

MAINE STATE LEGISLATURE

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2 Date: 06-08-07

(Filing No. S- 248)

3 JUDICIARY

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5 STATE OF MAINE

6 SENATE

7 123RD LEGISLATURE

8 FIRST REGULAR SESSION

9 COMMITTEE AMENDMENT "A" to S.P. 344, L.D. 1027, Bill, "An Act To
10 Clarify the Definition of "Physical or Mental Disability" in the Maine Human Rights Act"

11 Amend the bill by inserting after the title and before the enacting clause the
12 following:

13 'Emergency preamble. Whereas, acts and resolves of the Legislature do not
14 become effective until 90 days after adjournment unless enacted as emergencies; and

15 Whereas, after the Maine Supreme Judicial Court's ruling in Whitney v. Wal-Mart
16 2006 ME 37 invalidated rules providing guidance for interpretation of the definition of
17 "physical or mental disability" in the Maine Human Rights Act; and

18 Whereas, there may be confusion in the application of the existing statutory
19 definition without the guidance of the rules; and

20 Whereas, this Act provides a new statutory definition of "physical or mental
21 disability" that is narrower than the existing law after the Whitney decision, and the
22 enactment of the new definition removes any confusion; and

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

27 Amend the bill by striking out everything after the enacting clause and before the
28 summary and inserting the following:

29 'Sec. 1. 5 MRSA §4553, sub-§7-A, as amended by PL 1991, c. 99, §2, is
30 repealed and the following enacted in its place:

31 7-A. Physical or mental disability. "Physical or mental disability" has the meaning
32 set forth in section 4553-A.

COMMITTEE AMENDMENT

1 **Sec. 2. 5 MRSA §4553, sub-§7-B**, as enacted by PL 1995, c. 393, §6, is repealed.

2 **Sec. 3. 5 MRSA §4553-A** is enacted to read:

3 **§4553-A. Physical or mental disability**

4 **1. Physical or mental disability, defined.** "Physical or mental disability" means:

5 **A. A physical or mental impairment that:**

6 **(1) Substantially limits one or more of a person's major life activities;**

7 **(2) Significantly impairs physical or mental health; or**

8 **(3) Requires special education, vocational rehabilitation or related services;**

9 **B. Without regard to severity unless otherwise indicated: absent, artificial or**
10 **replacement limbs, hands, feet or vital organs; alcoholism; amyotrophic lateral**
11 **sclerosis; bipolar disorder; blindness or abnormal vision loss; cancer; cerebral palsy;**
12 **chronic obstructive pulmonary disease; Crohn's disease; cystic fibrosis; deafness or**
13 **abnormal hearing loss; diabetes; substantial disfigurement; epilepsy; heart disease;**
14 **HIV or AIDS; kidney or renal diseases; lupus; major depressive disorder;**
15 **mastectomy; mental retardation; multiple sclerosis; muscular dystrophy; paralysis;**
16 **Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis;**
17 **schizophrenia; and acquired brain injury;**

18 **C. With respect to an individual, having a record of any of the conditions in**
19 **paragraph A or B; or**

20 **D. With respect to an individual, being regarded as having or likely to develop any**
21 **of the conditions in paragraph A or B.**

22 **2. Additional terms.** For purposes of this section:

23 **A. The existence of a physical or mental disability is determined without regard to**
24 **the ameliorative effects of mitigating measures such as medication, auxiliary aids or**
25 **prosthetic devices; and**

26 **B. "Significantly impairs physical or mental health" means having an actual or**
27 **expected duration of more than 6 months and impairing health to a significant extent**
28 **as compared to what is ordinarily experienced in the general population.**

29 **3. Exceptions.** "Physical or mental disability" does not include:

30 **A. Pedophilia, exhibitionism, voyeurism, sexual behavior disorders, compulsive**
31 **gambling, kleptomania, pyromania or tobacco smoking;**

32 **B. Any condition covered under section 4553, subsection 9-C; or**

33 **C. Psychoactive substance use disorders resulting from current illegal use of drugs,**
34 **although this may not be construed to exclude an individual who:**

35 **(1) Has successfully completed a supervised drug rehabilitation program and is**
36 **no longer engaging in the illegal use of drugs or has otherwise been rehabilitated**
37 **successfully and is no longer engaging in such use;**

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- (2) Is participating in a supervised rehabilitation program and is no longer engaging in such use;
- (3) Is erroneously regarded as engaging in such use, but is not engaging in such use; or
- (4) In the context of a reasonable accommodation in employment, is seeking treatment or has successfully completed treatment.

Sec. 4. 5 MRSA §4554, sub-§4 is enacted to read:

4. Physical or mental disability. The definition of "physical or mental disability" in section 4553-A is intended to be interpreted broadly to create greater coverage than under the federal Americans with Disabilities Act of 1990.

Sec. 5. 5 MRSA §4566, sub-§7, as amended by PL 1977, c. 694, §29, is further amended to read:

7. Rules and regulations. To adopt, amend and rescind rules and regulations to effectuate this Act, such adoption, amendment and rescission to be made in the manner provided by chapter 375, subchapter H 2. Rules adopted to implement section 4553-A are major substantive rules as defined in chapter 375, subchapter 2-A;

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.'

SUMMARY

This amendment replaces the bill, which sought to make the definition of "physical or mental disability" within the Maine Human Rights Act consistent with federal law.

This amendment adopts a new definition of "physical or mental disability." A physical or mental impairment qualifies as a physical or mental disability under the Maine Human Rights Act if it:

- 1. Substantially limits one or more of a person's major life activities;
- 2. Significantly impairs physical or mental health; or
- 3. Requires special education, vocational rehabilitation or related services.

In addition, this amendment also includes a list of specific physical or mental impairments that qualify as physical or mental disabilities.

"Physical or mental disability" includes an individual with a record of physical or mental disability, as defined. It also includes an individual who is regarded as having or likely to develop any of the conditions within the definition of "physical or mental disability."

The existence of a physical or mental disability is determined without regard to the ameliorative effects of mitigating measures such as medication, auxiliary aids or prosthetic devices.

This amendment also includes a list of conditions that are not included as physical or mental disabilities.

COMMITTEE AMENDMENT "A" to S.P. 344, L.D. 1027

1 The stand-alone definition of "person with a disability" is repealed because it is
2 incorporated into the new definition of "physical or mental disability."

3 This amendment adds to the construction provisions of the Maine Human Rights Act
4 a rule of construction that directs that the definition of "physical or mental disability" in
5 the Act is to be interpreted broadly to create greater coverage than under the federal
6 Americans with Disabilities Act of 1990.

7 This amendment provides that rules adopted by the Maine Human Rights
8 Commission to implement the new definition of "physical or mental disability" are major
9 substantive rules and therefore require review by the Legislature before being finally
10 adopted.

11 This amendment adds an emergency preamble and emergency clause to make the
12 changes take effect immediately.

FISCAL NOTE REQUIRED
(See attached)



Approved: 05/31/07 *mac*

123rd MAINE LEGISLATURE

LD 1027

LR 1399(02)

An Act To Clarify the Definition of "Physical or Mental Disability" in the Maine Human Rights Act

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund