules.

25 **Sec. 10. 5 MRSA §4572, sub-§1, ¶D,** as amended by PL 1991, c.
26 885, Pt. E, §7 and affected by §47, is further amended to read:

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

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

42 (2) Make or keep a record of race or color, sex,
43 physical or mental disability, religion, age, ancestry
44 or national origin, any previous assertion of a claim
45 or right under former Title 39 or Title 39-A or any
46 previous actions that are protected under Title 26,

2 chapter 7, subchapter V-B, except under physical or
4 mental disability when an employer requires a physical
6 or mental examination prior to employment, a privileged
8 record of that examination is permissible if made and
10 kept in compliance with this Act;

12 (3) Use any form of application for employment, or
14 personnel or membership blank containing questions or
16 entries directly or indirectly pertaining to race or
18 color, sex, physical or mental disability, religion,
20 age, ancestry or national origin, any previous
22 assertion of a claim or right under former Title 39 or
24 Title 39-A or any previous actions that are protected
26 under Title 26, chapter 7, subchapter V-B, ~~except under
28 physical or mental disability when it can be determined
30 by the employer that the job or jobs to be filled
32 require that information for the well being and safety
34 of the individual.~~ This section does not prohibit any
36 officially recognized government agency from keeping
38 necessary records permitted to be kept under this Act
40 in order to provide free services to individuals
42 requiring requesting rehabilitation or employment
44 assistance;

46 (4) Print, publish or cause to be printed or published
48 any notice or advertisement relating to employment or
50 membership indicating any preference, limitation,
specification or discrimination based upon 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 the text of printed
or published material strictly adheres to this Act;~~ or

(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
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

Sec. 11. 5 MRSA §4572, sub-§2 is enacted to read:

**2. Unlawful discrimination against qualified individual
with a disability.** A covered entity may not discriminate against

2 a qualified individual with a disability because of the
3 disability of the individual in regard to job application
4 procedures, the hiring, advancement or discharge of employees,
5 employee compensation, job training and other terms, conditions
6 and privileges of employment. A qualified individual with a
7 disability, by reason of that disability, may not be excluded
8 from participation in or be denied the benefits of the services,
9 programs or activities of a public entity, or be subjected to
10 discrimination by any such public entity relating to job
11 application procedures, the hiring, advancement or discharge of
12 employees, employee compensation, job training and other terms,
13 conditions and privileges of employment.

14 A. The prohibition of this subsection against
15 discrimination includes medical examinations and inquiries.

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

23 C. A covered entity may require a medical examination after
24 an offer of employment has been made to a job applicant and
25 prior to the commencement of the employment duties of the
26 applicant and may condition an offer of employment on the
27 results of the examination, if:

28 (1) All entering employees are subjected to an
29 examination regardless of disability;

30 (2) Information obtained regarding the medical
31 condition or history of the applicant is collected and
32 maintained on separate forms and in separate medical
33 files and is treated as a confidential medical record,
34 except that:

35 (a) Supervisors and managers may be informed
36 regarding necessary restrictions on the work or
37 duties of the employee and necessary
38 accommodations;

39 (b) First aid and safety personnel may be
40 informed, when appropriate, if the disability
41 might require emergency treatment; and

42

2 (c) Government officials investigating compliance
3 with this Act are provided relevant information on
4 request; and

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

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

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

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

25 (1) A covered entity:

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

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

31 (c) May require that employees behave in
32 conformance with the requirements established
33 under the federal Drug-free Workplace Act of 1988;
34 and

35 (d) May hold an employee who engages in the
36 illegal use of drugs or who is an alcoholic to the
37 same qualification standards for employment or job
38 performance and behavior to which that entity
39 holds other employees, even if any unsatisfactory
40 performance or behavior is related to the drug use
41 or alcoholism of the employee; provided that an
42 employer shall make reasonable accommodation to an

2 alcoholic or drug user who is seeking treatment or
3 has successfully completed treatment.

4 **Sec. 12. 5 MRSA §4572-A, sub-§4**, as enacted by PL 1979, c. 79,
5 is amended to read:

6 **4. Employer not responsible for additional benefits.**
7 Nothing in this section shall may be construed to mean that an
8 employer, employment agency or labor organization is required to
9 provide sick leave, a leave of absence, medical benefits or other
10 benefits to a woman because of pregnancy or other medical
11 conditions which that result from pregnancy, if this the
12 employer, employment agency or labor organization does not also
13 provide sick leaves, leaves of absence, medical benefits or other
14 benefits for his the employer's other employees and is not
15 otherwise required to provide those leaves or benefits under
16 other state or federal laws.

17 **Sec. 13. 5 MRSA §4573, sub-§1-A, ¶B**, as amended by PL 1991, c.
18 99, §8, is further amended to read:

19 B. Observe the terms of any bona fide employee benefit plan
20 such as a retirement, pension or insurance plan which that
21 does not evade or circumvent the purposes of this chapter
22 and which that complies with the Federal Age Discrimination
23 in Employment Act, 29 United States Code, Section 621, as
24 amended and the federal Americans with Disabilities Act, 42
25 United States Code, Section 12101, et seq., and federal
26 administrative interpretations provided that:

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

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

39 **Sec. 14. 5 MRSA §4573, sub-§2**, as amended by PL 1991, c. 99,
40 §9, is further amended to read:

41 **2. Records.** After employment or admission to membership, to
42 make a record of such features of an individual as are needed in
43 good faith for the purpose of identifying them, provided the
44

2 record is intended and used in good faith solely for
3 identification, and not for the purpose of discrimination in
4 violation of this Act. Records of features regarding physical or
5 mental disability that are collected must be collected and
6 maintained on separate forms and in separate files and be treated
7 as confidential records;

8 **Sec. 15. 5 MRSA §4573, sub-§3,** as amended by PL 1991, c. 99,
9 §10, is further amended to read:

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

15 **Sec. 16. 5 MRSA §4573, sub-§4,** as amended by PL 1991, c. 484,
16 §3, is repealed.

17 **Sec. 17. 5 MRSA §4573, sub-§5,** as enacted by PL 1991, c. 484,
18 §4, is amended to read:

19 **5. Federal Indian policy.** Nothing in this Act may be
20 construed to prohibit any employment policy or action that is
21 permitted under 42 United States Code, Section 2000e-2(i) (1982)
22 of the federal Equal Employment Opportunity Act governing
23 employment of Indians; and

24 **Sec. 18. 5 MRSA §4573, sub-§6** is enacted to read:

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

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

37 B. Nothing in this Act may be construed to preempt, modify
38 or amend any state, county or local law, ordinance, rule or
39 regulation applicable to food handling that is designed to
40 protect the public health from individuals who pose a
41 significant risk to the health or safety of others, which
42 can not be eliminated by reasonable accommodation, pursuant
43 to the federal Americans with Disabilities Act, Title I,
44 Section 103(d)(1).

2 to the list of infectious or communicable diseases and the
3 modes of transmissibility published by the United States
4 Secretary of Health and Human Services.

6 Sec. 19. 5 MRSA §4573-A is enacted to read:

8 **§4573-A. Defenses**

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

18 2. Religious entities. This subchapter does not prohibit a
19 religious corporation, association, educational institution or
20 society from giving preference in employment to individuals of
21 its same religion to perform work connected with the carrying on
22 by the corporation, association, educational institution or
23 society of its activities. Under this subchapter, a religious
24 organization may require that all applicants and employees
25 conform to the religious tenets of that organization.

26 Sec. 20. 5 MRSA §4592, sub-§§1 and 2, as amended by PL 1991, c.
28 99, §22, are further amended to read:

30 1. Denial of public accommodations. For any public
31 accommodation or any person who is the owner, lessor, lessee,
32 proprietor, operator, manager, superintendent, agent or employee
33 of any place of public accommodation to directly or indirectly
34 refuse, discriminate against or in any manner withhold from or
35 deny the full and equal enjoyment to any person, on account of
36 race or color, sex, physical or mental disability, religion,
37 ancestry or national origin, any of the accommodations,
38 advantages, facilities, goods, services or privileges of public
39 accommodation, or in any manner discriminate against any person
40 in the price, terms or conditions upon which access to
41 accommodation, advantages, facilities, goods, services and
42 privileges may depend.

44 For purposes of this subsection, unlawful discrimination also
45 includes, but is not limited to:

46 A. The imposition or application of eligibility criteria
47 that screen out or tend to screen out an individual with a
48 disability or any class of individuals with disabilities
49 from fully and equally enjoying any goods, services,
50

2 facilities, privileges, advantages or accommodations, unless
3 the criteria can be shown to be necessary for the provision
4 of the goods, services, facilities, privileges, advantages
5 or accommodations being offered;

6 B. A failure to make reasonable modifications in policies,
7 practices or procedures, when modifications are necessary to
8 afford the goods, services, facilities, privileges,
9 advantages or accommodations to individuals with
10 disabilities, unless, in the case of a private entity, the
11 private entity can demonstrate that making the modifications
12 would fundamentally alter the nature of the goods, services,
13 facilities, privileges, advantages or accommodations;

14 C. A failure to take steps that may be necessary to ensure
15 that no individual with a disability is excluded, denied
16 services, segregated or otherwise treated differently than
17 other individuals because of the absence of auxiliary aids
18 and services, unless, in the case of a private entity, the
19 private entity can demonstrate that taking those steps would
20 fundamentally alter the nature of the good, service,
21 facility, privilege, advantage or accommodation being
22 offered or would result in an undue burden;

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

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

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

42 **2. Communication, notice or advertisement.** For any person
43 to directly or indirectly publish, display or communicate any
44 notice or advertisement to the effect that any of the
45 accommodations, advantages, facilities and privileges of any
46

2 place of public accommodation are refused, withheld from or
3 denied to any person on account of race or color, sex, physical
4 or mental disability, religion, ancestry or national origin, or
5 that the patronage or custom of any person belonging to or
6 purporting to be of any particular race or color, sex, physical
7 or mental disability, religion, ancestry or national origin is
8 unwelcome, objectionable or not acceptable, desired or solicited,
9 or that the clientele is restricted to any particular race or
10 color, physical or mental disability, religion, ancestry or
11 national origin. The production of any communication, notice or
12 advertisement purporting to relate to any place of accommodation
13 is presumptive evidence in any action that the action was
14 authorized by its owner, manager or proprietor; and

15 **Sec. 21. 5 MRSA §4592, sub-§3, ¶¶B and C,** as enacted by PL
16 1989, c. 301, are amended to read:

17 B. That contains no more than § 5 rooms available to be let
18 to lodgers; and

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

20 **Sec. 22. 5 MRSA §4592, sub-§§4 to 6** are enacted to read:

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

22 A. To deny an individual or a class of individuals, on the
23 basis of a disability or disabilities of the individual or
24 class, directly or through contractual, licensing or other
25 arrangements, the opportunity of the individual or class to
26 participate in or benefit from the goods, services,
27 facilities, privileges, advantages or accommodations of that
28 entity;

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

36 C. To provide an individual or a class of individuals, on
37 the basis of a disability or disabilities of the individual
38 or class, directly or through contractual, licensing or
39 other arrangements, with a good, service, facility,
40 privilege, advantage or accommodation that is different or
41 separate from those provided to other persons, unless this
42 provision is necessary to provide the individual or class of
43 individuals with a good, service, facility, privilege,
44 advantage or accommodation that is different or separate
45 from those provided to other persons, unless this provision
46 is necessary to provide the individual or class of
47 individuals with a good, service, facility, privilege,
48 advantage or accommodation that is different or separate
49 from those provided to other persons, unless this provision
50 is necessary to provide the individual or class of

2 advantage or accommodation or other opportunity that is as
3 effective as that provided to others.

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

8
9 5. Integrated setting; programs or activities not separate
10 or different. For a covered entity to not afford goods,
11 services, facilities, privileges, advantages and accommodations
12 to an individual with a disability in the most integrated setting
13 appropriate to the needs of the individual.

14
15 Notwithstanding the existence of separate or different programs
16 or activities provided in accordance with this section, an
17 individual with a disability may not be denied the opportunity to
18 participate in programs or activities that are not separate or
19 different;

20
21 6. Administrative methods. For an individual or a covered
22 entity, directly or through contractual or other arrangements, to
23 utilize standards or criteria or methods of administration:

24
25 A. That have the effect of discrimination on the basis of
26 disability; or

27
28 B. That perpetuate the discrimination of others who are
29 subject to common administrative control; and

30
31 7. Association. For a covered entity to exclude or
32 otherwise deny equal goods, services, facilities, privileges,
33 advantages, accommodations or other opportunities to an
34 individual or entity because of the known disability of an
35 individual with whom the individual or entity is known to have a
36 relationship or association.

37
38 Sec. 23. 5 MRSA §4593, sub-§§1 and 2, as amended by PL 1991, c.
39 99, §23, are further amended to read:

40
41 1. Public accommodations. ~~Nothing in section 4591 or 4592~~
42 ~~related to equal access to public accommodations or indirectly~~
43 ~~denying access to persons with physical disability applies to~~
44 ~~existing structures, structures under construction or proposed~~
45 ~~construction submitted for bid before September 1, 1974. For any~~
46 building or facility constructed specifically as a place of
47 public accommodation on or after September 1, 1974, but before
48 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.

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

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

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

2. Places of employment. Existing places of employment or structures to be used for this purpose currently under construction or where proposed construction has been submitted for bid before September 1, 1974, are exempt from the requirements of this chapter as they relate to accessibility for persons with physical disability. For any building or facility constructed specifically as a place of employment on or after

2 September 1, 1974, but before January 1, 1982, or when the
3 estimated total costs for remodeling or enlarging an existing
4 building exceeds \$100,000, and the remodeling or enlarging is
5 begun before January 1, 1982, the public accommodation provisions
6 relating to walks, entries, restroom facilities and doors apply.

7 **Sec. 24. 5 MRSA §4594-E**, as corrected by RR 1993, c. 2, §4,
8 is repealed.

9 **Sec. 25. 5 MRSA §4594-F** is enacted to read:

10 **§4594-F. Access to places of public accommodation and commercial**
11 **facilities; standards**

12 **1. Definitions.** As used in this section, unless the
13 context otherwise indicates, the following terms have the
14 following meanings.

15 **A. "Alteration"** means a change to a place of public
16 accommodation or a commercial facility that affects or could
17 affect the usability of the building or facility or any part
18 of the building or facility, including, but not limited to,
19 reconstruction, remodeling, rehabilitation, historic
20 restoration, changes or rearrangement in structural parts or
21 elements and changes or rearrangement in the plan
22 configuration of walls and full-height partitions.

23 **B. "Builder"** means the applicant for a building permit in a
24 municipality that requires such permits or the owner of a
25 property in a municipality that does not require building
26 permits.

27 **C. "Design professional"** means an architect or professional
28 engineer registered to practice under Title 32.

29 **D. "Facility"** means all or any portion of buildings,
30 structures, sites, complexes, equipment, rolling stock or
31 other conveyances, roads, walks, passageways, parking lots
32 or other real or personal property, including the site where
33 the building, property, structure or equipment is located.

34 **E. "Historic preservation programs"** means programs
35 conducted by a public or private entity that have
36 preservation of historic properties as a primary purpose.

37 **F. "Historic properties"** means those properties that are
38 listed or eligible for listing in the National Register of
39 Historic Places or the State of Maine Register of Historic
40 Places.

2 G. "Maximum extent feasible" applies to the occasional case
3 when the nature of an existing facility makes it virtually
4 impossible to comply fully with applicable accessibility
5 standards through a planned alteration. In these
6 circumstances, the alteration must provide the maximum
7 physical accessibility feasible. Any altered features of
8 the facility that can be made accessible must be made
9 accessible. If providing accessibility in conformance with
10 this section to individuals with certain disabilities would
11 not be feasible, the facility must be made accessible to
12 persons with other types of disabilities.

13 H. "New construction" includes, but is not limited to, the
14 design and construction of facilities for first occupancy
15 after January 1, 1996 or an alteration affecting at least
16 80% of the space of the internal structure of facilities
17 after January 1, 1996.

18 I. "Readily achievable" means easily accomplishable and
19 able to be carried out without much difficulty or expense.
20 In determining whether an action is readily achievable,
21 factors to be considered include:

22 (1) The nature and cost of the action needed under
23 this subchapter;

24 (2) The overall financial resources of the facility or
25 facilities involved in the action, the number of
26 persons employed at the facility, the effect on
27 expenses and resources or other impacts of the action
28 on the operation of the facility;

29 (3) The overall financial resources of the covered
30 entity, the overall size of the business of a covered
31 entity with respect to the number of its employees and
32 the number, type and location of its facilities; and

33 (4) The type of operation or operations of the covered
34 entity, including the composition, structure and
35 functions of the entity's workforce, the geographic
36 separateness and administrative or fiscal relationship
37 of the facility or facilities in question to the
38 covered entity.

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

44

2 2. Facilities attested. This section applies to any
3 building or facility constructed specifically as a place of
4 public accommodation or place of employment on or after January
5 1, 1996 or to any alterations of an existing place of public
6 accommodation or place of employment when the alteration is begun
after January 1, 1996.

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

10 A. Places of employment or public accommodation and
11 additions to those places constructed on or after January 1,
12 1996, must meet the standards of construction, including,
13 but not limited to, the 5 parts of construction in paragraph
14 B, subparagraph (2).

15 B. Alterations and repairs are governed by the following.

16 (1) Any alteration to a place of public accommodation,
17 commercial facility or place of employment on or after
18 January 1, 1996 must be made so as to ensure that, to
19 the maximum extent feasible, the altered portions of
20 the facility are readily accessible to and usable by
21 individuals with disabilities, including individuals
22 who use wheelchairs. If existing elements, spaces or
23 common areas are altered, then each element, space and
24 area must comply with the applicable provisions of the
25 standards of construction.

26 (2) This subparagraph applies to only buildings
27 remodeled or renovated or to any alterations if the
28 estimated total costs for remodeling or renovating an
29 existing building exceed \$100,000. Except for repairs
30 undertaken in accordance with the rules adopted
31 pursuant to subsection 4, when the proposed alteration
32 substantially affects that portion of the building
33 normally accessible to the public, a place of
34 employment or public accommodation altered on or after
35 January 1, 1996 must meet the following 5 parts of the
36 standards of construction, or must be the standard
37 otherwise indicated:

38 (a) 4.3 accessible routes;

39 (b) 4.13 doors;

40 (c) Tactile warnings on doors to hazardous
41 areas. Doors that lead to areas that might prove
42 dangerous to a blind person, for example, doors to
43 loading platforms, boiler rooms, stages and the
44 theater.

2 like, must be made identifiable to the touch by a
3 textured surface on the door handle, knob, pull or
4 other operating hardware. This textured surface
5 may be made by knurling or roughening or by a
6 material applied to the contact surface. Textured
7 surfaces may not be provided for emergency exit
8 doors or any doors other than those to hazardous
9 areas;

10 (d) Parking spaces for use by persons with
11 physical disabilities pursuant to 4.1.2 of the
12 standards of construction; and

13 (e) 4.17 toilet stalls, at least one of which
14 must be a standard toilet stall configuration
15 pursuant to ADAAG figure 30(a). Any additional
16 toilet stalls within the same toilet room may be
17 either standard stall configuration, ADAAG figure
18 30(a) or alternate stall configuration ADAAG
19 figure 30(b).

20
21 C. In addition to the 5 parts of the standards of
22 construction specified in paragraph C, each of which must be
23 met regardless of the cost of the 5 parts of the standards,
24 when the entity is undertaking an alteration that affects or
25 could affect usability of or access to an area of the
26 facility containing a primary function, the entity shall
27 also make the alterations in such a manner that, to the
28 maximum extent feasible, the path of travel to the altered
29 area and the bathrooms, telephones and drinking fountains
30 servicing the altered area are readily accessible to and
31 usable by individuals with disabilities where such
32 alterations to the path of travel or the bathrooms,
33 telephones and drinking fountains servicing the altered area
34 to the extent that the costs to provide an accessible path
35 of travel do not exceed 20% of the cost of the alteration to
36 the primary function area.

37
38 If the cost to provide an accessible path of travel to the
39 altered area exceeds 20% of the costs of the alteration to
40 the primary function area, the path of travel must be made
41 accessible to the extent that it can be made accessible
42 without incurring disproportionate costs.

43
44 In determining whether the 20% cost figure has been met, the
45 following analysis must be used. The analysis must include
46 an evaluation of whether the following elements of access
47 have been provided, using the following order of priority,
48 before costing 20%, regardless of other elements of access

2 that may have been provided which may affect the path of
3 travel:

4 (1) An accessible entrance;

6 (2) An accessible route to the altered area;

8 (3) At least one accessible restroom for each sex or a
9 single unisex restroom;

10 (4) Accessible telephones;

12 (5) Accessible drinking fountains; and

14 (6) When possible, additional accessible elements such
16 as parking, storage and alarms.

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

24 E. When the entity is undertaking an alteration that
25 affects or could affect usability or access to an area of
26 the facility containing a primary function, the entity shall
27 make the alterations in a manner that, to the maximum extent
28 feasible, the path of travel to the altered area and the
29 bathrooms, telephones and drinking fountains serving the
30 altered area are readily accessible to and usable by
31 individuals with disabilities. Alterations to the path of
32 travel or the bathrooms, telephones and drinking fountains
33 servicing the altered area may not be disproportionate to the
34 overall alterations in terms of cost and scope.

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

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

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

48 5. Rules. The commission shall adopt, alter and amend
49 rules designed to make facilities under this section accessible
50 to, functional for and safe for use by persons with physical or

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

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

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

29 8. Mandatory plan review; certification; inspection.
30 Builders of the following newly constructed facilities shall
31 submit plans to the Office of the State Fire Marshal to ensure
32 that the plans meet the standards of construction required by
33 subsections 3 and 4:

- 34 A. Restaurants;
- 35 B. Motels, hotels and inns;
- 36 C. State, municipal and county buildings; and
- 37 D. Elementary and secondary schools.

38 The municipal authority having jurisdiction to issue building
39 permits may not issue a building permit unless the Office of the
40 State Fire Marshal approves the plans and certifies that the
41 facility covered by this subsection meets the standards of
42 construction required by subsections 1 and 2. If, however, no
43 decision is rendered within 2 weeks of submission to the Office
44 of the State Fire Marshal, the municipal authority may issue a
45 building permit for the facility.

2 of the State Fire Marshal, the builder may submit the building
3 permit request directly to the municipality with an attestation
4 from a design professional that the plans meet the standards of
5 construction.

6 If officials of the municipality in which a facility covered by
7 this subsection is constructed, renovated, remodeled or enlarged
8 inspect buildings for compliance with construction standards,
9 that inspection must include an inspection for compliance with
10 the certified plans. The municipal officials shall require that
11 the facility be inspected for compliance with construction
12 standards before the municipal officials permit the facility to
13 be occupied.

14
15 9. Voluntary plan review. Builders of facilities not
16 governed by subsection 8 may submit plans to the Office of the
17 State Fire Marshal to ensure that the plans meet the standards of
18 construction required by subsections 3 and 4.

19
20 10. Waivers; variance. Builders of facilities governed by
21 subsection 8 that are private entities, when the facilities are
22 not to be owned or operated by, or leased to or by, a public
23 entity, may file a petition with the State Fire Marshal
24 requesting a waiver or variance of the standards of
25 construction. In all petitions for variance or waiver, the
26 burden of proof is on the party requesting the variance or waiver
27 to justify its allowance.

28
29
30 A. If a representative of the Office of the State Fire
31 Marshal determines, in cases covered by mandatory plan
32 review pursuant to subsection 8, that compliance with this
33 section and its rules is structurally impracticable, the
34 State Fire Marshal may provide for modification of, or
35 substitution for, these standards.

36
37
38 B. With regard to construction of 2-story facilities by
39 private entities when the facilities are not to be owned or
40 operated by, or leased to or by, a public entity, if a
41 representative of the Office of the State Fire Marshal
42 determines that installation of an elevator pursuant to
43 ADAAG 4.10 is not technologically feasible or would result
44 in excessive and unreasonable costs without any substantial
45 benefit to persons with physical or mental disabilities, the
46 State Fire Marshal may provide for modification of, or
47 substitution for, this standard. Any facility that houses a
48 shopping center, shopping mall, professional office of a
49 health care provider, a terminal, depot or other station
50 used for specified public transportation or an airport
passenger terminal does not qualify to obtain a waiver,
modification or substitution under this paragraph.

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

12 12. Preemption. This section preempts all municipal or
14 other local government standards that may affect access for
16 individuals with disabilities unless the standards are consistent
with this section or provide more access for individuals with
disabilities than this section.

18 13. Fees. The Office of the State Fire Marshal shall
20 establish fees for reviews under this section. The Office of the
22 State Fire Marshal shall pay all fees to the Treasurer of State
24 to be used to carry out this chapter. Any balance of these fees
does not lapse but is carried forward as a continuing account to
be expended for the same purposes in the following fiscal years.

26 **Sec. 26. 5 MRSA §4611**, as enacted by PL 1977, c. 259, §2, is
amended to read:

28 **§4611. Complaint**

30 Any person who believes he ~~that~~ the person has been subject
32 to unlawful discrimination, or any employee of the commission,
may file a complaint under oath with the commission stating the
34 facts concerning the alleged discrimination, provided that such
complaints ~~shall~~ must be filed with the commission not more than
36 6 months after the alleged act of unlawful discrimination. In
addition, any person may file a complaint pursuant to section
4632.

38 **Sec. 27. 5 MRSA §4613, sub-§2, ¶D** is enacted to read:

40 D. The obtaining of an approval of a plan certified by the
42 Office of the State Fire Marshal under section 4594-F,
44 subsection 8 is rebuttable evidence that the plan does meet
46 or exceed the minimum requirements of section 4594-F,
subsection 8.

48 **Sec. 28. 5 MRSA §4622, sub-§1**, as amended by PL 1993, c. 327,
§§3 and 4, is further amended to read:

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

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

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

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

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

26 **Sec. 29. Allocation.** The following funds are allocated from
 28 Other Special Revenue to carry out the purposes of this Act.

	1995-96	1996-97
30 PUBLIC SAFETY,		
32 DEPARTMENT OF		
34 Office of the State Fire		
36 Marshal		
38 Positions - Other Count	(2.0)	(2.0)
Personal Services	\$75,838	\$77,594
All Other	23,710	18,000
40 Capital Expenditures	31,800	
42 Provides for allocation of		
44 funds for 2 additional Fire		
Protection Specialists		
46 Assistant positions and		
general operating costs.		
48 DEPARTMENT OF PUBLIC SAFETY		
50 TOTAL	\$131,348	\$95,594

2

STATEMENT OF FACT

4

This bill contains the statutory recommendations of the People with Disabilities Access Commission, established by Resolve 1993, chapter 73. The commission's report was submitted to the Joint Standing Committee on Judiciary on January 31, 1995.

6