

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

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PUBLIC LAWS
OF THE
STATE OF MAINE

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1991

(368) feet; thence in a northwesterly direction parallel with the said northeasterly line of Montello Street, two hundred forty (240) feet to the point of beginning, containing two (2) acres more or less. Deacon Davis Bird Refuge: The following described territory: A certain parcel of land situated in the city of Lewiston, in the county of Androscoggin, and bounded as follows: The most northerly corner of land of the estate of George K. Davis, bounded and described as follows, to wit: On the northwest by land of the so-called Ham Farm; on the northeast by Pleasant Street; on the southwest by land of Joseph Breault; and on the southeast by a line extending northeasterly from the easterly corner of said Breault's land, and being a continuation of the southeast boundary of said Breault's land, containing 2 acres, more or less. Woodbury Sanctuary: The following described territory: A certain parcel of land situated in the towns of Litchfield and Monmouth in the county of Kennebec and bounded as follows: The westerly side of Whipoorwill Road, so called. Being all the land conveyed to the Stanton Bird Club by Louise S. Drew and Clara B. Dana by deed dated July 2, 1929 and recorded in Kennebec County Registry of Deeds in Book 669-Page 210.

See title page for effective date.

CHAPTER 99

S.P. 104 - L.D. 191

An Act to Change the Term "Handicap" in the Maine Human Rights Act

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

Sec. 1. 5 MRSA §4552, as amended by PL 1989, c. 245, §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 or access to public accommodations on account of race, color, sex, physical or mental ~~handicap~~ disability, religion, ancestry or national origin; and in employment, discrimination on account of age and in housing because of familial status; and to prevent discrimination in the extension of credit on account of age, race, color, sex, marital status, religion, ancestry or national origin; and to prevent discrimination in education on account of sex or physical or mental ~~handicap~~ disability.

Sec. 2. 5 MRSA §4553, sub-§7-A, as enacted by PL 1975, c. 358, §2, is amended to read:

7-A. Physical or mental disability. "Physical or mental ~~handicap~~ disability" means any disability, infirmity, mal-

formation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness, and ~~also~~ includes the physical or mental condition of a person ~~which~~ that constitutes a substantial ~~handicap~~ disability as determined by a physician or, in the case of mental ~~handicap~~ disability, by a psychiatrist or psychologist, as well as any other health or sensory impairment ~~which~~ that requires special education, vocational rehabilitation or related services.

Sec. 3. 5 MRSA §4566, sub-§6, as amended by PL 1975, c. 770, §29, is further amended to read:

6. Advisory groups. To create ~~such~~ local or state-wide advisory agencies and conciliation councils; ~~local or state-wide, as will~~ to aid in effectuating the purposes of this Act. The commission may ~~itself~~ study or ~~it~~ may empower these agencies and councils to study the problems of discrimination in all or specific fields of human relationships when based on race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin, and foster, ~~through community effort or otherwise,~~ good will among the groups and elements of the population of the State. ~~Such agencies~~ Agencies and councils may make recommendations to the commission for the development of policies and procedures ~~in general~~. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

Sec. 4. 5 MRSA §4566, sub-§10, as repealed and replaced by PL 1975, c. 770, §30, is amended to read:

10. Publications. To issue ~~such publication and such publish~~ results of investigations and research ~~as in its judgment will tend~~ to promote good will; and minimize or eliminate discrimination based on race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin;

Sec. 5. 5 MRSA §4566, sub-§11, as repealed and replaced by PL 1975, c. 770, §31, is amended to read:

11. Reports. ~~From time to time, but not less than once a year, to~~ To report to the Legislature and the Governor; ~~at least once a year~~ at least once a year describing the investigations, proceedings and hearings the commission has conducted and ~~their~~ the outcome and ~~the other work performed by it~~ the commission, and to make recommendations for ~~such~~ further legislation or executive action concerning abuses and discrimination based on race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin, or other infringements on human rights or personal dignity; ~~as may be desirable; and~~

Sec. 6. 5 MRSA §4571, as repealed and replaced by PL 1975, c. 770, §32, is 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, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin is recognized as and declared to be a civil right.

Sec. 7. 5 MRSA §4572, sub-§1, as amended by PL 1989, c. 251, §1, is further amended to read:

1. Unlawful employment. It ~~shall be~~ is unlawful employment discrimination, in violation of this Act, except ~~where 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, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin ~~or age~~, ~~or~~ because of the applicant's previous assertion of a claim or right under Title 39; or because of previous actions taken by the applicant ~~which that~~ are protected under Title 26, chapter 7, subchapter V-B; ~~;~~ ~~or~~, because of ~~any such reason 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 ~~which such that the~~ employer knows; or has reasonable cause to know; discriminates against individuals because of their race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin, ~~or because of~~ their previous assertion of a claim or right under Title 39; or because of previous actions ~~which that~~ are protected under Title 26, chapter 7, subchapter V-B;

(1) This paragraph does not apply to discrimination governed by Title 39, section 111;

B. For any employment agency to fail or refuse to classify properly ~~or~~, refer for employment or otherwise discriminate against any individual because of race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin ~~or~~, because of the individual's previous assertion of a claim or right under Title 39; or because of previous actions taken by the individual ~~which that~~ are protected under Title 26, chapter 7, subchapter V-B; ~~;~~ or to comply with an employer's request for the referral of job applicants; if ~~such a~~ request indicates either directly or indirectly that ~~such the~~ employer will not afford full and equal employment opportunities to individuals regardless of their race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin ~~or~~, because of previous assertion of a claim or right under Title 39; or because of previous actions ~~which that~~ are protected under Title 26, chapter 7, subchapter V-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, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin, ~~or because of~~ the applicant's previous assertion of a claim or right under Title 39; or because of previous actions taken by the applicant ~~which that~~ are protected under Title 26, chapter 7, subchapter V-B; ~~;~~ ~~or~~, because of ~~any such reason those~~ reasons, to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate ~~in any manner~~ with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of ~~such that~~ labor organization or by a collective labor agreement or other contract; ~~or~~; to fail or refuse to classify properly or refer for employment; or otherwise ~~to~~ discriminate against any member because of race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin, ~~or because of~~ the member's previous assertion of a claim or right under Title 39; or because of previous actions taken by the member ~~which 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 ~~shall be~~ is lawful for labor organizations and employers to adopt a maximum age limitation in apprenticeship programs, ~~provided that if~~ the employer or labor organization obtains prior approval from the Maine Human Rights Commission of any maximum age limitation employed in an apprenticeship program. The commission shall approve the age limitation if a reasonable relationship exists between the maximum age limitation employed and a legitimate expectation of the employer in receiving a reasonable return upon ~~his the employer's~~ investment in an apprenticeship program. The employer or labor organization bears the burden of demonstrating that such a relationship exists;

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

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

(2) Make or keep a record of race or color, sex, physical or mental ~~handicap~~ disability, reli-

gion, age, ancestry or national origin or, any previous assertion of a claim or right under Title 39; or any previous actions ~~which that~~ are protected under Title 26, chapter 7, subchapter V-B, except under physical or mental ~~handicap~~ disability; when an employer requires a physical or mental examination prior to employment, a privileged record of ~~such an~~ that examination is permissible;

(3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin or, any previous assertion of a claim or right under Title 39; or any previous actions ~~which that~~ are protected under Title 26, chapter 7, subchapter V-B, except under physical or mental ~~handicap~~ disability, ~~where~~ when it can be determined by the employer that the job or jobs to be filled require ~~such that~~ information for the well-being and safety of the individual; ~~nor will this~~. This section does not prohibit any officially recognized agency from keeping necessary records in order to provide free services to individuals requiring rehabilitation or employment assistance;

(4) Print or, publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry or national origin or, any previous assertion of a claim or right under Title 39; or any previous actions ~~which that~~ are protected under Title 26, chapter 7, subchapter V-B, except under physical or mental ~~handicap~~ disability when the text of ~~such~~ printed or published material strictly adheres to this Act; or

(5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, physical or mental ~~handicap~~ disability, religion, age, ancestry; or national origin or, the previous assertion of a claim or right under Title 39; or because of previous actions ~~which that~~ are protected under Title 26, chapter 7, subchapter V-B, of ~~such that~~ group; or

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

Sec. 8. 5 MRSA §4573, sub-§1-A, as enacted by PL 1979, c. 350, §3, is amended to read:

1-A. Age. To discriminate on account of age to:

A. Comply with the state or federal laws relating to the employment of minors;

B. Observe the terms of any bona fide employee benefit plan such as a retirement, pension or insurance plan which does not evade or circumvent the purposes of this chapter and which complies with the Federal Age Discrimination in Employment Act, 29 United States Code, ~~Title 29~~, Section 621, as amended, and federal administrative interpretations ~~thereof~~; provided that:

(1) No ~~such~~ employee benefit plan ~~shall require~~ requires or ~~permit~~ permits any employer to refuse or fail to hire an applicant for employment, including those exempted from the Age Discrimination in Employment Act, 29 United States Code, ~~Title 29~~, Section 621, as amended, because of the age of the individual; and

(2) No ~~such~~ employee benefit plan ~~shall require~~ requires or ~~permit~~ permits the denial or termination of employment of any individual including those exempted from the Age Discrimination in Employment Act, 29 United States Code, ~~Title 29~~, Section 621, as amended, because of the age of the individual or after completion of a specified number of years of service.

Sec. 9. 5 MRSA §4573, sub-§2, as amended by PL 1973, c. 347, §7, is further amended to read:

2. Records. After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying them, provided ~~such the~~ record is intended and used in good faith solely for ~~such~~ identification, and not for the purpose of discrimination in violation of this Act;

Sec. 10. 5 MRSA §4573, sub-§3, as enacted by PL 1971, c. 501, §1, is amended to read:

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

Sec. 11. 5 MRSA §4573, sub-§4, as amended by PL 1975, c. 770, §34, is further amended to read:

4. Discharge of or refusal to hire employee with physical or mental disability. Nothing in this Act ~~shall prohibit~~ prohibits an employer from refusing to hire or discharging ~~a physically or mentally handicapped an~~ with physical or mental disability, or ~~subject~~ subjects an employer to any legal liability resulting from the refusing to employ or the discharge of ~~a physically or mentally handicapped an~~ employee with physical or mental disability, where

the employee, because of the physical or mental ~~handicap~~ disability, is unable to perform ~~his~~ the duties or perform those duties in a manner which 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.

Sec. 12. 5 MRSA §4581, first ¶, as amended by PL 1989, c. 245, §3, is further amended to read:

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

Sec. 13. 5 MRSA §4582, first ¶, as repealed and replaced by PL 1975, c. 770, §36, is amended to read:

It ~~shall be~~ is unlawful housing discrimination, in violation of this Act:

Sec. 14. 5 MRSA §4582, 2nd, 3rd and 4th ¶¶, as amended by PL 1989, c. 245, §4, are further amended to read:

For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of any prospective purchaser, occupant or tenant of the housing accommodation; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual housing accommodation because of the race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of the individual; or to issue any advertisement relating to the sale, rental or lease of the housing accommodation which indicates any preference, limitation, specification or discrimination based upon race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status; or to discriminate against any individual because of race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status in the price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations or in the furnishing of facilities or services in connection ~~therewith~~ with any housing accommodations, or to evict or attempt to evict any tenant of any housing accommodation because of the race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of the tenant;

For any real estate broker or real estate sales person, or agent of one of them, to fail or refuse to show any applicant for a housing accommodation any accommodation listed for sale, lease or rental, because of the race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of the applicant or of any intended occupant of the accommodation, or to misrepresent, for the purpose of

discriminating ~~on account~~ because of the race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of the applicant or intended occupant, the availability or asking price of a housing accommodation listed for sale, lease or rental; or for ~~such a~~ any reason to fail to communicate to the person having the right to sell or lease the housing accommodation any offer for the same made by any applicant ~~thereof~~; or in any other manner to discriminate against any applicant for housing because of race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of the applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of any applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status, or when the broker knows or has reason to know that the person having the right to sell or lease the housing accommodation has made a practice of discrimination since July 1, 1972;

For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of the person, to make or cause to be made any oral or written inquiry concerning the race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of any individual seeking financial assistance, or of existing or prospective occupants or tenants of housing accommodations; or to discriminate in the granting of financial assistance, or in the terms, conditions or privileges relating to the obtaining or use of any financial assistance, against any applicant because of the race or color, sex, physical or mental ~~handicap~~ disability, religion, ancestry, national origin or familial status of the applicant or of the existing or prospective occupants or tenants;

Sec. 16. 5 MRSA §4582, 6th ¶, as enacted by PL 1983, c. 437, §3, is amended to read:

For any form of public housing or any housing that is financed in whole or in part with public funds offering housing accommodations, containing 20 or more units, constructed on or after January 1, 1984, or begun to be remodeled or enlarged at an estimated total cost of more than \$100,000 after January 1, 1984, to not have at least one unit for each multiple of 20 of those units designed so as to be accessible to and useable by ~~handicapped~~ persons with physical disability. Plans to reconstruct, remodel or enlarge an existing building when the estimated total cost exceeds \$100,000 ~~shall be~~ are subject to this section, when the proposed reconstruction, remodeling or enlargement ~~will substantially effect~~ affects that portion of the building normally accessible to the public. For purposes of this section, a newly constructed housing unit is ~~deemed deter-~~

mined accessible to and useable by handicapped persons with physical disability if it meets the requirements of the 1981 standards of construction, Section 4.34, Dwelling Units, adopted pursuant to Title 25, chapter 331. A remodeled, renovated or enlarged housing unit is deemed determined accessible to and useable by handicapped persons with physical disability if it meets the requirements of the following 4 parts of the 1981 standards of construction adopted pursuant to Title 25, chapter 331:

Sec. 17. 5 MRSA §4582, last ¶, as amended by PL 1987, c. 730, §1, is further amended to read:

With respect to any form of public housing or any housing that is financed in whole or in part with public funds offering housing accommodations containing 20 or more units for which construction is begun after October 1, 1988, no less than 10% of the ground level units and a minimum of 10% of the upper story units connected by an elevator shall must be accessible to and useable by physically handicapped persons with physical disability. For purposes of this section, a newly constructed housing unit is deemed determined accessible to and useable by handicapped persons with physical disability if it meets the requirements of the 1986 standards set forth by the American National Standards Institute in the publication, "Specifications for Making Buildings Accessible to and Useable by Physically Handicapped People," ANSI A 117.1-1986. A remodeled, renovated or enlarged housing unit where the remodeling, renovating or enlarging is begun after October 1, 1988, is deemed determined accessible to and useable by handicapped persons with physical disability if it meets the requirements of the following 4 parts of the 1986 American National Standards Institute standards: 4.3 accessible routes; 4.23 doors; 4.34.5 adaptable bathrooms; and 4.29.3 tactile warnings on doors to hazardous areas.

Sec. 18. 5 MRSA §4582-A, as enacted by PL 1989, c. 779, is amended to read:

§4582-A. Unlawful housing discrimination on the basis of disability

It is unlawful housing discrimination, in violation of this Act:

1. Modifications. For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any of their agents to refuse to permit, at the expense of the handicapped person with physical disability, reasonable modifications of existing premises occupied or to be occupied by that person if the modifications may be necessary to give that person full enjoyment of the premises, except that, with a rental, the landlord, when it is reasonable to do so, may condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; or

2. Accommodations. For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any of their

agents to refuse to make reasonable accommodations in rules, policies, practices or services when those accommodations are necessary to give that person equal opportunity to use and enjoy the housing.

Sec. 19. 5 MRSA §4583, as amended by PL 1989, c. 245, §5, is further amended to read:

§4583. Application

Nothing in this Act shall may be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting or in the furnishings of facilities or services in connection therewith with the facilities which are not based on the race, color, sex, physical or mental handicap disability, religion, country of ancestral origin, familial status or the receipt of public assistance payments of any prospective or actual purchaser, lessee, tenant or occupant. Nothing in this Act shall may be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations, to set standards and preferences, terms, conditions, limitations or specifications for the granting of loans or financial assistance which are not based on the race, color, sex, physical or mental handicap disability, religion, country of ancestral origin, familial status or the receipt of public assistance payments of the applicant for a loan or financial assistance or, of any existing or prospective owner, lessee, tenant or occupant of housing accommodation.

Sec. 20. 5 MRSA §4591, as repealed and replaced by PL 1975, c. 770, §38, is 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, physical or mental handicap disability, religion, ancestry or national origin is recognized as and declared to be a civil right.

Sec. 21. 5 MRSA §4592, first ¶, as repealed and replaced by PL 1989, c. 301, is amended to read:

It shall be is unlawful public accommodations discrimination, in violation of this Act:

Sec. 22. 5 MRSA §4592, sub-§§1 and 2, as enacted by PL 1989, c. 301, are amended to read:

1. Denial of public accommodations. For any person who is the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to directly or indirectly refuse, withhold from or deny to any person, on account of race or color, sex, physical or mental handicap disability, religion, ancestry or national origin, any of the accommodations, advantages, fa-

cilities 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;

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 ~~shall be~~ are refused, withheld from or denied to any person on account of race or color, sex, physical or mental ~~handicap~~ 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, physical or mental ~~handicap~~ 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, physical or mental ~~handicap~~ disability, religion, ancestry or national origin. The production of any communication, notice or advertisement purporting to relate to any place of accommodation ~~shall be~~ is presumptive evidence in any action that the action was authorized by its owner, manager or proprietor; and

Sec. 23. 5 MRSA §4593, as amended by PL 1987, c. 390, §1, is further amended to read:

§4593. Existing facilities

1. Public accommodations. Nothing in section 4591 or 4592 related to equal access to public accommodations or indirectly denying access to ~~the physically handicapped~~ persons with physical disability ~~applies~~ to existing structures, structures under construction or proposed construction submitted for bid before September 1, 1974. For any building or facility constructed specifically as a place of public accommodation on or after September 1, 1974, but before January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$250,000 and the remodeling or enlarging is begun before January 1, 1982, the following standards of construction ~~shall~~ must be met.

A. There ~~shall~~ must be at least one public walk not less than 40 inches wide with a slope not greater than one foot rise in 12 feet leading directly to a primary entrance. However, after April 1, 1977, the public walk ~~shall~~ must be not less than 48 inches wide.

B. There ~~shall~~ must be a door at ~~such~~ the primary entrance with a clear opening of ~~no~~ not less than 32 inches and operable by a single effort. If doors at a primary entrance are in a series, they ~~shall~~ must have a space between them of not less than 84 inches measured from their closed positions; and each ~~shall~~ must open in the same direction so that swings do not conflict.

C. Rest room facilities ~~should~~ must have at least one stall that is not less than 4 feet wide, 5 feet in depth, a 32-inch wide door that swings out or slides, handrails on

each side mounted 33 inches from the floor, and a water closet with a seat 20 inches high.

D. Doors that are not intended for normal use, and that are dangerous if a blind person were to enter or exit by them, ~~shall~~ must be made identifiable to touch by knurling the handle or knob.

E. There ~~shall~~ must be parking spaces designated for ~~handicapped~~ persons with physical disability set aside in adequate number and clearly marked for use only by the ~~handicapped~~ disabled. Set aside in adequate number means that, for every 25 parking spaces made available to the public on a public or private parking lot, at least one of those spaces ~~shall~~ must be made available in an appropriate location for handicapped parking exclusively used by persons with physical disability.

In any building designed and constructed specifically for public accommodations, the bathroom facilities and all accompanying fixtures ~~shall~~ must be arranged to permit access and use by a person in a wheelchair in at least 1% of the living units. ~~Such~~ The units ~~shall~~ must be constructed on ground level and ~~shall~~ must comply with paragraph C.

2. Places of employment. Existing places of employment or structures to be used for this purpose currently under construction or where proposed construction has been submitted for bid before September 1, 1974, are exempt from the requirements of this chapter as they relate to accessibility for ~~the physically handicapped~~ persons with physical disability. For any building or facility constructed specifically as a place of employment on or after September 1, 1974, but before January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$100,000, and the remodeling or enlarging is begun before January 1, 1982, the public accommodation provisions relating to walks, entries, restroom facilities and doors ~~shall~~ apply.

Sec. 24. 5 MRSA §4594, sub-§2, as amended by PL 1987, c. 390, §§2 and 3, is further amended to read:

2. Application. Facilities subject to this section ~~shall~~ must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, chapter 331, to implement the following 4 parts of the American National Standards Institute's "Specification for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," (ANSI A 117.1-1980):

A. 4.3 Accessible Route;

B. 4.13 Doors;

C. 4.17 Toilet Stalls;

D. 4.29.3 Tactile Warnings on doors to Hazardous Areas; and

E. ~~Handicapped parking~~ Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E.

Sec. 25. 5 MRSA §4594-A, sub-§2, as amended by PL 1987, c. 390, §4, is further amended to read:

2. Application. Facilities subject to this section ~~shall~~ must meet the following standards.

A. Facilities subject to this section constructed on or after January 1, 1984, ~~shall~~ must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, chapter 331.

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$150,000, ~~shall be~~ are subject to this section when the proposed reconstruction, remodeling or enlargement will substantially affect that portion of the building normally accessible to the public.

Facilities subject to this section which are remodeled, enlarged or renovated on or after January 1, 1984, ~~shall~~ must meet the requirements of the following 4 parts of the 1981 standards of construction adopted pursuant to Title 25, chapter 331:

- (1) 4.3 accessible route;
- (2) 4.13 doors;
- (3) 4.17 toilet stalls;
- (4) 4.29.3 tactile warnings on doors to hazardous areas; and
- (5) ~~Handicapped parking~~ Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E.

Sec. 26. 5 MRSA §4594-D, sub-§§3, 4, 7 and 9, as enacted by PL 1989, c. 795, are amended to read:

3. Application. Facilities subject to this section must meet the following standards.

A. Places of employment or public accommodation and additions to these places constructed on or after January 1, 1991, must meet the standards of construction.

B. Except for repairs undertaken in accordance with the rules adopted pursuant to subsection 4, when the proposed remodeling or renovation substantially affects that portion of the building normally accessible to the public, places of employment or public accommodation remodeled or renovated on or after January 1, 1991, must meet the following 5 parts of the standards of construction:

- (1) 4.3 accessible routes;

(2) 4.13 doors;

(3) 4.29.3 tactile warnings on doors to hazardous areas;

(4) ~~Handicapped parking~~ Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E; and

(5) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls within the same toilet room may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b).

4. Rules. The commission may adopt, alter, amend and repeal rules designed to make buildings under this section accessible to, functional for and safe for use by physically ~~handicapped~~ persons with physical disability in accordance with subsection 3, and may adopt, alter, amend and repeal rules designed otherwise to enforce this section.

7. Mandatory plan review; certification; inspection. Builders of the following newly constructed facilities must submit plans to the Office of the State Fire Marshal, which shall serve as the contractor for the commission for these purposes, to assure that the plans meet the standards of construction required by subsection 3:

- A. Restaurants;
- B. Motels, hotels and inns;
- C. State, municipal and county buildings; and
- D. Schools, elementary and secondary.

Fees for reviews ~~shall be~~ are established by the Office of the State Fire Marshal.

No building permit may be issued by the municipal authority having jurisdiction to issue these permits unless the Office of the State Fire Marshal approves the plans and certifies that the facility covered by the mandatory plan review meets the standards of construction required by this section; if, however, no decision is rendered within 2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the building permit request directly to the municipality with an attestation that the plans meet the standards of construction.

If officials of the municipality in which the facility is constructed, renovated, remodeled or enlarged inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the certified plans. The municipal officials shall require that the facility be inspected for compliance with construction standards before the municipal officials permit the facility to be occupied.

9. Waivers; variance. If the commission determines in cases covered by mandatory plan review that compliance with

this section and its rules is not technologically feasible or would result in excessive and unreasonable costs without any substantial benefit to ~~physically handicapped~~ persons with physical disability, it may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting a variance or waiver to justify its allowance.

Requests for waivers or variances for buildings covered by mandatory plan review are heard by a representative of the commission and a designee of the Office of the State Fire Marshal. A decision must be provided in writing to the party requesting the waiver or variance.

Sec. 27. 5 MRSA §4601, as amended by PL 1989, c. 725, §1, 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, vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of sex, a physical or mental ~~handicap~~ disability, or national origin, is recognized and declared to be a civil right.

Sec. 28. 5 MRSA §4602, sub-§2, as enacted by PL 1987, c. 478, §4, is amended to read:

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

- A. Exclude from participation in, deny the benefits of or subject to discrimination under any educational program or activity any otherwise qualified ~~handicapped~~ individual with physical or mental disability;
- B. Deny any person equal opportunity in athletic programs, provided that no educational institution may be required under this subsection to provide separate athletic programs to serve ~~the handicapped~~ persons with physical or mental disability;
- C. Deny admission to any institution or program or fail to provide equal access to and information about an institution or program through recruitment; or
- D. Deny financial assistance availability and opportunity.

Nothing in this subsection may be construed to cover the rights of exceptional students to special education programs under state or federal law.

Sec. 29. 5 MRSA §4612, sub-§4, ¶A, as amended by PL 1975, c. 358, §15, is further amended to read:

- A. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and

further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination or to members of a racial, color, sex, physical or mental ~~handicap~~ disability, religious, nationality group or age group if relief is not immediately granted; or if conciliation efforts under subsection 3 have not succeeded, the commission shall file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders.

Sec. 30. 5 MRSA §4612, sub-§4, ¶B, as amended by PL 1973, c. 347, §13, is further amended to read:

B. Grounds for the filing of such an action before attempting conciliation include, but are not limited to:

- (1) In unlawful housing discrimination, that the housing accommodation sought is likely to be sold or rented to another during the pendency of proceedings, or that an unlawful eviction is about to occur;
- (2) In unlawful employment discrimination, that the victim of the discrimination has lost or is threatened with the loss of job and income as a result of such discrimination;
- (3) In unlawful public accommodations discrimination, that such discrimination is causing inconvenience to many persons;
- (4) In any unlawful discrimination, that the victim of the discrimination is suffering or is in danger of suffering severe financial loss in relation to ~~his~~ circumstances, severe hardship or personal danger as a result of such discrimination.

See title page for effective date.

CHAPTER 100

H.P. 341 - L.D. 471

An Act to Amend the Maine Human Rights Act to Prohibit Educational Discrimination on the Basis of Race

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

Sec. 1. 5 MRSA §4601, as amended by PL 1989, c. 725, §1, 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, vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of sex,