

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1448

S.P. 531

In Senate, May 2, 1995

An Act to Reconcile Rights and Responsibilities with Respect to Sexual Orientation and Related Matters.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator BERUBE of Androscoggin.

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

4 **Sec. 1. 5 MRSA §4553, sub-§§1-A and 9-A** are enacted to read:

6 1-A. Crime victim status. "Crime victim status" means that
8 a person has been a victim of criminal conduct involving violence
10 or the threat of violence and has reported that criminal conduct
12 to the appropriate law enforcement agency. "Crime victim status"
14 does not include a person who was engaged in unlawful conduct at
16 the time of, or in connection with, the criminal conduct.

12 9-A. Sexual orientation. "Sexual orientation" means the
14 status, condition or tendency toward heterosexual or homosexual
16 attraction or interest, but does not include any form of sexual
18 behavior, conduct or life-style.

18 **Sec. 2. 5 MRSA §4572**, as amended by PL 1991, c. 885, Pt. E,
20 §7, is further amended to read:

20 **§4572. Unlawful employment discrimination**

22 **1. Unlawful employment.** It is unlawful employment
24 discrimination, in violation of this Act, except when based on a
26 bona fide occupational qualification:

26 A. For any employer to fail or refuse to hire or otherwise
28 discriminate against any applicant for employment because of
30 race or color, sex, physical or mental disability, religion,
32 age, ancestry, crime victim status, sexual orientation or
34 national origin, because of the applicant's previous
36 assertion of a claim or right under former Title 39 or Title
38 39-A or because of previous actions taken by the applicant
40 that are protected under Title 26, chapter 7, subchapter
42 V-B; or, because of those reasons, to discharge an employee
44 or discriminate with respect to hire, tenure, promotion,
46 transfer, compensation, terms, conditions or privileges of
48 employment or any other matter directly or indirectly
50 related to employment; or, in recruiting of individuals for
employment or in hiring them, to utilize any employment
agency that the employer knows or has reasonable cause to
know discriminates against individuals because of their race
or color, sex, physical or mental disability, religion, age,
ancestry, crime victim status, sexual orientation or
national origin, because of their 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;

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

2 B. For any employment agency to fail or refuse to classify
4 properly, refer for employment or otherwise discriminate
6 against any individual because of race or color, sex,
8 physical or mental disability, religion, age, ancestry,
10 crime victim status, sexual orientation or national origin,
12 because of the individual's previous assertion of a claim or
14 right under former Title 39 or Title 39-A or because of
16 previous actions taken by the individual that are protected
18 under Title 26, chapter 7, subchapter V-B; or to comply with
20 an employer's request for the referral of job applicants if
a request indicates either directly or indirectly that the
employer will not afford full and equal employment
opportunities to individuals regardless of their race or
color, sex, physical or mental disability, religion, age,
ancestry, crime victim status, sexual orientation or
national origin, because of 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;

22 C. For any labor organization to exclude from
24 apprenticeship or membership or to deny full and equal
26 membership rights to any applicant for membership because of
28 race or color, sex, physical or mental disability, religion,
30 age, ancestry, crime victim status, sexual orientation or
32 national origin, because of the applicant's previous
34 assertion of a claim or right under former Title 39 or Title
36 39-A or because of previous actions taken by the applicant
38 that are protected under Title 26, chapter 7, subchapter
40 V-B; or, because of those reasons, to deny a member full and
42 equal membership rights, expel from membership, penalize or
44 otherwise discriminate with respect to hire, tenure,
46 promotion, transfer, compensation, terms, conditions or
48 privileges of employment, representation, grievances or any
50 other matter directly or indirectly related to membership or
employment, whether or not authorized or required by the
constitution or bylaws of that labor organization or by a
collective labor agreement or other contract; to fail or
refuse to classify properly or refer for employment or
otherwise discriminate against any member because of race or
color, sex, physical or mental disability, religion, age,
ancestry, crime victim status, sexual orientation or
national origin, because of the member's previous assertion
of a claim or right under former Title 39 or Title 39-A or
because of previous actions taken by the member that are
protected under Title 26, chapter 7, subchapter V-B; or to
cause or attempt to cause an employer to discriminate
against an individual in violation of this section, except
that it is lawful for labor organizations and employers to

2 adopt a maximum age limitation in apprenticeship programs,
if the employer or labor organization obtains prior approval
4 from the Maine Human Rights Commission of any maximum age
limitation employed in an apprenticeship program. The
6 commission shall approve the age limitation if a reasonable
relationship exists between the maximum age limitation
8 employed and a legitimate expectation of the employer in
receiving a reasonable return upon the employer's investment
10 in an apprenticeship program. The employer or labor
organization bears the burden of demonstrating that such a
relationship exists;

12

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

16

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

30

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

42

44 (3) Use any form of application for employment, or
personnel or membership blank containing questions or
entries directly or indirectly pertaining to race or
46 color, sex, physical or mental disability, religion,
age, ancestry, crime victim status, sexual orientation
or national origin, any previous assertion of a claim
48 or right under former Title 39 or Title 39-A or any
previous actions that are protected under Title 26,
50 chapter 7, subchapter V-B, except under physical or

2 mental disability when it can be determined by the
3 employer that the job or jobs to be filled require that
4 information for the well-being and safety of the
5 individual. This section does not prohibit any
6 officially recognized agency from keeping necessary
7 records in order to provide free services to
8 individuals requiring rehabilitation or employment
assistance;

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

22 (5) Establish, announce or follow a policy of denying
23 or limiting, through a quota system or otherwise,
24 employment or membership opportunities of any group
25 because of the race or color, sex, physical or mental
26 disability, religion, age, ancestry, crime victim
27 status, sexual orientation or national origin, the
28 previous assertion of a claim or right under former
29 Title 39 or Title 39-A or because of previous actions
30 that are protected under Title 26, chapter 7,
31 subchapter V-B, of that group; or

34 E. For an employer, employment agency or labor organization
35 to discriminate in any manner against individuals because
36 they have opposed a practice that would be a violation of
37 this Act or because they have made a charge, testified or
38 assisted in any investigation, proceeding or hearing under
39 this Act.

40
41 **Sec. 3. 5 MRSA §4573, sub-§3**, as amended by PL 1991, c. 99,
42 §10, is further amended to read:

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

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

4
6 **4. Discharge of or refusal to hire employee with physical
or mental disability.** Nothing in this Act prohibits an employer
8 from refusing to hire or discharging an employee with physical or
10 mental disability, or subjects an employer to any legal liability
12 resulting from the refusing to employ or the discharge of an
14 employee with physical or mental disability, where the employee,
because of the physical or mental disability, is unable to
16 perform the duties or perform those duties in a manner that would
not endanger the health or safety of the employee or the health
or safety of others or to be at, remain or go to or from the
place where the duties of employment are to be performed; or

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

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

26 **Sec. 6. 5 MRSA §4573, sub-§§6 and 7** are enacted to read:

28 **6. Misconduct by crime victim.** For an employer to
discipline or discharge an employee based on information arising
30 from the employee's crime victim status if the employee was
engaged in misconduct in connection with that employment when the
32 employee became a crime victim; or

34 **7. Family and spousal employment benefits.** For an employer
or insurer to provide insurance and other benefits for the
36 spouses and children of employees without providing such benefits
to, or on account of, a person who is involved in a homosexual
38 relationship with an employee.

40 **Sec. 7. 5 MRSA §4582, 2nd, 3rd, and 4th ¶¶**, as amended by PL
1991, c. 99, §14, are further amended to read:

42
44 For any owner, lessee, sublessee, managing agent or other
person having the right to sell, rent, lease or manage a housing
46 accommodation, or any agent of these to make or cause to be made
any written or oral inquiry concerning the race or color, sex,
48 physical or mental disability, religion, ancestry, crime victim
status, sexual orientation, national origin or familial status of
any prospective purchaser, occupant or tenant of the housing
50 accommodation; or to refuse to show or refuse to sell, rent,

2 lease, let or otherwise deny to or withhold from any individual
3 housing accommodation because of the race or color, sex, physical
4 or mental disability, religion, ancestry, crime victim status,
5 sexual orientation, national origin or familial status of the
6 individual; or to issue any advertisement relating to the sale,
7 rental or lease of the housing accommodation which indicates any
8 preference, limitation, specification or discrimination based
9 upon race or color, sex, physical or mental disability, religion,
10 ancestry, crime victim status, sexual orientation, national
11 origin or familial status; or to discriminate against any
12 individual because of race or color, sex, physical or mental
13 disability, religion, ancestry, crime victim status, sexual
14 orientation, national origin or familial status in the price,
15 terms, conditions or privileges of the sale, rental or lease of
16 any housing accommodations or in the furnishing of facilities or
17 services in connection with any housing accommodations, or to
18 evict or attempt to evict any tenant of any housing accommodation
19 because of the race or color, sex, physical or mental disability,
20 religion, ancestry, crime victim status, sexual orientation,
21 national origin or familial status of the tenant;

22 For any real estate broker or real estate sales person, or
23 agent of one of them, to fail or refuse to show any applicant for
24 a housing accommodation any accommodation listed for sale, lease
25 or rental, because of the race or color, sex, physical or mental
26 disability, religion, ancestry, crime victim status, sexual
27 orientation, national origin or familial status of the applicant
28 or of any intended occupant of the accommodation, or to
29 misrepresent, for the purpose of discriminating because of the
30 race or color, sex, physical or mental disability, religion,
31 ancestry, crime victim status, sexual orientation, national
32 origin or familial status of the applicant or intended occupant,
33 the availability or asking price of a housing accommodation
34 listed for sale, lease or rental; or for any reason to fail to
35 communicate to the person having the right to sell or lease the
36 housing accommodation any offer for the same made by any
37 applicant; or in any other manner to discriminate against any
38 applicant for housing because of race or color, sex, physical or
39 mental disability, religion, ancestry, crime victim status,
40 sexual orientation, national origin or familial status of the
41 applicant or of any intended occupant of the housing
42 accommodation, or to make or cause to be made any written or oral
43 inquiry or record concerning the race or color, sex, physical or
44 mental disability, religion, ancestry, crime victim status,
45 sexual orientation, national origin or familial status of any
46 applicant or intended occupant, or to accept for listing any
47 housing accommodation when the person having the right to sell or
48 lease the same has directly or indirectly indicated an intention
49 of discriminating among prospective tenants or purchasers on the
50 ground of their race or color, sex, physical or mental

2 disability, religion, ancestry, crime victim status, sexual
3 orientation, national origin or familial status, or when the
4 broker knows or has reason to know that the person having the
5 right to sell or lease the housing accommodation has made a
6 practice of discrimination since July 1, 1972;

7
8 For any person to whom application is made for a loan or
9 other form of financial assistance for the acquisition,
10 construction, rehabilitation, repair or maintenance of any
11 housing accommodation, whether secured or unsecured, or agent of
12 the person, to make or cause to be made any oral or written
13 inquiry concerning the race or color, sex, physical or mental
14 disability, religion, ancestry, crime victim status, sexual
15 orientation, national origin or familial status of any individual
16 seeking financial assistance, or of existing or prospective
17 occupants or tenants of housing accommodations; or to
18 discriminate in the granting of financial assistance, or in the
19 terms, conditions or privileges relating to the obtaining or use
20 of any financial assistance, against any applicant because of the
21 race or color, sex, physical or mental disability, religion,
22 ancestry, crime victim status, sexual orientation, national
23 origin or familial status of the applicant or of the existing or
24 prospective occupants or tenants;

25 **Sec. 8. 5 MRSA §4583,** as amended by PL 1991, c. 99, §19, is
26 further amended to read:

27 **§4583. Application**

28
29 Nothing in this Act may be construed to prohibit or limit
30 the exercise of the privilege of every person and the agent of
31 any person having the right to sell, rent, lease or manage a
32 housing accommodation to set up and enforce specifications in the
33 selling, renting, leasing or letting or in the furnishings of
34 facilities or services in connection with the facilities which
35 are not based on the race, color, sex, physical or mental
36 disability, religion, country of ancestral origin, crime victim
37 status, sexual orientation, familial status or the receipt of
38 public assistance payments of any prospective or actual
39 purchaser, lessee, tenant or occupant. Nothing in this Act may
40 be construed to prohibit or limit the exercise of the privilege
41 of every person and the agent of any person making loans for or
42 offering financial assistance in the acquisition, construction,
43 rehabilitation, repair or maintenance of housing accommodations,
44 to set standards and preferences, terms, conditions, limitations
45 or specifications for the granting of loans or financial
46 assistance which are not based on the race, color, sex, physical
47 or mental disability, religion, country of ancestral origin,
48 crime victim status, sexual orientation, familial status or the
49 receipt of public assistance payments of the applicant for a loan
50

2 or financial assistance or, of any existing or prospective owner,
lessee, tenant or occupant of housing accommodation.

4 Nothing in this Act prohibits a person from acting on
6 information that a crime victim was engaged in misconduct that
8 constitutes grounds for eviction, relating to the use of leased
premises at the time of, or relating to, the criminal conduct
against that person.

10 **Sec. 9. 5 MRSA §4592, sub-§§1 and 2,** as amended by PL 1991, c.
12 99, §22, are further amended to read:

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

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, sexual orientation or
38 national origin, or that the patronage or custom of any person
40 belonging to or purporting to be of any particular race or color,
42 sex, physical or mental disability, religion, ancestry, sexual
orientation 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, sexual orientation 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

44 **Sec. 10. 5 MRSA §4594-F** is enacted to read:

46 **§4594-F. Not unlawful discrimination**

48 This Act may not be construed to require any private
membership organization to admit any person as a member based on

2 sexual orientation and this Act may not be construed to require
3 any person or organization to permit the participation of any
4 group in any activity or event or to require the use of any
5 facility or other public accommodation for the purpose of
6 promoting or advocating matters relating to sexual orientation.

7 **Sec. 11. 5 MRSA §4596**, as amended by PL 1975, c. 770, §41, is
8 further amended to read:

10 **§4596. Unlawful credit extension discrimination**

12 It shall--be is unlawful credit discrimination for any
13 creditor to refuse the extension of credit to any person solely
14 on the basis of any one or more of the following factors: Age
15 age; race; color; sex; marital status; sexual orientation;
16 ancestry; religion or national origin in any credit transaction.
17 It shall is not be unlawful credit discrimination to comply with
18 the terms and conditions of any bona fide group credit life,
19 accident and health insurance plan, for a financial institution
20 extending credit to a married person to require both the husband
21 and the wife to sign a note and a mortgage and to deny credit to
22 persons under the age of 18 or to consider a person's age in
23 determining the terms upon which credit will be extended.

24 **Sec. 12. 5 MRSA §4634** is enacted to read:

26 **§4634. Provisions relating to sexual orientation**

28 **1. Endorsement, promotion or protection.** This Act may not
29 be construed as endorsing, promoting or protecting any form of
30 conduct, life-style or sexual behavior that is related to sexual
31 orientation.

34 **2. Standard of proof.** In any complaint under this Act,
35 based on a claim of sexual orientation discrimination, the
36 complainant has the burden of proof to establish that
37 discrimination against sexual orientation was the primary reason
38 in any complaint for an action taken under this Act.

40 **3. Certain nonprofit organizations exempt.** The provisions
41 of this Act relating to sexual orientation do not apply to:

42 **A. Religious organizations, nonprofit organizations that**
43 are owned or controlled by religious organizations and
44 nonprofit organizations for which a substantial purpose is
45 the propagation of a particular religion; and

48 **B. Private nonprofit organizations for which the primary**
49 purpose is to provide services to, or the members of which
50 are primarily, persons under the age of 18.

2 4. Adoption and foster care. This Act may not be construed
4 to require the placement of a child for adoption or foster care
6 when one or more of the prospective adoptive or foster parents is
 homosexual. Any person or agency responsible for the placement
 of a child may consider the sexual orientation of the prospective
 adoptive or foster parents.

8
10 5. Disparate impact. The fact that a practice or policy
 has a disparate impact on the basis of sexual orientation does
 not constitute unlawful discrimination.

12
14 6. Affirmative action. An employer is not required to take
 an affirmative action to recruit, hire, or promote persons based
16 on sexual orientation and an employer is not required to obtain
 or maintain information relating to the sexual orientation of
 employees.

18
20 7. School curriculum. A school is not required to
 incorporate any particular view of homosexual orientation or
22 behavior in its curriculum and any such curriculum decisions are
 under the jurisdiction of local school boards and governing
 bodies of other educational institutions.

24
26 8. Immunity for certain employers and landlords. Under
 this Act, a complaint or civil action based on sexual orientation
 discrimination may not be filed against:

28 A. An employer who has fewer than 15 regular employees and
30 who would not be subject to a lawsuit under the employment
 provisions of the federal Americans with Disabilities Act; or

32 B. A property owner who owns less than 5 housing units or,
34 with respect to any claim involving a building in which the
 property owner or a member of the owner's immediate family
36 resides.

38 **Sec. 13. 17-A MRSA §254, sub-§1-A** is enacted to read:

40 1-A. A person is guilty of sexual abuse of a minor if the
42 person engages in a sexual act or sexual contact with another
 person who has not attained 18 years of age and who is of the
44 same gender as the actor, provided that the actor is at least 3
 years older than the other person.

46 **Sec. 14. 19 MRSA §5** is enacted to read:

48 **§5. Public policy on marriage**

50 It is the policy of this State that marriage is a vital

2 fundamental institution that is entitled to the support and
3 protection of the State. A marriage must be limited to one male
4 and one female of sufficient age and who otherwise meet the
5 qualifications set forth in this chapter. To the maximum extent
6 permitted under the Full Faith and Credit clause of the United
7 States Constitution, this State does not recognize relationships
8 or arrangements between or among 2 or more persons as a marriage
9 or substantially equivalent to a marriage for any purpose under
10 the laws of this State.

12 STATEMENT OF FACT

14 This bill attempts to reconcile the respective rights and
15 responsibilities of individuals, business and organizations with
16 respect to issues of sexual orientation and related matters.

18 The bill amends the Maine Human Rights Act to prohibit
19 discrimination in employment and housing against a person who has
20 been the victim of a crime involving violence or the threat of
21 violence and who reports that crime to law enforcement, provided
22 that person was not involved in criminal conduct or misconduct
23 relating to employment.

24 The bill amends the Maine Human Rights Act to prohibit
25 discrimination in employment, housing, access to public
26 accommodations and credit based on sexual orientation. The term
27 "sexual orientation" is defined as the status or tendency toward
28 homosexual or heterosexual attraction but the bill expressly does
29 not protect any form of sexual behavior, conduct or life-style
30 that may be related to a sexual orientation.

32 The bill exempts religious organizations and certain
33 nonprofit organizations from the provisions of the Act relating
34 to sexual orientation.

36 The bill states that an employer or insurer is not required
37 to provide insurance or other employee benefits to persons
38 involved in homosexual relationships with an employee because the
39 employer provides those benefits to employees' spouses and
40 children and that employers are not required to engage in
41 affirmative action or to keep employment records relating to
42 sexual orientation.

44 The bill prohibits lawsuits under the Maine Human Rights Act
45 that force participation of groups in privately sponsored events
46 such as parades or conventions for the purpose of advocating a
47 certain life-style based on sexual orientation.

50 The bill prohibits lawsuits based on sexual orientation

2 discrimination against employers with less than 15 employees who
are exempt from a lawsuit under the federal Americans with
4 Disabilities Act and against landlords who own less than 5 rental
units or who reside in the building in question.

6 The bill prohibits lawsuits to force any school to
incorporate any particular view of homosexual orientation or
8 behavior in its curriculum and expressly leaves these other
decisions under the jurisdiction of local school boards and
10 governing bodies of educational institutions.

12 The bill does not require the placement of any child for
adoption or foster care when one or more of the prospective
14 parents is homosexual and any person or agency responsible for
the placement of a child may lawfully consider the sexual
16 orientation of the prospective parents.

18 The bill expressly affirms public policy in support of
marriage and makes clear that marriage is limited to one female
20 and one male and that other forms of relationships or
arrangements, whether or not sanctioned by another state, are not
22 recognized in Maine as a marriage or marriage-equivalent.

24 The bill makes it a crime of sexual abuse of a minor for a
person to engage in a sexual act or sexual contact with a minor
26 of the same gender who is more than 3 years younger than the
actor. Current law applies only when the actor is at least 5
28 years older, if the minor is between 14 and 16 years of age and
an adult of any age can lawfully engage in sexual activity with a
30 minor who is 16 or 17 years of age.