

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

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Legislative Document

No. 1245

H.P. 906

House of Representatives, March 14, 2019

**An Act To Protect Victims of Domestic and Sexual Violence in
Certain Provisions under the Maine Human Rights Act**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative STOVER of Boothbay.
Cosponsored by Representatives: DENK of Kennebunk, EVANGELOS of Friendship, FAY of
Raymond, HARNETT of Gardiner, LANDRY of Farmington, MATLACK of St. George,
McCREIGHT of Harpswell, WARREN of Hallowell.

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

2 **Sec. 1. 5 MRSA §4553, sub-§9-A**, as enacted by PL 1995, c. 393, §8, is amended
3 to read:

4 **9-A. Reasonable accommodation.** For purposes of subchapter III, "reasonable
5 accommodation" may include, but is not limited to:

6 A. Making existing facilities used by employees readily accessible to and usable by
7 individuals with disabilities; ~~and~~

8 B. Job restructuring, part-time or modified work schedules, reassignment to a vacant
9 position, acquisition or modification of equipment or devices, appropriate adjustment
10 or modifications of examinations, training materials or policies, the provision of
11 qualified readers or interpreters and other similar accommodations for individuals
12 with disabilities; and

13 C. For an employee who is a victim of domestic or sexual violence, allowing the
14 employee to take time off to obtain or attempt to obtain a restraining order or any
15 other judicial relief to help ensure the employee's health, safety or welfare or the
16 health, safety or welfare of the employee's child; to seek legal assistance and prepare
17 for or attend court-related proceedings; to seek medical or psychological care; to
18 obtain services from a domestic violence shelter or program or rape crisis center; to
19 participate in safety planning; to locate safe housing or secure the employee's home;
20 or to relocate. An employer may require a victim of domestic or sexual violence
21 seeking such leave as a reasonable accommodation to exhaust annual leave, vacation
22 leave, personal leave and sick leave.

23 **Sec. 2. 5 MRSA §4553, sub-§11** is enacted to read:

24 **11. Victim of domestic or sexual violence.** "Victim of domestic or sexual violence"
25 means an individual who is the victim of:

26 A. Domestic violence assault under Title 17-A, section 207-A;

27 B. Domestic violence criminal threatening under Title 17-A, section 209-A;

28 C. Terrorizing under Title 17-A, section 210;

29 D. Stalking under Title 17-A, section 210-A;

30 E. Domestic violence terrorizing under Title 17-A, section 210-B; or

31 F. Domestic violence stalking under Title 17-A, section 210-C.

32 **Sec. 3. 5 MRSA §4572, sub-§1**, as amended by PL 2005, c. 10, §§11 and 12, is
33 further amended to read:

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

36 A. For any employer to fail or refuse to hire or otherwise discriminate against any
37 applicant for employment because of race or color, sex, sexual orientation, physical

1 or mental disability, religion, age, ancestry or national origin, status as a victim of
2 domestic or sexual violence, because of the applicant's previous assertion of a claim
3 or right under former Title 39 or Title 39-A or because of previous actions taken by
4 the applicant that are protected under Title 26, chapter 7, subchapter 5-B; or, because
5 of those reasons, to discharge an employee or discriminate with respect to hire,
6 tenure, promotion, transfer, compensation, terms, conditions or privileges of
7 employment or any other matter directly or indirectly related to employment; or, in
8 recruiting of individuals for employment or in hiring them, to utilize any employment
9 agency that the employer knows or has reasonable cause to know discriminates
10 against individuals because of their race or color, sex, sexual orientation, physical or
11 mental disability, religion, age, ancestry or national origin, status as a victim of
12 domestic or sexual violence, because of their previous assertion of a claim or right
13 under former Title 39 or Title 39-A or because of previous actions that are protected
14 under Title 26, chapter 7, subchapter 5-B;

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

17 B. For any employment agency to fail or refuse to classify properly, refer for
18 employment or otherwise discriminate against any individual because of race or
19 color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or
20 national origin, status as a victim of domestic or sexual violence, because of the
21 individual's previous assertion of a claim or right under former Title 39 or Title 39-A
22 or because of previous actions taken by the individual that are protected under Title
23 26, chapter 7, subchapter 5-B; or to comply with an employer's request for the
24 referral of job applicants if a request indicates either directly or indirectly that the
25 employer will not afford full and equal employment opportunities to individuals
26 regardless of their race or color, sex, sexual orientation, physical or mental disability,
27 religion, age, ancestry or national origin, status as a victim of domestic or sexual
28 violence, because of previous assertion of a claim or right under former Title 39 or
29 Title 39-A or because of previous actions that are protected under Title 26, chapter 7,
30 subchapter 5-B;

31 C. For any labor organization to exclude from apprenticeship or membership or to
32 deny full and equal membership rights to any applicant for membership because of
33 race or color, sex, sexual orientation, physical or mental disability, religion, age,
34 ancestry or national origin, status as a victim of domestic or sexual violence, because
35 of the applicant's previous assertion of a claim or right under former Title 39 or Title
36 39-A or because of previous actions taken by the applicant that are protected under
37 Title 26, chapter 7, subchapter 5-B; or, because of those reasons, to deny a member
38 full and equal membership rights, expel from membership, penalize or otherwise
39 discriminate with respect to hire, tenure, promotion, transfer, compensation, terms,
40 conditions or privileges of employment, representation, grievances or any other
41 matter directly or indirectly related to membership or employment, whether or not
42 authorized or required by the constitution or bylaws of that labor organization or by a
43 collective labor agreement or other contract; to fail or refuse to classify properly or
44 refer for employment or otherwise discriminate against any member because of race
45 or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry
46 or national origin, status as a victim of domestic or sexual violence, because of the

1 member's previous assertion of a claim or right under former Title 39 or Title 39-A or
2 because of previous actions taken by the member that are protected under Title 26,
3 chapter 7, subchapter 5-B; or to cause or attempt to cause an employer to discriminate
4 against an individual in violation of this section, except that it is lawful for labor
5 organizations and employers to adopt a maximum age limitation in apprenticeship
6 programs, if the employer or labor organization obtains prior approval from the
7 Maine Human Rights Commission of any maximum age limitation employed in an
8 apprenticeship program. The commission shall approve the age limitation if a
9 reasonable relationship exists between the maximum age limitation employed and a
10 legitimate expectation of the employer in receiving a reasonable return upon the
11 employer's investment in an apprenticeship program. The employer or labor
12 organization bears the burden of demonstrating that such a relationship exists;

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

15 (1) Elicit or attempt to elicit information directly or indirectly pertaining to race
16 or color, sex, sexual orientation, physical or mental disability, religion, age,
17 ancestry or national origin, status as a victim of domestic or sexual violence, any
18 previous assertion of a claim or right under former Title 39 or Title 39-A or any
19 previous actions that are protected under Title 26, chapter 7, subchapter 5-B;

20 (2) Make or keep a record of race or color, sex, sexual orientation, physical or
21 mental disability, religion, age, ancestry or national origin, status as a victim of
22 domestic or sexual violence, any previous assertion of a claim or right under
23 former Title 39 or Title 39-A or any previous actions that are protected under
24 Title 26, chapter 7, subchapter 5-B, except under physical or mental disability
25 when an employer requires a physical or mental examination prior to
26 employment, a privileged record of that examination is permissible if made and
27 kept in compliance with this Act;

28 (3) Use any form of application for employment, or personnel or membership
29 blank containing questions or entries directly or indirectly pertaining to race or
30 color, sex, sexual orientation, physical or mental disability, religion, age, ancestry
31 or national origin, status as a victim of domestic or sexual violence, any previous
32 assertion of a claim or right under former Title 39 or Title 39-A or any previous
33 actions that are protected under Title 26, chapter 7, subchapter 5-B. This section
34 does not prohibit any officially recognized government agency from keeping
35 records permitted to be kept under this Act in order to provide free services to
36 individuals requesting rehabilitation or employment assistance;

37 (4) Print, publish or cause to be printed or published any notice or advertisement
38 relating to employment or membership indicating any preference, limitation,
39 specification or discrimination based upon race or color, sex, sexual orientation,
40 physical or mental disability, religion, age, ancestry or national origin, status as a
41 victim of domestic or sexual violence, any previous assertion of a claim or right
42 under former Title 39 or Title 39-A or any previous actions that are protected
43 under Title 26, chapter 7, subchapter 5-B; or

44 (5) Establish, announce or follow a policy of denying or limiting, through a
45 quota system or otherwise, employment or membership opportunities of any

1 group because of the race or color, sex, sexual orientation, physical or mental
2 disability, religion, age, ancestry or national origin, status as a victim of domestic
3 or sexual violence, the previous assertion of a claim or right under former Title
4 39 or Title 39-A or because of previous actions that are protected under Title 26,
5 chapter 7, subchapter 5-B, of that group; or

6 E. For an employer, employment agency or labor organization to discriminate in any
7 manner against individuals because they have opposed a practice that would be a
8 violation of this Act or because they have made a charge, testified or assisted in any
9 investigation, proceeding or hearing under this Act.

10 **Sec. 4. 5 MRSA §4591**, as amended by PL 2005, c. 10, §16, is further amended to
11 read:

12 **§4591. Equal access to public accommodations**

13 The opportunity for every individual to have equal access to places of public
14 accommodation without discrimination because of race, color, sex, sexual orientation,
15 physical or mental disability, religion, ancestry or national origin or status as a victim of
16 domestic or sexual violence is recognized as and declared to be a civil right.

17 **Sec. 5. 5 MRSA §4592, sub-§§1 and 2**, as amended by PL 2005, c. 10, §17, are
18 further amended to read:

19 **1. Denial of public accommodations.** For any public accommodation or any person
20 who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or
21 employee of any place of public accommodation to directly or indirectly refuse,
22 discriminate against or in any manner withhold from or deny the full and equal enjoyment
23 to any person, on account of race or color, sex, sexual orientation, physical or mental
24 disability, religion, ancestry or national origin or status as a victim of domestic or sexual
25 violence, any of the accommodations, advantages, facilities, goods, services or privileges
26 of public accommodation, or in any manner discriminate against any person in the price,
27 terms or conditions upon which access to accommodation, advantages, facilities, goods,
28 services and privileges may depend.

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

31 A. The imposition or application of eligibility criteria that screen out or tend to
32 screen out an individual with a disability or any class of individuals with disabilities
33 from fully and equally enjoying any goods, services, facilities, privileges, advantages
34 or accommodations, unless the criteria can be shown to be necessary for the provision
35 of the goods, services, facilities, privileges, advantages or accommodations being
36 offered;

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

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

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

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

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

21 **2. Communication, notice or advertisement.** For any person to directly or
22 indirectly publish, display or communicate any notice or advertisement to the effect that
23 any of the accommodations, advantages, facilities and privileges of any place of public
24 accommodation are refused, withheld from or denied to any person on account of race or
25 color, sex, sexual orientation, physical or mental disability, religion, ancestry or national
26 origin or status as a victim of domestic or sexual violence, or that the patronage or custom
27 of any person belonging to or purporting to be of any particular race or color, sex, sexual
28 orientation, physical or mental disability, religion, ancestry or national origin or status as
29 a victim of domestic or sexual violence is unwelcome, objectionable or not acceptable,
30 desired or solicited, or that the clientele is restricted to any particular race or color, sexual
31 orientation, physical or mental disability, religion, ancestry or national origin or status as
32 a victim of domestic or sexual violence. The production of any communication, notice or
33 advertisement purporting to relate to any place of accommodation is presumptive
34 evidence in any action that the action was authorized by its owner, manager or proprietor;

35 **SUMMARY**

36 This bill amends certain portions of the Maine Human Rights Act to provide
37 protections to victims of domestic and sexual violence.