

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1995

Legislative Document

No. 1625

S.P. 620

In Senate, December 22, 1995

An Act to Restore the Safety Defense to the Maine Human Rights Act.

(EMERGENCY)

Submitted by the Maine Human Rights Commission pursuant to Joint Rule 24.
Received by the Secretary of the Senate on December 20, 1995. Referred to the Committee on Judiciary and ordered printed pursuant to Joint Rule 14.

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

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 Whereas, the law providing the safety defense under the
Maine Human Rights Act was repealed September 29, 1995; and

8 Whereas, it is necessary to restore the safety defense to
the Maine Human Rights Act as quickly as possible; and

10 Whereas, in the judgment of the Legislature, these facts
12 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
14 necessary for the preservation of the public peace, health and
safety; now, therefore,

16
18 **Be it enacted by the People of the State of Maine as follows:**

20 **Sec. 1. 5 MRSA §4573-A, sub-§§1-A and 1-B** are enacted to read:

22 1-A. Qualification standards defined. For the purposes of
this section, the term "qualification standards" may include a
24 requirement that an individual does not pose a direct threat to
the health or safety of other individuals in the workplace.

26 1-B. Physical or mental disability. This subchapter does
not prohibit an employer from discharging or refusing to hire an
28 individual with physical or mental disability, or subject an
employer to any legal liability resulting from the refusal to
30 employ or the discharge of an individual with physical or mental
disability, if the individual, because of the physical or mental
32 disability, is unable to perform the duties or to perform the
duties in a manner that would not endanger the health or safety
34 of the individual or others or is unable to be at, remain at or
go to or from the place where the duties of employment are to be
36 performed.

38 **Sec. 2. 5 MRSA §4592**, as amended by PL 1995, c. 393, §§22 to
24, is further amended by adding a new first paragraph to read:

40
42 This section does not require an entity to permit an
individual to participate in or benefit from the goods, services,
44 facilities, privileges, advantages and accommodations of that
entity when the individual poses a direct threat to the health or
46 safety of others. For the purposes of this section, the term
"direct threat" means a significant risk to the health or safety
of others that can not be eliminated by a modification of
48 policies, practices or procedures or by the provision of
auxiliary aids or services.

2 **Sec. 3. Retroactivity.** This Act applies retroactively to
September 29, 1995.

4 **Emergency clause.** In view of the emergency cited in the
6 preamble, this Act takes effect when approved.

8
STATEMENT OF FACT

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12 The addition of language to the Maine Revised Statutes,
14 Title 5, sections 4573-A and 4592 adds necessary references to
the "direct threat" defense found in the federal Americans with
16 Disabilities Act from which Title 5, sections 4573-A and 4592 are
derived. The addition of the language to section 4573-A restores
18 reference to the Maine Human Rights Act's long-standing "safety
defense" which has been interpreted by the Maine Law Court in
20 numerous cases in a way beneficial to both employers and
employees. See, for example, Maine Human Rights Commission v.
Canadian Pacific, 458 A.2d 1225 (Me. 1983).