

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
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TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
1995

report out legislation concerning roe-yield standards during the Second Regular Session of the 117th Legislature.

See title page for effective date.

CHAPTER 393

H.P. 837 - L.D. 1168

An Act to Implement the Recommendations of the People with Disabilities Access Commission

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

Sec. 1. 5 MRSA §4553, first ¶, as enacted by PL 1971, c. 501, §1, is amended to read:

As used in this Act, unless the context or subchapter otherwise indicates, the following words shall have the following meanings:

Sec. 2. 5 MRSA §4553, sub-§§1-A, 1-B and 1-C are enacted to read:

1-A. Commercial facilities. "Commercial facilities" means facilities that are intended for nonresidential use.

1-B. Covered entity. For purposes of subchapter III, "covered entity" means an employer, employment agency, labor organization or joint labor-management committee. For purposes of subchapter V, "covered entity" means any applicable private entity or public entity.

1-C. Direct threat. For purposes of subchapter III, "direct threat" means a significant risk to the health or safety of others that can not be eliminated by reasonable accommodation.

Sec. 3. 5 MRSA §4553, sub-§2, as enacted by PL 1971, c. 501, §1, is amended to read:

2. Discriminate. "Discriminate" includes, without limitation, segregate or separate.

For purposes of subchapter III, "discriminate" also includes, as it relates to individuals with physical or mental disability:

A. Limiting, segregating or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

B. Participating in a contractual or other arrangement or relationship that has the effect of

subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this Act. A relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity or an organization providing training and apprenticeship programs;

C. Utilizing standards, criteria or methods of administration:

(1) That have the effect of discrimination on the basis of disability; or

(2) That perpetuate the discrimination of others who are subject to common administrative control;

D. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

E. Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity;

F. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

G. Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

H. Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or any other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant, except

when the skills are the factors that the test purports to measure.

Sec. 4. 5 MRSA §4553, sub-§2-A, as enacted by PL 1983, c. 578, §1, is amended to read:

2-A. Educational institution. "Educational institution" means any public school or educational program, any public post-secondary institution, any private school or educational program approved for tuition purposes if both male and female students are admitted and the governing body of each such school or program. For purposes related to disability-related discrimination, "educational institution" also means any private school or educational program approved for tuition purposes.

Sec. 5. 5 MRSA §4553, sub-§§3 and 4, as enacted by PL 1971, c. 501, §1, are amended to read:

3. Employee. "Employee" means an individual employed by an employer. "Employee" does not include any individual employed by his that individual's parents, spouse or child, except for purposes of disability-related discrimination, in which case the individual is considered to be an employee.

4. Employer. "Employer" includes any person in this State employing any number of employees, whatever the place of employment of such the employees, and any person outside this State employing any number of employees whose usual place of employment is in this State; any person acting in the interest of any employer, directly or indirectly; and labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees; ~~but~~. "Employer" does not include a religious or fraternal corporation or association, not organized for private profit and in fact not conducted for private profit, with respect to employment of its members of the same religion, sect or fraternity, except for purposes of disability-related discrimination, in which case the corporation or association is considered to be an employer.

Sec. 6. 5 MRSA §4553, sub-§7-B is enacted to read:

7-B. Person with physical or mental disability. "Person with physical or mental disability" or "individual with a physical or mental disability" means a person who:

- A. Has a physical or mental disability;
- B. Has a record of a physical or mental disability; or
- C. Is regarded as having a physical or mental disability.

Sec. 7. 5 MRSA §4553, sub-§8, as amended by PL 1991, c. 109, is repealed and the following enacted in its place:

8. Place of public accommodation. "Place of public accommodation" means a facility, operated by a public or private entity, whose operations fall within at least one of the following categories:

A. An inn, hotel, motel or other place of lodging, whether conducted for the entertainment or accommodation of transient guests or those seeking health, recreation or rest;

B. A restaurant, eating house, bar, tavern, buffet, saloon, soda fountain, ice cream parlor or other establishment serving or selling food or drink;

C. A motion picture house, theater, concert hall, stadium, roof garden, airdrome or other place of exhibition or entertainment;

D. An auditorium, convention center, lecture hall or other place of public gathering;

E. A bakery, grocery store, clothing store, hardware store, shopping center, garage, gasoline station or other sales or rental establishment;

F. A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, dispensary, clinic, bathhouse or other service establishment;

G. All public conveyances operated on land or water or in the air as well as a terminal, depot or other station used for specified public transportation;

H. A museum, library, gallery or other place of public display or collection;

I. A park, zoo, amusement park, race course, skating rink, fair, bowling alley, golf course, golf club, country club, gymnasium, health spa, shooting gallery, billiard or pool parlor, swimming pool, seashore accommodation or boardwalk or other place of recreation, exercise or health;

J. A nursery, elementary, secondary, undergraduate or postgraduate school or other place of education;

K. A day-care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment;

L. Public elevators of buildings occupied by 2 or more tenants or by the owner and one or more tenants;

M. A municipal building, courthouse, town hall or other establishment of the State or a local government; and

N. Any establishment that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public.

When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subchapter, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for the residential purposes is covered by this subchapter. The covered portion of the residence extends to those elements used to enter the place of public accommodation, and those exterior and interior portions of the residence available to or used by customers or clients, including rest rooms.

Sec. 8. 5 MRSA §4553, sub-§§8-A, 8-B, 8-C, 8-D, 9-A and 9-B are enacted to read:

8-A. Private entity. "Private entity" means any entity other than a public entity.

8-B. Public accommodation. "Public accommodation" means a public or private entity that owns, leases, leases to or operates a place of public accommodation.

8-C. Public entity. "Public entity" means:

A. The State or any local government;

B. Any department, agency, special purpose district or other instrumentality of the State, 2 or more states or a local government; and

C. A state, local or private commuter authority as defined in the federal Rail Passenger Service Act, Section 103 (8).

8-D. Qualified individual with a disability. "Qualified individual with a disability" applies to only:

A. Subchapter III (employment); and

B. Subchapter V (public accommodations) with regard to public entities only.

For purposes of subchapter III, "qualified individual with a disability" means an individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of

the employment position that the individual holds or desires.

For purposes of subchapter V, "qualified individual with a disability" means an individual with a disability who, with or without reasonable modification to rules, policies or practices, the removal of architectural, communication or transportation barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

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

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

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

9-B. Undue hardship; undue burden. "Undue hardship" or "undue burden" mean an action requiring undue financial or administrative hardship. In determining whether an action would result in an undue hardship, factors to be considered include:

A. The nature and cost of the accommodation needed under this Act;

B. The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or the impact otherwise of the action upon the operation of the facility;

C. The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees and the number, type and location of its facilities;

D. The type of operation or operations of the covered entity, including the composition, structure and functions of the work force of the entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity;

E. All the resources available to meet the costs of the accommodation, including any government funding or other grants available for

making public accommodations and places of employment accessible;

F. The extent to which current costs of accommodations have been minimized by past efforts to provide equal access to persons with disabilities;

G. The extent to which resources spent on improving inaccessible equipment or service could have been spent on making an accommodation so that service or equipment is accessible to individuals with disabilities, as well as to individuals without disabilities;

H. Documented good faith efforts to explore less restrictive or less expensive alternatives;

I. The availability of equipment and technology for the accommodation;

J. Whether an accommodation would result in a fundamental change in the nature of the public accommodation;

K. Efforts to minimize costs by spreading costs over time; and

L. The extent to which resources saved by failing to make an accommodation for persons who have disabilities could have been saved by cutting costs in equipment or services for the general public.

"Undue hardship" or "undue burden" is a higher standard than "readily achievable" and requires a greater level of effort on the part of the public accommodation.

Sec. 9. 5 MRSA §4554 is enacted to read:

§4554. Construction

1. Relationship to other laws. Nothing in this Act may be construed to invalidate or limit the remedies, rights and procedures of any law of any state or political subdivision of any state or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act may be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter III or in transportation or places of public accommodation covered by subchapter V.

2. Insurance. Subchapters III and V of this Act may not be construed to prohibit or restrict, with regard to individuals with disabilities:

A. An insurer, hospital, medical service company, health maintenance organization or any

agent or entity that administers benefit plans or similar organizations from underwriting risks, classifying risks or administering risks that are based on or not inconsistent with state law;

B. A person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks or administering risks that are based on or not inconsistent with state law; or

C. A person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide employee benefit plan that is not subject to state laws that regulate insurance.

Paragraphs A, B and C may not be used as a subterfuge to evade the requirements of subchapters III and V.

3. Accommodations and services. Nothing in this Act may be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity or benefit that the individual chooses not to accept.

Sec. 10. 5 MRSA §4555 is enacted to read:

§4555. Application

This Act does not apply to the issuance, denial, suspension, revocation or restriction of drivers' licenses by the Secretary of State until April 1, 1996.

Sec. 11. 5 MRSA §4566-A is enacted to read:

§4566-A. Certification and conformity with rules

1. Certification of state law. The commission shall take all steps required under 29 Code of Federal Regulations, Part 36, Subpart F to request federal certification that the State's laws concerning accessibility and usability of places of public accommodation meet or exceed the minimum requirements of the federal Americans with Disabilities Act of 1990. These steps include issuing public notice of an intent to file, conducting a public hearing on record and preparing and filing with the United States Department of Justice the request for certification. If the commission determines that no significant portion of the law is certifiable, the commission may cease its attempts to obtain certification and shall report its determinations to the joint standing committee of the Legislature having jurisdiction over judiciary matters. The report must include recommendations on changes to the law as necessary to achieve certification of a significant portion of the law.

2. Conformity of rules relating to special use areas. The commission shall amend its rules relating

to accessibility of places of public accommodation to include standards contained in the regulations adopted pursuant to Titles I, II, and III of the Americans with Disabilities Act of 1990 and the federal Americans with Disabilities Act of 1990 Accessibility Guidelines, 29 Code of Federal Regulations, Part 36, Subpart F, relating to restaurants and cafeterias, medical care facilities, business and mercantile establishments, libraries, accessible transient lodging and other places of public accommodation, but only to the extent that those standards provide greater accessibility than any comparable standards contained in current state law or rules.

Sec. 12. 5 MRSA §4572, sub-§1, ¶D, as amended by PL 1991, c. 885, Pt. E, §7 and affected by §47, is further amended to read:

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

(1) Elicit or attempt to elicit information directly or indirectly pertaining to race or color, sex, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter V-B, ~~except when a physical or mental disability is determined by the employer, employment agency or labor organization to be job related or 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 disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter V-B, ~~except under physical or mental disability when an employer requires a physical or mental examination prior to employment, a privileged record of that examination is permissible if made and kept in compliance with this Act;~~

(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 disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title

~~26, chapter 7, subchapter V-B, except under physical or mental disability when it can be determined by the employer that the job or jobs to be filled require that information for the well being and safety of the individual. This section does not prohibit any officially recognized government agency from keeping necessary records permitted to be kept under this Act in order to provide free services to individuals requiring requesting rehabilitation or employment assistance;~~

(4) Print, 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 disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter V-B, ~~except under physical or mental disability when the text of 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 disability, religion, age, ancestry or national origin, the 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 V-B, of that group; or

Sec. 13. 5 MRSA §4572, sub-§2 is enacted to read:

2. Unlawful discrimination against qualified individual with a disability. A covered entity may not discriminate against a qualified individual with a disability because of the disability of the individual in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training and other terms, conditions and privileges of employment. A qualified individual with a disability, by reason of that disability, may not be excluded from participation in or be denied the benefits of the services, programs or activities of a public covered entity, or be subjected to discrimination by any such covered entity relating to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training and other terms, conditions and privileges of employment.

A. The prohibition of this subsection against discrimination includes medical examinations and inquiries.

B. Except as provided in paragraph C, a covered entity may not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability. A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

C. A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination, if:

(1) All entering employees are subjected to the same examination regardless of disability;

(2) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:

(a) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(b) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(c) Government officials investigating compliance with this Act are provided relevant information on request; and

(3) The results of the examination are used only in accordance with this Act.

D. A covered entity may not require a medical examination and may not make inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

E. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health

program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions. Information obtained under this paragraph regarding the medical condition or history of an employee is subject to the requirements of paragraph C, subparagraphs (2) and (3).

F. For purposes of this subsection, a test to determine the illegal use of drugs may not be considered a medical examination.

(1) A covered entity:

(a) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) May require that employees may not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(c) May require that employees behave in conformance with the requirements established under the federal Drug-free Workplace Act of 1988, 41 United States Code, Section 701 et seq.; and

(d) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which that entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee; provided that an employer shall make reasonable accommodation to an alcoholic or drug user who is seeking treatment or has successfully completed treatment.

Sec. 14. 5 MRSA §4572-A, sub-§4, as enacted by PL 1979, c. 79, is amended to read:

4. Employer not responsible for additional benefits. Nothing in this section ~~shall~~ may be construed to mean that an employer, employment agency or labor organization is required to provide sick leave, a leave of absence, medical benefits or other benefits to a woman because of pregnancy or other medical conditions ~~which~~ that result from pregnancy, if ~~this~~ the employer, employment agency or labor organization does not also provide sick leaves, leaves of absence, medical benefits or other benefits for ~~his~~ the employer's other employees and is not otherwise required to provide those leaves or benefits under other state or federal laws.

Sec. 15. 5 MRSA §4573, sub-§1-A, ¶B, as amended by PL 1991, c. 99, §8, is further amended to read:

B. Observe the terms of any bona fide employee benefit plan such as a retirement, pension or insurance plan ~~which that~~ does not evade or circumvent the purposes of this chapter and ~~which that~~ complies with the Federal Age Discrimination in Employment Act, 29 United States Code, Section 621, as amended and the federal Americans with Disabilities Act, 42 United States Code, Section 12101, et seq., and federal administrative interpretations provided that:

(1) No employee benefit plan requires or 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, Section 621, as amended, because of the age of the individual; and

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

Sec. 16. 5 MRSA §4573, sub-§2, as amended by PL 1991, c. 99, §9, 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 the record is intended and used in good faith solely for identification, and not for the purpose of discrimination in violation of this Act. Records of features regarding physical or mental disability that are collected must be collected and maintained on separate forms and in separate files and be treated as confidential records;

Sec. 17. 5 MRSA §4573, sub-§3, as amended by PL 1991, c. 99, §10, is further 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 the records are recorded and 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. 18. 5 MRSA §4573, sub-§4, as amended by PL 1991, c. 484, §3, is repealed.

Sec. 19. 5 MRSA §4573, sub-§5, as enacted by PL 1991, c. 484, §4, is amended to read:

5. Federal Indian policy. Nothing in this Act may be construed to prohibit any employment policy or action that is permitted under 42 United States Code, Section 2000e-2(i) (1982) of the federal Equal Employment Opportunity Act governing employment of Indians; ~~and~~

Sec. 20. 5 MRSA §4573, sub-§6 is enacted to read:

6. Infectious and communicable diseases. Assignment of individuals with an infectious or communicable disease is governed by the following.

A. In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food that is included on the list developed by the United States Secretary of Health and Human Services under the federal Americans with Disabilities Act, Title I, Section 103(d)(1), and which can not be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign the individual a job involving food handling.

B. Nothing in this Act may be construed to preempt, modify or amend any state, county or local law, ordinance, rule or regulation applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which can not be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the United States Secretary of Health and Human Services.

Sec. 21. 5 MRSA §4573-A is enacted to read:

§4573-A. Defenses

1. General provisions. It is a defense to a charge of discrimination under this subchapter that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance can not be accomplished by reasonable accommodation, as required by this subchapter.

2. Religious entities. This subchapter does not prohibit a religious corporation, association, educational institution or society from giving preference in employment to individuals of its same religion to perform work connected with the carrying on by the corporation, association, educational institution or

society of its activities. Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of that organization.

Sec. 22. 5 MRSA §4592, sub-§§1 and 2, as amended by PL 1991, c. 99, §22, are 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, 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;

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, 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, 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, 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; ~~and~~

Sec. 23. 5 MRSA §4592, sub-§3, ¶¶B and C, as enacted by PL 1989, c. 301, are amended to read:

B. That contains no more than 8 ½ rooms available to be let to lodgers; and

C. In which the owner resides on the premises;

Sec. 24. 5 MRSA §4592, sub-§§4 to 7 are enacted to read:

4. Participation. For a covered entity:

A. To subject an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations of that entity;

B. To afford an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage or accommodation in a manner that is not equal to that afforded to other individuals; and

C. To provide an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, with a good, service, facility, privilege, advantage or accommodation that is different or separate from that provided to other individuals, unless this action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage or accommodation or other opportunity that is as effective as that provided to others.

For purposes of this subsection, the term "individual" or "class of individuals" refers to the clients or customers of the covered public accommodation that enters into a contractual, licensing or other arrangement;

5. Integrated setting; programs or activities not separate or different. For a covered entity to not afford goods, services, facilities, privileges, advantages and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability may not be denied the opportunity to participate in programs or activities that are not separate or different;

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 of an individual with whom the individual or entity is known to have a relationship or association; and

7. Administrative methods. For an individual or an entity, directly or through contractual or other

arrangements, to utilize standards or criteria or methods of administration:

A. That have the effect of discrimination on the basis of disability; or

B. That perpetuate the discrimination of others who are subject to common administrative control.

Sec. 25. 5 MRSA §4593, sub-§§1 and 2, as amended by PL 1991, c. 99, §23, are further amended to read:

1. Public accommodations. ~~Nothing in section 4591 or 4592 related to equal access to public accommodations or indirectly denying access to 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~~ exceed \$250,000 and the remodeling or enlarging is begun before January 1, 1982, the following standards of construction must be met.

A. There 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 must be not less than 48 inches wide.

B. There must be a door at the primary entrance with a clear opening of not less than 32 inches and operable by a single effort. If doors at a primary entrance are in a series, they must have a space between them of not less than 84 inches measured from their closed positions; and each must open in the same direction so that swings do not conflict.

C. Rest room facilities 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, must be made identifiable to touch by knurling the handle or knob.

E. There must be parking spaces designated for persons with physical disability set aside in adequate number and clearly marked for use only by the 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 must be made available in an appropriate location for 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 must be arranged to permit access and use by a person in a wheelchair in at least 1% of the living units. The units must be constructed on ground level and 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 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 apply.

Sec. 26. 5 MRSA §4594-E, as corrected by RR 1993, c. 2, §4, is repealed.

Sec. 27. 5 MRSA §4594-F is enacted to read:

§4594-F. Access to places of public accommodation and commercial facilities; standards

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alteration" means a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part of the building or facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration, changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions.

B. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of a property in a municipality that does not require building permits.

C. "Design professional" means an architect or professional engineer registered to practice under Title 32.

D. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots or other real or personal property, including the site where the building, property, structure or equipment is located.

E. "Historic preservation programs" means programs conducted by a public or private entity that have preservation of historic properties as a primary purpose.

F. "Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or the State of Maine Register of Historic Places.

G. "Maximum extent feasible" applies to the occasional case when the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration must provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible must be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities would not be feasible, the facility must be made accessible to persons with other types of disabilities.

H. "New construction" includes, but is not limited to, the design and construction of facilities for first occupancy after January 1, 1996 or an alteration affecting at least 80% of the space of the internal structure of facilities after January 1, 1996.

I. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

(1) The nature and cost of the action needed under this subchapter;

(2) The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or other impacts of the action on the operation of the facility;

(3) The overall financial resources of the covered entity, the overall size of the busi-

ness of a covered entity with respect to the number of its employees and the number, type and location of its facilities; and

(4) The type of operation or operations of the covered entity, including the composition, structure and functions of the entity's work force, the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity.

J. "Standards of construction" means the standards set forth in the federal Americans with Disabilities Act Accessibility Guidelines, "ADAAG," standards. The ADAAG standards of construction replace ANSI standards and provide the architectural standards of construction.

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation or place of employment on or after January 1, 1996 or to any alterations of an existing place of public accommodation or place of employment when the alteration is begun after January 1, 1996.

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

A. Places of employment or public accommodation and additions to those places constructed on or after January 1, 1996, must meet the standards of construction, including, but not limited to, the 5 parts of construction in paragraph B, subparagraph (2).

B. Alterations are governed by the following.

(1) Any alteration to a place of public accommodation, commercial facility or place of employment on or after January 1, 1996 must be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If existing elements, spaces or common areas are altered, then each altered element, space or area must comply with the applicable provisions of the standards of construction.

(2) This subparagraph applies to only buildings remodeled or renovated or to any alterations if the estimated total costs for remodeling or renovating or for alterations to an existing building exceed \$100,000.

(a) Except for repairs undertaken in accordance with the rules adopted

pursuant to subsection 4, when the proposed alteration substantially affects that portion of the building normally accessible to the public, a place of employment or public accommodation altered on or after January 1, 1996 must meet the following 5 parts of the standards of construction or as otherwise indicated:

(i) 4.3 accessible routes;

(ii) 4.13 doors;

(iii) Tactile warnings on doors to hazardous areas. Doors that lead to areas that might prove dangerous to a blind person, for example, doors to loading platforms, boiler rooms, stages and the like, must be made identifiable to the touch by a textured surface on the door handle, knob, pull or other operating hardware. This textured surface may be made by knurling or roughening or by a material applied to the contact surface. Textured surfaces may not be provided for emergency exit doors or any doors other than those to hazardous areas;

(iv) Parking spaces for use by persons with physical disabilities pursuant to 4.1.2 of the standards of construction; and

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

(b) In addition to the 5 parts of the standards of construction specified in division (a), each of which must be met regardless of the cost of the 5 parts of the standards, when the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to

the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area to the extent that the costs to provide an accessible path of travel do not exceed 20% of the cost of the alteration to the primary function area.

If the cost to provide an accessible path of travel to the altered area exceeds 20% of the costs of the alteration to the primary function area, the path of travel must be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

In determining whether the 20% cost figure has been met, the following analysis must be used. The analysis must include an evaluation of whether the following elements of access have been provided, using the following order of priority, before costing 20%, regardless of other elements of access that may have been provided which may affect the path of travel:

- (i) An accessible entrance;
- (ii) An accessible route to the altered area;
- (iii) At least one accessible restroom for each sex or a single unisex restroom;
- (iv) Accessible telephones;
- (v) Accessible drinking fountains; and
- (vi) When possible, additional accessible elements such as parking, storage and alarms.

The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(3) This subparagraph applies to only buildings remodeled or renovated or to any

alterations if the estimated total costs for remodeling or renovating or for alterations to an existing building do not exceed \$100,000. When the entity is undertaking an alteration that affects or could affect usability or access to an area of the facility containing a primary function, the entity shall make the alterations in a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, where the alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope.

C. This subsection may not be construed to require the installation of an elevator for a facility that is less than 3 stories in height or has less than 3,000 square feet per story unless the facility is a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot or other station used for specified public transportation or an airport passenger terminal or a facility covered by Title II of the Americans with Disabilities Act or unless the United States Attorney General determines that a particular category of facility requires the installation of elevators based on the usage of the facility.

4. Curb ramps. Curb ramps or other slopes are required in the following situations.

A. Newly constructed or altered streets, roads and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway.

B. Newly constructed or altered street-level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads or highways.

5. Rules. The commission shall adopt, alter and amend rules designed to make facilities under this section accessible to, functional for and safe for use by persons with physical or mental disabilities in accordance with subsections 3 and 4 and shall adopt, alter and amend rules designed to enforce this section. The commission may repeal only those rules contrary to this chapter. The commission shall also adopt rules concerning procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1) and (2) of the Uniform Federal

Accessibility Standards, maintaining, at a minimum, the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

6. Certification; inspection. The builder of a facility to which this section applies must obtain a certification from a design professional that the plans meet the standards of construction required by this section if the costs of the construction or alterations are at least \$50,000. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built.

7. Training, education and assistance. The commission and the Office of the State Fire Marshal, with input from organizations representing individuals with disabilities, shall develop, as necessary, information packets, lectures, seminars and educational forums on barrier-free design for the purpose of increasing the awareness and knowledge of owners, architects, design professionals, code enforcers, building contractors, individuals with disabilities and other interested parties.

8. Mandatory plan review; certification; inspection. Builders of newly constructed public buildings shall submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsections 3 and 4.

A. For purposes of this subsection, "public building" means any building or structure constructed, operated or maintained for use by the general public, including, but not limited to, all buildings or portions of buildings used for:

- (1) State, municipal or county purposes;
- (2) Education;
- (3) Health care;
- (4) Public assembly;
- (5) A hotel, motel or inn;
- (6) A restaurant;
- (7) Business occupancy; or
- (8) Mercantile establishments occupying more than 3000 square feet.

B. The municipal authority having jurisdiction to issue building permits may not issue a building permit unless the Office of the State Fire Marshal approves the plans and certifies that the public building covered by this subsection 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 from the design professional that the plans meet the standards of construction.

C. If officials of the municipality in which a restaurant; motel; hotel; inn; state; municipal or county building; or an elementary or secondary school covered by this subsection 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 a facility covered by this paragraph be inspected for compliance with construction standards before the municipal officials permit a facility covered by this paragraph to be occupied.

9. Voluntary plan review. Builders of facilities not governed by subsection 8 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsections 3 and 4.

10. Waivers; variance. Builders of facilities governed by subsection 8 that are private entities, when the facilities are not to be owned or operated by, or leased to or by, a public entity, may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If a representative of the Office of the State Fire Marshal determines, in cases covered by mandatory plan review pursuant to subsection 8, that compliance with this section and its rules is structurally impracticable, the State Fire Marshal 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 the variance or waiver to justify its allowance.

11. Appeals relating to mandatory plan reviews. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review under subsection 8 are subject to review in Superior Court upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action as the court may direct.

12. Fees. The Office of the State Fire Marshal shall establish fees for reviews, waivers or variances under this section. The Office of the State Fire

Marshal shall pay all fees to the Treasurer of State to be used to carry out this chapter. Any balance of these fees does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

Sec. 28. 5 MRSA §4611, as enacted by PL 1977, c. 259, §2, is amended to read:

§4611. Complaint

Any person who believes ~~he~~ that the person has been subject to unlawful discrimination, or any employee of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination, provided that such complaints ~~shall~~ must be filed with the commission not more than 6 months after the alleged act of unlawful discrimination. In addition, any person may file a complaint pursuant to section 4632.

Sec. 29. 5 MRSA §4613, sub-§2, ¶D is enacted to read:

D. The obtaining of an approval of a plan certified by the Office of the State Fire Marshal under section 4594-F, subsection 8 or 9 is rebuttable evidence that the plan does meet or exceed the minimum requirements of section 4594-F, subsection 8 or 9.

Sec. 30. 5 MRSA §4622, sub-§1, as amended by PL 1993, c. 327, §§3 and 4, is further amended to read:

1. Limitation. No attorneys' fees under section 4614 and no civil penal damages under section 4613 may be awarded to a plaintiff in a civil action under this Act unless the plaintiff alleges and establishes that, prior to the filing of the civil action, the plaintiff first filed a complaint with the commission and the commission either:

A. Dismissed the case under section 4612, subsection 2;

B. Failed, within 90 days after finding reasonable grounds to believe that unlawful discrimination occurred, to enter into a conciliation agreement to which the plaintiff was a party; or

C. Issued a right-to-sue letter under section 4612, subsection 6 and the action was brought by the aggrieved person not more than 2 years after the act of unlawful discrimination of which the complaint was made as provided in section 4613, subsection 2, paragraph C.

This subsection does not apply to or limit any remedies for civil actions filed under subchapter V if one or more additional causes of action are alleged in

the same civil action that do not require exhaustion of administrative remedies.

Sec. 31. Resolve 1993, c. 73, §1, sub-§§2 and 3 are amended to read:

2. Recommend changes in state laws and rules needed to ensure that compliance with state law will meet at least the minimum requirements of federal law, so that state law can be certified by the United States Department of Justice as complying with the federal Americans with Disabilities Act of 1990 and, in part, so that, with respect to standards of construction relating to access for people with disabilities, businesses may have a more efficient and cost-effective process and a "one-stop shopping" location at the Office of State Fire Marshal for review and approval of construction plans with respect to both state and federal access laws; ~~and~~

3. Plan for implementation, including development of resources and financing, to meet the needs of people with disabilities and the needs of businesses and others required to comply with the laws pertaining to access for persons with disabilities; ~~and be it further~~

Sec. 32. Resolve 1993, c. 73, §1, sub-§§4 and 5 are enacted to read:

4. Study and propose legislation concerning providing vertical access through elevators or other effective means, taking into account federal requirements, current state requirements and requirements under state law in effect June 1, 1995; and

5. Study the issuance, denial, suspension, revocation and restriction of drivers' licenses by the Secretary of State, taking into account federal requirements; and be it further

Sec. 33. Resolve 1993, c. 73, §2, first ¶ is amended to read:

Sec. 2. Initial appointment. Resolved: That the commission consists of 17 members appointed in the following manner:

Sec. 34. Resolve 1993, c. 73, §2-A is enacted to read:

Sec. 2-A. Additional appointment. Resolved: That 2 additional members are appointed after June 1, 1995 in the following manner:

1. One member from an organization representing municipalities, appointed by the Governor; and

2. The Secretary of State or the Secretary of State's designee.

The additional appointments must be made within 10 days of the effective date of this section; and be it further

Sec. 35. Resolve 1993, c. 73, §7 is amended to read:

Sec. 7. Report. Resolved: That the commission shall present ~~its~~ interim findings and any recommended legislation to the joint standing committee of the Legislature having jurisdiction over judiciary matters, the Chair of the Legislative Council and the Executive Director of the Legislative Council by February 1, 1995. The commission shall present final findings and recommendations to the Second Regular Session of the 117th Legislature and the joint standing committee of the Legislature having jurisdiction over judiciary matters by January 15, 1996; and be it further

Sec. 36. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1995-96	1996-97
PUBLIC SAFETY, DEPARTMENT OF		
Office of the State Fire Marshal		
Positions - Other Count	(4.0)	(4.0)
Personal Services	\$113,757	\$155,188
All Other	35,565	36,000
Capital Expenditures	63,600	
Allocates funds for 4 additional Fire Protection Specialist Assistant positions and general operating expenses to handle additional mandatory plan reviews.		
DEPARTMENT OF PUBLIC SAFETY		
TOTAL	\$212,922	\$191,188

Sec. 37. Retroactivity. That section of this Act that amends Resolve 1993, chapter 73, section 7 applies retroactively to February 1, 1995.

See title page for effective date.

CHAPTER 394

H.P. 1008 - L.D. 1419

**An Act to Modify the Licensure Act
for Substance Abuse Counselors**

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

Sec. 1. 5 MRSA §12004-A, sub-§41, as enacted by PL 1987, c. 786, §5, is amended to read:

41. State	Not	32 MRSA
Board of Substance	Authorized	§6201
<u>Abuse Alcohol and Drug Counselors</u>		

Sec. 2. 32 MRSA §6201, as amended by PL 1989, c. 503, Pt. B, §148, is further amended to read:

§6201. State Board of Alcohol and Drug Counselors

The State Board of ~~Substance Abuse Alcohol and Drug~~ Counselors within the Department of Professional and Financial Regulation as established by Title 5, section 12004-A, subsection 41, shall carry out the purposes of this chapter.

Sec. 3. 32 MRSA §6202, as amended by PL 1987, c. 395, Pt. A, §193, is further amended to read:

§6202. Objective

The objective of this legislation is to establish a State Board of ~~Substance Abuse Alcohol and Drug~~ Counselors, which ~~will establish~~ establishes and ~~ensure~~ ensures high professional standards among ~~substance abuse alcohol and drug~~ counselors and which ~~will encourage~~ encourages and ~~promote~~ promotes quality treatment and rehabilitation services for substance abusers.

Sec. 4. 32 MRSA §6203, as amended by PL 1991, c. 456, §§2 to 8, is further amended to read:

§6203. Definitions

As used in this chapter, unless a ~~different meaning clearly appears from~~ the context otherwise indicates, the following terms ~~shall~~ have the following meanings.

1. Board. "Board" means the State Board of ~~Substance Abuse Alcohol and Drug~~ Counselors.

1-A. College level course. "College level course" means any education class or program that includes at least 15 contact hours per credit.

2. Consumer of alcohol and drug counseling services. A "consumer of ~~substance abuse alcohol and drug counseling~~ services" is a person affected by or recovering from alcoholism or other drug abuse.

3. Nonprovider. A "nonprovider" means an individual who neither is presently nor has been any of the following for the past 3 years: