

MAINE STATE LEGISLATURE

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ONE
ROES

L.D. 1703

Date: 1-29-20

(Filing No. H-665)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "C" to H.P. 1218, L.D. 1703, Bill, "An Act To Improve Consistency within the Maine Human Rights Act"

Amend the bill by striking out the title and substituting the following:

'An Act To Improve Consistency in the Maine Human Rights Act and Related Statutes'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 5 MRSA §1825-L, sub-§2, ¶A, as enacted by PL 2001, c. 439, Pt. NNNN, §1, is amended to read:

A. Comply with all applicable wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes and laws relating to discrimination in hiring, promotion or compensation on the basis of race, disability, national origin, gender, sexual orientation, gender identity or affiliation with any political, nongovernmental or civic group except when federal law precludes the State from attaching the procurement conditions provided in this subchapter.

Sec. 2. 5 MRSA §4552, as amended by PL 2005, c. 10, §1, is further amended to read:

§4552. Policy

To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing, education, extension of credit or access to public accommodations on account of an individual's actual or perceived race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry or national origin; and in employment, extension of credit and access to public accommodations on the basis of age; and in employment and housing on the basis of familial status; and in employment, discrimination on account of age or because of the previous assertion of a claim or right against another prior employer under former Title 39 or Title 39-A and in

housing because of familial status; and to prevent discrimination in the extension of credit on account of age, race, color, sex, sexual orientation, marital status, religion, ancestry or national origin; and to prevent discrimination in education on account of sex, sexual orientation or physical or mental disability and because of protected activity under Title 26, chapter 7, subchapter 5-B, and to prevent discrimination or retaliation on the basis of an assertion of rights under this Act or interference with an individual's right to be free from discrimination prohibited under this Act.

Sec. 3. 5 MRSA §4553, sub-§5-A, as amended by PL 2019, c. 464, §1, is further amended to read:

5-A. Familial status. "Familial status" means that a family unit may contain one or more individuals who have not attained 18 years of age and are living with:

A. A One or more individuals who have not attained 18 years of age and are living with a parent or another person having legal custody of the individual or individuals or the designee of the parent or other person having custody with the written permission of the parent or other person; or

~~B. The designee of the parent or other person having custody, with the written permission of the parent or other person.~~

C. One or more individuals who lack the ability to meet essential requirements for physical health, safety or self-care because the individual or individuals are unable to receive and evaluate information or make or communicate decisions.

The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or who is in the process of securing legal custody of any individual who has not attained 18 years of age.

Sec. 4. 5 MRSA §4553, sub-§10, ¶G, as amended by PL 2019, c. 464, §1, is further amended to read:

G. Discrimination in employment, housing, public accommodation, credit and educational opportunity on the basis of sexual orientation or gender identity, except that a religious corporation, association or organization that does not receive public funds is exempt from this provision with respect to:

(1) Employment, as is more fully set forth in section 4553, subsection 4 and section 4573-A;

(2) Housing; and

(3) Educational opportunity, ~~as is more fully set forth in section 4602, subsection 4.~~

Any for-profit organization owned, controlled or operated by a religious association or corporation and subject to the provisions of the Internal Revenue Code, 26 United States Code, Section 511(a) is not covered by the exemptions set forth in this paragraph.

Sec. 5. 5 MRSA §4571, as amended by PL 2005, c. 10, §10, is further amended to read:

§4571. Right to freedom from discrimination in employment

The opportunity for an individual to secure employment without discrimination because of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin or familial status is recognized as and declared to be a civil right.

Sec. 6. 5 MRSA §4572, sub-§1, as amended by PL 2005, c. 10, §§11 and 12, is further amended to read:

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

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin, or familial status, because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter 5-B; or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly 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, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin, or familial status, 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 5-B;

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

B. For any employment agency to fail or refuse to classify properly, refer for employment or otherwise discriminate against any individual because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin, or familial status, because of the individual's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the individual that are protected under Title 26, chapter 7, subchapter 5-B; or to comply with 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, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin, or familial status, 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 5-B;

C. For any labor organization to exclude from apprenticeship or membership or to deny full and equal membership rights to any applicant for membership because of race or color, sex, sexual orientation or gender identity, physical or mental disability,

1 religion, age, ancestry ~~or~~, national origin, or familial status, because of the applicant's
 2 previous assertion of a claim or right under former Title 39 or Title 39-A or because
 3 of previous actions taken by the applicant that are protected under Title 26, chapter 7,
 4 subchapter 5-B; or, because of those reasons, to deny a member full and equal
 5 membership rights, expel from membership, penalize or otherwise discriminate with
 6 respect to hire, tenure, promotion, transfer, compensation, terms, conditions or
 7 privileges of employment, representation, grievances or any other matter directly or
 8 indirectly related to membership or employment, whether or not authorized or
 9 required by the constitution or bylaws of that labor organization or by a collective
 10 labor agreement or other contract; to fail or refuse to classify properly or refer for
 11 employment or otherwise discriminate against any member because of race or color,
 12 sex, sexual orientation or gender identity, physical or mental disability, religion, age,
 13 ancestry ~~or~~, national origin, or familial status, because of the member's previous
 14 assertion of a claim or right under former Title 39 or Title 39-A or because of
 15 previous actions taken by the member that are protected under Title 26, chapter 7,
 16 subchapter 5-B; or to cause or attempt to cause an employer to discriminate against
 17 an individual in violation of this section, except that it is lawful for labor
 18 organizations and employers to adopt a maximum age limitation in apprenticeship
 19 programs, if the employer or labor organization obtains prior approval from the
 20 Maine Human Rights Commission of any maximum age limitation employed in an
 21 apprenticeship program. The commission shall approve the age limitation if a
 22 reasonable relationship exists between the maximum age limitation employed and a
 23 legitimate expectation of the employer in receiving a reasonable return upon the
 24 employer's investment in an apprenticeship program. The employer or labor
 25 organization bears the burden of demonstrating that such a relationship exists;

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

28 (1) Elicit or attempt to elicit information directly or indirectly pertaining to race
 29 or color, sex, sexual orientation or gender identity, physical or mental disability,
 30 religion, age, ancestry ~~or~~, national origin, or familial status, any previous
 31 assertion of a claim or right under former Title 39 or Title 39-A or any previous
 32 actions that are protected under Title 26, chapter 7, subchapter 5-B;

33 (2) Make or keep a record of race or color, sex, sexual orientation or gender
 34 identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin,
 35 or familial status, any previous assertion of a claim or right under former Title 39
 36 or Title 39-A or any previous actions that are protected under Title 26, chapter 7,
 37 subchapter 5-B, except under physical or mental disability when an employer
 38 requires a physical or mental examination prior to employment, a privileged
 39 record of that examination is permissible if made and kept in compliance with
 40 this Act;

41 (3) Use any form of application for employment, or personnel or membership
 42 blank containing questions or entries directly or indirectly pertaining to race or
 43 color, sex, sexual orientation or gender identity, physical or mental disability,
 44 religion, age, ancestry ~~or~~, national origin, or familial status, any previous
 45 assertion of a claim or right under former Title 39 or Title 39-A or any previous

1 actions that are protected under Title 26, chapter 7, subchapter 5-B. This section
2 does not prohibit any officially recognized government agency from keeping
3 records permitted to be kept under this Act in order to provide free services to
4 individuals requesting rehabilitation or employment assistance;

5 (4) Print, publish or cause to be printed or published any notice or advertisement
6 relating to employment or membership indicating any preference, limitation,
7 specification or discrimination based upon race or color, sex, sexual orientation
8 or gender identity, physical or mental disability, religion, age, ancestry ~~or~~,
9 national origin, or familial status, any previous assertion of a claim or right under
10 former Title 39 or Title 39-A or any previous actions that are protected under
11 Title 26, chapter 7, subchapter 5-B; or

12 (5) Establish, announce or follow a policy of denying or limiting, through a
13 quota system or otherwise, employment or membership opportunities of any
14 group because of the race or color, sex, sexual orientation or gender identity,
15 physical or mental disability, religion, age, ancestry ~~or~~, national origin, or
16 familial status, the previous assertion of a claim or right under former Title 39 or
17 Title 39-A or because of previous actions that are protected under Title 26,
18 chapter 7, subchapter 5-B, of that group; or

19 E. For an employer, employment agency or labor organization to discriminate in any
20 manner against individuals because they have opposed a practice that would be a
21 violation of this Act or because they have made a charge, testified or assisted in any
22 investigation, proceeding or hearing under this Act. This paragraph does not in any
23 way limit the liability of individuals or entities pursuant to section 4633.

24 **Sec. 7. 5 MRSA §4573-A, sub-§2**, as enacted by PL 1995, c. 393, §21, is
25 amended to read:

26 **2. Religious entities.** This subchapter does not prohibit a religious corporation,
27 association, educational institution or society that does not receive public funds from
28 giving preference in employment to individuals of its same religion to perform work
29 connected with the carrying on by the corporation, association, educational institution or
30 society of its activities. Under this subchapter, a religious organization that does not
31 receive public funds may require that all applicants and employees conform to the
32 religious tenets of that organization.

33 **Sec. 8. 5 MRSA §4581, first ¶**, as amended by PL 2011, c. 613, §10 and affected
34 by §29, is further amended to read:

35 The opportunity for an individual to secure housing in accordance with the
36 individual's ability to pay, and without discrimination because of race, color, sex, sexual
37 orientation or gender identity, physical or mental disability, religion, ancestry, national
38 origin or familial status is hereby recognized as and declared to be a civil right.

39 **Sec. 9. 5 MRSA §4581-A, sub-§1**, as enacted by PL 2011, c. 613, §11 and
40 affected by §29, is amended to read:

1 **1. Sale or rental of housing and other prohibited practices.** For any owner,
2 lessee, sublessee, managing agent or other person having the right to sell or rent or
3 manage a housing accommodation, or any agent of these, to:

4 A. Make or cause to be made any written or oral inquiry concerning the race or
5 color, sex, sexual orientation or gender identity, physical or mental disability,
6 religion, ancestry, national origin or familial status of any prospective purchaser,
7 occupant or tenant of the housing accommodation;

8 B. Refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold
9 from any person the housing accommodation because of race or color, sex, sexual
10 orientation or gender identity, physical or mental disability, religion, ancestry,
11 national origin or familial status;

12 C. Make, print or publish or cause to be made, printed or published any notice,
13 statement or advertisement relating to the sale, rental or lease of the housing
14 accommodation that indicates any preference, limitation or discrimination based upon
15 race or color, sex, sexual orientation or gender identity, physical or mental disability,
16 religion, ancestry, national origin or familial status or an intention to make any such
17 preference, limitation or discrimination;

18 D. Discriminate against any person because of race or color, sex, sexual orientation
19 or gender identity, physical or mental disability, religion, ancestry, national origin or
20 familial status in the price, terms, conditions or privileges of the sale, rental or lease
21 of any housing accommodations or in the furnishing of facilities or services in
22 connection with any housing accommodations; or

23 E. Evict or attempt to evict any tenant of any housing accommodation because of the
24 race or color, sex, sexual orientation or gender identity, physical or mental disability,
25 religion, ancestry, national origin or familial status of the tenant;

26 **Sec. 10. 5 MRSA §4581-A, sub-§2**, as enacted by PL 2011, c. 613, §11 and
27 affected by §29, is amended to read:

28 **2. Selling, brokering or appraising of housing.** For any real estate broker or real
29 estate salesperson, or any agent of these, to:

30 A. Fail or refuse to show any person a housing accommodation listed for sale, lease
31 or rent because of race or color, sex, sexual orientation or gender identity, physical or
32 mental disability, religion, ancestry, national origin or familial status;

33 B. Misrepresent, for the purpose of discriminating because of race or color, sex,
34 sexual orientation or gender identity, physical or mental disability, religion, ancestry,
35 national origin or familial status, the availability or asking price of a housing
36 accommodation listed for sale, lease or rent or for such reason to fail to communicate
37 to the person having the right to sell, rent or lease the housing accommodation any
38 offer for the same made by any applicant;

39 C. In any other manner to discriminate against any applicant for a housing
40 accommodation because of race or color, sex, sexual orientation or gender identity,
41 physical or mental disability, religion, ancestry, national origin or familial status;

1 D. Make or cause to be made any written or oral inquiry or record concerning the
2 race or color, sex, sexual orientation or gender identity, physical or mental disability,
3 religion, ancestry, national origin or familial status of any applicant for or intended
4 occupant of a housing accommodation; or

5 E. Accept for listing any housing accommodation when the person having the right
6 to sell, rent or lease the housing accommodation has directly or indirectly indicated
7 an intention of discriminating among prospective tenants or purchasers on the ground
8 of race or color, sex, sexual orientation or gender identity, physical or mental
9 disability, religion, ancestry, national origin or familial status, or when the broker or
10 salesperson knows or has reason to know that the person having the right to sell, rent
11 or lease the housing accommodation has made a practice of discrimination since July
12 1, 1972;

13 **Sec. 11. 5 MRSA §4581-A, sub-§3**, as enacted by PL 2011, c. 613, §11 and
14 affected by §29, is amended to read:

15 **3. Making of loans; other financial assistance.** For any person to whom
16 application is made for a loan or other form of financial assistance for the acquisition,
17 construction, rehabilitation, repair or maintenance of any housing accommodation,
18 whether secured or unsecured, or agent of the person, to:

19 A. Make or cause to be made any oral or written inquiry concerning the race or
20 color, sex, sexual orientation or gender identity, physical or mental disability,
21 religion, ancestry, national origin or familial status of any applicant for financial
22 assistance or of existing or prospective occupants or tenants of housing
23 accommodations; or

24 B. Discriminate in the granting of financial assistance, or in the terms, conditions or
25 privileges relating to obtaining or the use of any financial assistance, against any
26 applicant because of race or color, sex, sexual orientation or gender identity, physical
27 or mental disability, religion, ancestry, national origin or familial status; or

28 **Sec. 12. 5 MRSA §4583**, as amended by PL 2007, c. 243, §4, is further amended
29 to read:

30 **§4583. Application**

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

based on the race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, country of ancestral origin or familial status of or the receipt of public assistance payments by the applicant for a loan or financial assistance or of any existing or prospective owner, lessee, tenant or occupant of housing accommodation.

Sec. 13. 5 MRSA §4591, as amended by PL 2005, c. 10, §16, is further amended to read:

§4591. Equal access to public accommodations

The opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin is recognized as and declared to be a civil right.

Sec. 14. 5 MRSA §4592, sub-§1, as amended by PL 2005, c. 10, §17, is further amended to read:

1. Denial of public accommodations. For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin, any of the accommodations, advantages, facilities, goods, services 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, goods, services and privileges may depend.

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

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

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

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

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

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

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

Sec. 15. 5 MRSA §4592, sub-§2, as amended by PL 2005, c. 10, §17, is further amended to read:

2. Communication, notice or advertisement. For any person to directly or indirectly publish, display or communicate any notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation are refused, withheld from or denied to any person on account of race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin, or that the patronage or custom of any person belonging to or purporting to be of any particular race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele is restricted to any particular race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry 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;

Sec. 16. 5 MRSA §4592, sub-§6, as amended by PL 2007, c. 664, §5, is further amended to read:

6. Association. For a covered entity to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known ~~disability~~ protected class status of an individual with whom the individual or entity is known to have a relationship or association;

Sec. 17. 5 MRSA §4595, as amended by PL 2005, c. 10, §18, is further amended to read:

§4595. Right to freedom from discrimination solely on basis of age, race, color, sex, sexual orientation, gender identity, marital status, ancestry, religion or national origin in any credit transaction

The opportunity for every individual to be extended credit without discrimination solely because of any one or more of the following factors: age; race; color; sex; sexual

orientation or gender identity; marital status; ancestry; religion; or national origin is recognized as and declared to be a civil right.

Sec. 18. 5 MRSA §4596, as amended by PL 2005, c. 10, §19, is further amended to read:

§4596. Unlawful credit extension discrimination

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

Sec. 19. 5 MRSA §4601, as amended by PL 2005, c. 10, §20, is further amended to read:

§4601. Right to freedom from discrimination in education

The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs ~~and~~ all apprenticeship and on-the-job training programs and all extracurricular activities without discrimination because of sex, sexual orientation or gender identity, a physical or mental disability, ancestry, national origin ~~or~~, race, color or religion is recognized and declared to be a civil right.

Sec. 20. 5 MRSA §4602, as amended by PL 2005, c. 662, Pt. A, §1, is further amended to read:

§4602. Unlawful educational discrimination

1. Unlawful educational discrimination ~~on the basis of sex~~. It is unlawful educational discrimination in violation of this Act, on the basis of sex, sexual orientation or gender identity, physical or mental disability, ancestry, national origin, race, color or religion, to:

- A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity;
- B. Deny a person equal opportunity in athletic programs;
- C. Apply any rule concerning the actual or potential family or marital status of a person or to exclude any person from any program or activity because of pregnancy or related conditions or because of sex or sexual orientation or gender identity;
- D. Deny a person admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or
- E. Deny a person financial assistance availability and opportunity.

1 ~~2. Unlawful educational discrimination on the basis of physical or mental~~
 2 ~~disability. It is unlawful educational discrimination in violation of this Act solely on the~~
 3 ~~basis of physical or mental disability to:~~

4 ~~A. Exclude from participation in, deny the benefits of or subject to discrimination~~
 5 ~~under any educational program or activity any otherwise qualified individual with~~
 6 ~~physical or mental disability;~~

7 ~~B. Deny any person equal opportunity in athletic programs, provided that no~~
 8 ~~educational institution may be required under this subsection to provide separate~~
 9 ~~athletic programs to serve persons with physical or mental disability;~~

10 ~~C. Deny admission to any institution or program or fail to provide equal access to~~
 11 ~~and information about an institution or program through recruitment; or~~

12 ~~D. Deny financial assistance availability and opportunity.~~

13 ~~Nothing in this subsection may be construed to cover the rights of children with~~
 14 ~~disabilities to special education programs under state or federal law.~~

15 ~~3. Unlawful educational discrimination on the basis of national origin or race. It~~
 16 ~~is unlawful educational discrimination in violation of this Act, on the basis of national~~
 17 ~~origin or race, to:~~

18 ~~A. Exclude a person from participation in, deny a person the benefits of, or subject a~~
 19 ~~person to, discrimination in any academic, extracurricular, research, occupational~~
 20 ~~training or other program or activity;~~

21 ~~B. Deny admission to the institution or program or to fail to provide equal access to~~
 22 ~~and information about an institution or program through recruitment; or~~

23 ~~C. Deny financial assistance availability and opportunity.~~

24 ~~4. Unlawful education discrimination on the basis of sexual orientation. It is~~
 25 ~~unlawful education discrimination in violation of this Act, on the basis of sexual~~
 26 ~~orientation, to:~~

27 ~~A. Exclude a person from participation in, deny a person the benefits of or subject a~~
 28 ~~person to discrimination in any academic, extracurricular, research, occupational~~
 29 ~~training or other program or activity;~~

30 ~~B. Deny a person equal opportunity in athletic programs;~~

31 ~~C. Apply any rule concerning the actual or potential family or marital status of a~~
 32 ~~person or to exclude any person from any program or activity because of their sexual~~
 33 ~~orientation;~~

34 ~~D. Deny admission to the institution or program or to fail to provide equal access to~~
 35 ~~any information about an institution or program through recruitment; or~~

36 ~~E. Deny financial assistance availability and opportunity.~~

37 ~~The provisions in this subsection relating to sexual orientation do not apply to any~~
 38 ~~education facility owned, controlled or operated by a bona fide religious corporation,~~
 39 ~~association or society.~~

- 1 **5. Not unlawful education discrimination.** Nothing in this section:
- 2 A. Requires an educational institution to provide separate athletic or other
- 3 extracurricular programs to serve a person with physical or mental disability;
- 4 B. May be construed to cover the rights of individuals with disabilities to special
- 5 education programs under state or federal law;
- 6 C. Requires a religious corporation, association or society that does not receive
- 7 public funding to comply with this section as it relates to sexual orientation or gender
- 8 identity; or
- 9 D. Requires an educational institution to participate in or endorse any religious
- 10 beliefs or practices; to the extent that an educational institution permits religious
- 11 expression, it cannot discriminate between religions in so doing.

12 **Sec. 21. 5 MRSA §4634**, as enacted by PL 2001, c. 206, §1, is amended to read:

13 **§4634. Right to breast-feed**

14 Notwithstanding any other provision of law, a ~~mother~~ person may breast-feed ~~her~~ the
15 ~~person's~~ baby in any location, public or private, where the ~~mother~~ person is otherwise
16 authorized to be.

17 **Sec. 22. 5 MRSA §4684-A**, as enacted by PL 1993, c. 379, §1, is amended to
18 read:

19 **§4684-A. Civil rights**

20 For purposes of this chapter and Title 17, section 2931, a person has the right to
21 engage in lawful activities without being subject to physical force or violence, damage or
22 destruction of property, trespass on property or the threat of physical force or violence,
23 damage or destruction of property or trespass on property motivated by reason of race,
24 color, religion, sex, ancestry, national origin, physical or mental disability ~~or~~, sexual
25 orientation or gender identity.

26 **Sec. 23. 5 MRSA §17057, sub-§5, ¶B**, as enacted by PL 2011, c. 449, §2, is
27 amended to read:

28 B. Personal information. Records containing the following information are
29 confidential, except that the records may be examined by the employee to whom they
30 relate when the examination is permitted or required by law:

- 31 (1) Medical information of any kind, including information pertaining to
- 32 diagnosis or treatment of mental or emotional disorders;
- 33 (2) Performance evaluations and personal references submitted in confidence;
- 34 (3) Information pertaining to the creditworthiness of a named employee;
- 35 (4) Information pertaining to the personal history, general character or conduct
- 36 of members of the employee's immediate family;
- 37 (5) Personal information pertaining to the employee's race, color, religion, sex,
- 38 national origin, ancestry, age, physical disability, mental disability, marital status

1 ~~and~~, sexual orientation and gender identity; social security number; personal
2 contact information as provided in Title 1, section 402, subsection 3, paragraph
3 O; and personal employment choices pertaining to elected payroll deductions,
4 deferred compensation, savings plans, pension plans, health insurance and life
5 insurance; and

6 (6) Complaints, charges or accusations of misconduct, replies to those
7 complaints, charges or accusations and any other information or materials that
8 may result in disciplinary action. If disciplinary action is taken, the final written
9 decision relating to that action is no longer confidential after the decision is
10 completed if it imposes or upholds discipline. If an arbitrator completely
11 overturns or removes disciplinary action from an employee personnel file, the
12 final written decision is public except that the employee's name must be deleted
13 from the final written decision and kept confidential. If the employee whose
14 name was deleted from the final written decision discloses that the employee is
15 the person who is the subject of the final written decision, the entire final written
16 decision, with regard to that employee, is public.

17 For purposes of this subparagraph, "final written decision" means:

18 (a) The final written administrative decision that is not appealed pursuant to
19 a grievance arbitration procedure; or

20 (b) If the final written administrative decision is appealed to arbitration, the
21 final written decision of a neutral arbitrator.

22 A final written administrative decision that is appealed to arbitration is no longer
23 confidential 120 days after a written request for the decision is made to the
24 employer if the final written decision of the neutral arbitrator is not issued and
25 released before the expiration of the 120 days.

26 This paragraph does not preclude a union representative from having access to
27 personnel records that are necessary for the bargaining agent to carry out collective
28 bargaining responsibilities. Any records available to union representatives that are
29 otherwise covered by this paragraph remain confidential and are not open for public
30 inspection;

31 **Sec. 24. 14 MRSA §1202-A**, as corrected by RR 2017, c. 1, §6, is amended to
32 read:

33 **§1202-A. Prohibition of discrimination**

34 A citizen may not be excluded from jury service in this State on account of race,
35 color, religion, sex, sexual orientation as defined in Title 5, section 4553, subsection 9-C,
36 gender identity, national origin, ancestry, economic status, marital status, age or physical
37 handicap, except as provided in this chapter.

38 **Sec. 25. 17-A MRSA §1501, sub-§8, ¶B**, as enacted by PL 2019, c. 113, Pt. A,
39 §2, is amended to read:

40 B. The selection by the person of the victim or of the property that was damaged or
41 otherwise affected by the crime because of the race, color, religion, sex, ancestry,

1 national origin, physical or mental disability, sexual orientation, gender identity or
2 homelessness of the victim or of the owner or occupant of that property; and

3 **Sec. 26. 20-A MRSA §2404, sub-§3**, as enacted by PL 2011, c. 414, §5, is
4 amended to read:

5 **3. Discrimination prohibited.** A public charter school may not discriminate on the
6 basis of race, ethnicity, national origin, religion, gender, sexual orientation, gender
7 identity, income level, disabling condition, proficiency in the English language or
8 academic or athletic ability, except that nothing in this subsection may be construed to
9 limit the formation of a public charter school that is dedicated to focusing education
10 services on at-risk pupils, students with disabilities and students who pose such severe
11 disciplinary problems that they warrant a specific education program.

12 **Sec. 27. 20-A MRSA §2412, sub-§4, ¶A**, as enacted by PL 2011, c. 414, §5, is
13 amended to read:

14 A. A public charter school may not discriminate against any person on the basis of
15 race, color, sex, sexual orientation, gender identity, physical or mental disability,
16 religion, age, ancestry or national origin or on any other basis that would be unlawful
17 if done by a noncharter public school.

18 **Sec. 28. 24-A MRSA §6910, sub-§3, ¶B**, as corrected by RR 2003, c. 1, §22, is
19 amended to read:

20 B. Ensure that:

21 (1) Providers contracting with a carrier contracted to provide coverage to plan
22 enrollees do not charge plan enrollees or 3rd parties for covered health care
23 services in excess of the amount allowed by the carrier the provider has
24 contracted with, except for applicable copayments, deductibles or coinsurance or
25 as provided in section 4204, subsection 6;

26 (2) Providers contracting with a carrier contracted to provide coverage to plan
27 enrollees do not refuse to provide services to a plan enrollee on the basis of
28 health status, medical condition, previous insurance status, race, color, creed, age,
29 national origin, citizenship status, gender, sexual orientation, gender identity,
30 disability or marital status. This subparagraph may not be construed to require a
31 provider to furnish medical services that are not within the scope of that
32 provider's license; and

33 (3) Providers contracting with a carrier contracted to provide coverage to plan
34 enrollees are reimbursed at the negotiated reimbursement rates between the
35 carrier and its provider network.

36 **Sec. 29. 25 MRSA §1544, 2nd ¶**, as amended by PL 2001, c. 399, §6, is further
37 amended to read:

38 The bureau shall establish a category for abuse by adults of family or household
39 members, a category for cruelty to animals and a category for crimes that manifest
40 evidence of prejudice based on race, religion, disability, sexual orientation, gender
41 identity or ethnicity that are supplementary to its other reported information. The bureau

shall prescribe the information to be submitted in the same manner as for all other categories of the uniform crime reports.

Sec. 30. 30-A MRSA §4706, sub-§5, ¶B, as enacted by PL 2017, c. 234, §8, is amended to read:

B. Authority records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and

(6) Personal information, including that which pertains to the employee's:

(a) Age;

(b) Ancestry, ethnicity, genetic information, national origin, race or skin color;

(c) Marital status;

(d) Mental or physical disabilities;

(e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;

(f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, saving plans, pension plans, health insurance and life insurance;

(g) Religion;

(h) Sex or, sexual orientation as defined in Title 5, section 4553, subsection 9-C or gender identity; or

(i) Social security number; and

Sec. 31. 34-B MRSA §3611, sub-§9, ¶B, as enacted by PL 2007, c. 592, §2, is amended to read:

1 B. A person may not be excluded from the council system or discriminated against
2 within the council system by reason of race, creed, color, gender, sexual orientation,
3 gender identity, age, marital status, homelessness, national origin, disability or status
4 as a consumer of mental health services.

5 **Sec. 32. 34-B MRSA §15002, sub-§6**, as enacted by PL 1997, c. 790, Pt. A, §1
6 and affected by §3, is amended to read:

7 **6. Rights protections; cultural sensitivity.** The program must protect the rights of
8 children to receive care without regard to race, religion, ancestry or national origin,
9 gender, physical or mental disability or sexual orientation or gender identity.

10 **Sec. 33. 36 MRSA §5122, sub-§2, ¶O**, as amended by PL 2001, c. 679, §3 and
11 affected by §6, is further amended to read:

12 O. A Holocaust victim settlement payment received by a Holocaust victim to the
13 extent included in federal adjusted gross income. This paragraph applies only to a
14 taxpayer who is the first recipient of a Holocaust victim settlement payment. For
15 purposes of this paragraph, the following terms have the following meanings.

16 (1) "Holocaust victim" means an individual who died, lost property or was a
17 victim of persecution as a result of discriminatory laws, policies or actions
18 targeted against discrete groups of individuals based on race, religion, ethnicity,
19 sexual orientation, gender identity or national origin, whether or not the
20 individual was actually a member of any of those groups, or because the
21 individual assisted or allegedly assisted any of those groups, between January 1,
22 1929 and December 31, 1945, in Nazi Germany or in any European country
23 allied with or occupied by Nazi Germany. "Holocaust victim" includes the
24 spouse or descendant of such an individual.

25 (2) "Holocaust victim settlement payment" means a payment received:

26 (a) As a result of the taxpayer's status as a Holocaust victim;

27 (b) As a result of the settlement of any other Holocaust claim, including an
28 insurance claim, a claim relating to looted art, a claim relating to looted
29 financial assets, a claim relating to slave labor wages or a class action lawsuit
30 claim against Swiss banks; or

31 (c) As interest on any payment under division (a) or (b) accumulated or
32 accrued through the date of payment;

33 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
34 section number to read consecutively.

35 SUMMARY

36 This amendment incorporates the substance of the bill, as amended by Committee
37 Amendment "A," Senate Amendment "A" and House Amendment "A" and makes the
38 following changes:

ROFS

HOUSE AMENDMENT "C" to H.P. 1218, L.D. 1703

1 1. It strikes from the bill a provision that makes it unlawful public accommodations
2 discrimination under the Maine Human Rights Act for any public entity to discriminate
3 on the basis of protected class; and

4 2. It retains a provision in current law that makes it unlawful discrimination for a
5 qualified individual with a disability, by reason of that disability, to be excluded from
6 participation in or denied the benefits of the services, programs or activities of a public
7 entity or subjected to discrimination by a public entity.

8 The amendment also updates the statutory sections to reflect changes in the law that
9 were enacted in the First Regular Session of the 129th Legislature.

10 **FISCAL NOTE REQUIRED**

11 (See attached)

12 SPONSORED BY: 

13 (Representative BAILEY)

14 TOWN: Saco



129th MAINE LEGISLATURE

LD 1703

LR 2283(09)

An Act To Improve Consistency within the Maine Human Rights Act

Fiscal Note for House Amendment 'C' to Original Bill

Sponsor: Rep. Bailey of Saco

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor revenue increase - General Fund

Minor revenue increase - Other Special Revenue Funds

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional filing fees may increase General Fund and other dedicated revenue by minor amounts.

Fiscal Detail and Notes

This amendment replaces the bill and various amendments but incorporates the substance of them except for striking a provision that makes it unlawful public accommodations discrimination under the Maine Human Rights Act for any public entity to discriminate on the basis of a protected class and retaining a provision of current law that the original bill struck (5 MRSA §4592, subsection 1, paragraph E). Removing these provisions does not significantly change the fiscal impact described above. Any additional costs to the Maine Human Rights Commission due to an increase in complaints filed are expected to be minor and can be absorbed within existing budgeted resources.