

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST SPECIAL SESSION
September 27, 2011

SECOND REGULAR SESSION
January 4, 2012 to May 31, 2012

THE EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
LAWS IS
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AUGUST 30, 2012

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2012

structure that would allow the upstream passage of an invasive fish species known to be present downstream in the Piscataquis River or Penobscot River drainage.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$500 or more than \$1,000 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

Sec. 2. 12 MRSA §12761, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §305 and affected by §422, is further amended to read:

§12761. Construction of new dams or other artificial obstructions

1. Notice required. Prior to construction or prior to authorizing construction of a new dam or other obstruction in the inland waters, the owner, lessee or other person in control of the dam or other artificial obstruction shall provide written notice to the commissioner, and the Commissioner of Marine Resources supplying information on construction plans, proposed location and date of construction of the dam or other artificial obstruction.

2. Initiation of fishway proceedings. Within 30 days of receipt of the construction notice pursuant to subsection 1, the commissioner and the Commissioner of Marine Resources shall review the plans in order to determine whether fishway construction or alteration of proposed fishway construction plans may be required pursuant to the criteria set forth in section 12760, subsection 4. If the ~~commissioner determines~~ commissioners determine that the construction or alteration may be necessary, the ~~commissioner~~ commissioners shall initiate fishway proceedings and follow the procedures prescribed in section 12760.

3. Unlawful building of dam. A person may not build any dam or other obstruction in any of the rivers, streams or brooks of this State without first filing written notice with the commissioner and the Commissioner of Marine Resources pursuant to subsection 1.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

Sec. 3. 38 MRSA §480-Q, sub-§27, as enacted by PL 2009, c. 75, §3, is amended to read:

27. Fishways. Erection, maintenance, repair or alteration of a fishway in a dam or other artificial obstruction when required by the Commissioner of Inland Fisheries and Wildlife and the Commissioner of

Marine Resources pursuant to Title 12, section 12760 or by the Commissioner of Marine Resources pursuant to Title 12, section 6121;

See title page for effective date.

CHAPTER 613

S.P. 487 - L.D. 1530

An Act To Amend the Housing Provisions of the Maine Human Rights Act

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

Sec. 1. 5 MRSA §4553, sub-§1-D is enacted to read:

1-D. Aggrieved person. "Aggrieved person" includes any person who claims to have been subject to unlawful discrimination. "Aggrieved person" also includes any person who claims to have been injured by unlawful housing discrimination.

Sec. 2. 5 MRSA §4553, sub-§1-E is enacted to read:

1-E. Complainant. "Complainant" means a person who files a complaint under section 4611 or a civil action under section 4621.

Sec. 3. 5 MRSA §4553, sub-§1-F is enacted to read:

1-F. Conciliation. "Conciliation" means the attempted resolution of issues raised by a complaint filed under section 4611 or by an investigation of such a complaint through informal negotiations involving the complainant, the respondent and the commission.

Sec. 4. 5 MRSA §4553, sub-§1-G is enacted to read:

1-G. Conciliation agreement. "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

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

5-B. Family. "Family" includes, but is not limited to, a single individual.

Sec. 6. 5 MRSA §4553, sub-§6, as corrected by RR 1999, c. 2, §2, is amended to read:

6. Housing accommodation. "Housing accommodation" includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, ~~which that~~ is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes, ~~excepting:~~

~~A. The rental of a one family unit of a 2 family dwelling, one unit of which is occupied by the owner;~~

~~B. The rental of not more than 4 rooms of a one family dwelling which is occupied by the owner; or~~

~~C. The rental of any dwelling owned, controlled or operated for other than a commercial purpose, by a religious corporation to its membership unless such membership is restricted on account of race, color or national origin.~~

Sec. 7. 5 MRSA §4553, sub-§7, as amended by PL 1975, c. 182, §1, is further amended to read:

7. Person. "Person" includes one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, labor organizations, mutual companies, joint-stock companies and unincorporated organizations and includes the State and all agencies thereof.

Sec. 8. 5 MRSA §4553, sub-§§9-F and 9-G are enacted to read:

9-F. Rent. "Rent" includes to lease, to sublease, to let or otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

9-G. Respondent. "Respondent" means a person accused of unlawful discrimination in a complaint filed under section 4611 or a civil action filed under section 4621.

Sec. 9. 5 MRSA §4553, sub-§10, ¶G, as enacted by PL 2005, c. 10, §6, is amended to read:

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

- (1) Employment, as is more fully set forth in section 4553, subsection 4 and section 4573-A;
- (2) ~~Housing, as is more fully set forth in section 4553, subsection 6, paragraph C;~~ and
- (3) Educational opportunity, as is more fully set forth in section 4602, subsection 4.

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

Sec. 10. 5 MRSA §4581, as amended by PL 2007, c. 243, §1, is further amended to read:

§4581. Right to freedom from discrimination in housing; exceptions

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, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status is hereby recognized as and declared to be a civil right.

1. Number of occupants. Nothing in this subchapter limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

2. Definition. As used in this section, "housing for older persons" means housing:

A. Provided under any state or federal program that the United States Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons as defined in the state or federal program;

B. Intended for, and solely occupied by, persons 62 years of age or older; or

C. Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this paragraph, the housing must meet at least the following factors:

- (2) That at least 80% of the dwellings are occupied by at least one person 55 years of age or older per unit; and
- (3) The publication of, and adherence to, policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

3. Requirements. Housing ~~shall~~ does not fail to meet the requirements for "housing for older persons" by reason of:

A. Persons residing in the housing as of the date of enactment of this subsection who do not meet the requirements of subsection 2, paragraph B or C, ~~provided that if~~ new occupants of the housing ~~shall~~ meet the age requirements of subsection 2, paragraphs B and C; or

B. Unoccupied units, ~~provided that if~~ the units are reserved for occupancy by persons who meet the age requirements of subsection 2, paragraphs B and C.

4. Housing accommodation exceptions. The following exceptions apply in this chapter:

A. This chapter does not prohibit the rental of any dwelling owned, controlled or operated for other than a commercial purpose by a religious corporation to its membership unless such membership is restricted on account of race, color or national origin; and

B. Except as provided in section 4581-A, subsection 1, paragraph C and section 4581-A, subsections 2 and 3, this chapter does not apply to:

(1) The rental of a one-family unit of a 2-family dwelling, one unit of which is occupied by the owner; or

(2) The rental of not more than 4 rooms of a one-family dwelling that is occupied by the owner.

Sec. 11. 5 MRSA §4581-A is enacted to read:

§4581-A. Unlawful housing discrimination

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

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

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

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

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

D. Discriminate against any person because of race or color, sex, sexual orientation, physical or mental 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 with any housing accommodations; or

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

2. Selling, brokering or appraising of housing.

For any real estate broker or real estate salesperson, or any agent of these, to:

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

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

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

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

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

3. Making of loans; other financial assistance.

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:

A. Make or cause to be made any oral or written inquiry concerning the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of any

applicant for financial assistance or of existing or prospective occupants or tenants of housing accommodations; or

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

4. Receipt of public assistance. For any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual's status as recipient.

Sec. 12. 5 MRSA §4582, as amended by PL 2005, c. 10, §14, is repealed.

Sec. 13. 5 MRSA §4582-A, as amended by PL 2007, c. 664, §§2 to 4, is further 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~~ lessor, ~~sublessee~~ sublessor, 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 a person with physical or mental 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;

2. Accommodations. For any owner, ~~lessee~~ lessor, ~~sublessee~~ sublessor, 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 a person with physical or mental disability equal opportunity to use and enjoy the housing; or

3. Service animals. For any owner, ~~lessee~~ lessor, ~~sublessee~~ sublessor, 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 the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the housing

accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of a service animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal.

Sec. 14. 5 MRSA §4582-C is enacted to read:

§4582-C. Standards for multifamily and public housing constructed on or after September 1, 2012

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 facility that affects or could affect the usability of the facility or any part of the 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. "Alteration" does not include normal maintenance, decoration and upgrades, including, but not limited to, reroofing, re-siding, painting or wallpapering, replacement of doors or windows, asbestos removal and changes to mechanical and electrical systems unless they affect the usability of the facility.

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

C. "Covered multifamily dwellings" means:

(1) Buildings consisting of 4 or more units if such buildings have one or more elevators; and

(2) Ground floor units in other buildings consisting of 4 or more units that have no elevators.

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

E. "New construction" includes, but is not limited to, the design and construction of facilities for first occupancy or an alteration if the cost of the alteration is 75% or more of the replacement cost of the completed facility.

F. "Public housing" means any housing that is financed in whole or in part with public funds offer-

ing housing accommodations containing 20 or more units.

G. "Standards of construction" means the most recent American National Standards Institute standards, published as ANSI A 117.1. Departures from particular technical and scoping requirements of ANSI A 117.1 by the use of other methods are permitted where substantially equivalent or greater access to and usability of the facility is provided.

2. Facilities affected. This section applies to new construction of covered multifamily dwellings and new construction and alterations of public housing if the date when the last application for a building permit or permit extension is certified to be complete by a state, county or local government or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension received by the state, county or local government is on or after September 1, 2012 or, if no permit is required, if the start of physical construction or alterations occurs on or after September 1, 2012.

3. Unlawful housing discrimination. For purposes of this Act, unlawful housing discrimination, in addition to any violations of applicable accessible building requirements in subchapter 5, includes, but is not limited to:

A. The failure to design and construct covered multifamily dwellings subject to this section in such a manner that:

(1) The public use and common use portions of the dwellings are readily accessible to and usable by people with physical or mental disabilities;

(2) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons in wheelchairs; and

(3) All premises within the dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling;

(b) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(c) Reinforcements in bathroom walls to allow later installation of grab bars; and

(d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space;

B. For new construction of public housing subject to this section, to have less than 10% of the

ground level units and less than 10% of the upper story units connected by an elevator be accessible to and usable by persons with physical disabilities, and less than 2% of the units, no fewer than one unit, with accessible communication features; and

C. For alterations to public housing units subject to this section, to fail to have the altered units meet the parts of the standards of construction concerning accessible routes, accessible doors and adaptable bathrooms until at least 10% of the total ground level units and a minimum of 10% of the total upper story units connected by an elevator meet the parts of the standards of construction concerning accessible routes, accessible doors and adaptable bathrooms.

4. Compliance with standards. Compliance with the appropriate standards of construction satisfies the requirements of this section.

5. Statement; inspection. The builder of a facility to which this section applies shall obtain a statement from a design professional that, based on professional judgment, the plans of the facility at the time of the statement meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the statement to:

A. The municipal authority that reviews plans in the municipality where the facility is to be constructed; or

B. If the municipality where the facility is to be constructed has no authority that reviews plans, the municipal officers of the municipality.

If municipal officials of the municipality where the facility is to be constructed inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the standards required by this section. The municipal officials shall require a facility that is inspected to meet the standards of this section before the municipal officials permit the facility to be occupied.

Sec. 15. 5 MRSA §4594, sub-§2, as amended by PL 1991, c. 99, §24, is further amended to read:

2. Application. Facilities subject to this section must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, former 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. Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E.

Sec. 16. 5 MRSA §4594-A, sub-§2, ¶A, as amended by PL 2011, c. 322, §3, is further amended to read:

A. Facilities subject to this section constructed on or after January 1, 1984 but before January 1, 1988 must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, former chapter 331.

Sec. 17. 5 MRSA §4594-A, sub-§2, ¶B, as amended by PL 2011, c. 322, §3, is further amended to read:

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$150,000, 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 that are remodeled, enlarged or renovated on or after January 1, 1984 but before January 1, 1988 must meet the requirements of the following 4 parts of the 1981 standards of construction adopted pursuant to Title 25, former 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) Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E.

Sec. 18. 5 MRSA §4611, as amended by PL 2009, c. 235, §1, is further amended to read:

§4611. Complaint

Any aggrieved person who believes 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, except that a complaint must be filed with the commission not more than 300 days after the alleged act of unlawful discrimination. In addition, any person may file a complaint pursuant to section 4632.

Sec. 19. 5 MRSA §4612, sub-§4, ¶A, as amended by PL 2005, c. 10, §22, 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, sexual orientation, physical or mental disability, religious or nationality group or age group if relief is not immediately granted, or if conciliation efforts under subsection 3 have not succeeded, the commission may file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders. In a complaint investigated pursuant to a memorandum of understanding between the commission and the United States Department of Housing and Urban Development that results in a reasonable grounds determination, the commission shall file a civil action for the use of complainant if conciliation efforts under subsection 3 are unsuccessful.

Sec. 20. 5 MRSA §4612, sub-§5, as enacted by PL 1983, c. 281, §2, is amended to read:

5. Confidentiality of 3rd-party records. The Legislature finds that persons who are not parties to a complaint under this chapter as a complainant or a ~~person accused of discrimination~~ respondent have a right to privacy. Any records of the commission ~~which~~ that are open to the public under Title 1, chapter 13, ~~shall~~ must be kept in such a manner as to ensure that data identifying these 3rd parties is not reflected in the record. Only data reflecting the identity of these persons may be kept confidential.

Sec. 21. 5 MRSA §4613, sub-§2, ¶B, as repealed and replaced by PL 2007, c. 695, Pt. A, §7, is amended to read:

B. If the court finds that unlawful discrimination occurred, its judgment must specify an appropriate remedy or remedies for that discrimination. The remedies may include, but are not limited to:

- (1) An order to cease and desist from the unlawful practices specified in the order;
- (2) An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
- (3) An order to accept or reinstate such a person in a union;
- (4) An order to rent or sell a specified housing accommodation, or one substantially identical to that accommodation if controlled by the respondent, to a victim of unlawful housing discrimination;

(5) An order requiring the disclosure of the locations and descriptions of all housing accommodations that the violator has the right to sell, rent, lease or manage and forbidding the sale, rental or lease of those housing accommodations until the violator has given security to ensure compliance with any order entered against the violator and with all provisions of this Act. An order may continue the court's jurisdiction until the violator has demonstrated compliance and may defer decision on some or all relief until after a probationary period and a further hearing on the violator's conduct during that period;

(6) An order to pay the victim, in cases of unlawful price discrimination, 3 times the amount of any excessive price demanded and paid by reason of that unlawful discrimination;

(7) An order to pay to the victim of unlawful discrimination, other than employment discrimination in the case of a respondent who has more than 14 employees, or, if the commission brings action on behalf of the victim, an order to pay to the victim, the commission or both, civil penal damages not in excess of \$20,000 in the case of the first order under this Act against the respondent, not in excess of \$50,000 in the case of a 2nd order against the respondent arising under the same subchapter of this Act and not in excess of \$100,000 in the case of a 3rd or subsequent order against the respondent arising under the same subchapter of this Act, except that the total amount of civil penal damages awarded in any action filed under this Act may not exceed the limits contained in this subparagraph;

(8) In cases of intentional employment discrimination with respondents who have more than 14 employees, compensatory and punitive damages as provided in this subparagraph.

(a) In an action brought by a complaining party under section 4612 and this section against a respondent who engaged in unlawful intentional discrimination prohibited under sections 4571 to 4575, if the complaining party can not recover under 42 United States Code, Section 1981 (1994), the complaining party may recover compensatory and punitive damages as allowed in this subparagraph in addition to any relief authorized elsewhere in this subsection from the respondent.

(b) When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded under this subparagraph when the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

(c) A complaining party may recover punitive damages under this subparagraph against a respondent if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the rights of an aggrieved individual protected by this Act.

(d) Compensatory damages awarded under this subparagraph do not include back pay, interest on back pay or any other type of relief authorized elsewhere under this subsection.

(e) The sum of compensatory damages awarded under this subparagraph for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed for each complaining party:

(i) In the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;

(ii) In the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000;

(iii) In the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000; and

(iv) In the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks

in the current or preceding calendar year, \$500,000.

(f) Nothing in this subparagraph may be construed to limit the scope of, or the relief available under, 42 United States Code, Section 1981 (1994).

(g) If a complaining party seeks compensatory or punitive damages under this subparagraph, any party may demand a trial by jury, and the court may not inform the jury of the limitations described in division (e).

(h) This subparagraph does not apply to recoveries for a practice that is unlawful only because of its disparate impact.

(i) Punitive damages may not be included in a judgment or award against a governmental entity, as defined in Title 14, section 8102, subsection 2, or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of that employee's employment; and

(9) In addition to other remedies in subparagraphs (1) to (8), an order to pay actual and punitive damages in the case of discriminatory housing practices. This subparagraph is not intended to limit actual damages available to a plaintiff alleging other discrimination if the remedy of actual damages is otherwise available under this Act. Punitive damages under this subparagraph may not be included in a judgment or award against a governmental entity, as defined in Title 14, section 8102, subsection 2, or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of that employee's employment.

Sec. 22. 5 MRSA §4621, as amended by PL 1979, c. 541, Pt. A, §41, is further amended to read:

§4621. Civil action

Within the time limited, ~~a~~ an aggrieved person who has been subject to unlawful discrimination may file a civil action in the Superior Court against the person or persons who committed the unlawful discrimination.

Sec. 23. 5 MRSA §4622, sub-§1, as amended by PL 2009, c. 235, §4, is further amended to read:

1. Limitation. Attorney's fees under section 4614 and civil penal damages or compensatory and punitive damages under section 4613 may not 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;

C. Issued a right-to-sue letter under section 4612, subsection 6; or

D. Dismissed the case in error.

This subsection does not apply to or limit any remedies for civil actions filed under subchapter ~~4~~ 5 if one or more additional causes of action are alleged in the same civil action that do not require exhaustion of administrative remedies or subchapter 4 if the allegations are covered by the federal Fair Housing Act, 42 United States Code, Chapter 45.

Sec. 24. 21-A MRSA §630, sub-§1, ¶A, as enacted by PL 1985, c. 161, §6, is amended to read:

A. "Accessible voting place" means a voting place in a building in which the part of the building set aside for voting meets the requirements for accessible routes ~~of the 1981 standards of construction~~ described in Title ~~25~~ 5, chapter ~~334~~ 337, subchapter 5.

Sec. 25. 23 MRSA §954, as amended by PL 1979, c. 248, §1, is further amended to read:

§954. Picnic areas

The department is authorized to construct along state and state aid highways roadside picnic areas, roadside springs, scenic turnouts or other landscaping where in the opinion of the department it may seem advisable and place distinguishing signs upon the same. The department is authorized to use for the maintenance of the same such funds as are now available for maintenance of state and state aid highways. In any roadside area along any state or state aid highway where modern flush toilet facilities are provided for public use, there ~~shall~~ must be provided toilet rooms ~~which that~~ are accessible to and usable by the physically disabled, as ~~defined set out in Title 25 5, sections 2701 and 2702 respectively~~ chapter 337, subchapter 5. The department shall erect and maintain signs along the approach to any roadside area where toilet facilities accessible to the disabled are available ~~which that~~ are designed to inform disabled persons that the facilities are available.

Sec. 26. 25 MRSA c. 331, as amended, is repealed.

Sec. 27. 30-A MRSA §4451, sub-§2-A, ¶E, as amended by PL 2009, c. 261, Pt. A, §14, is further amended to read:

E. Building standards under chapter 141; chapter 185, subchapter 1; Title 5, sections 4582-B, 4582-C and 4594-F; beginning June 1, 2010, Title 10, chapter 1103; and Title 25, ~~chapters~~ chapter 313 and 331.

Sec. 28. 30-A MRSA §4452, sub-§5, ¶F, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

F. Laws pertaining to the construction of public buildings for the physically disabled pursuant to Title 25 5, chapter 331 sections 4582-B, 4582-C and 4594-F;

Sec. 29. Effective date. This Act takes effect September 1, 2012.

Effective September 1, 2012.

CHAPTER 614

S.P. 473 - L.D. 1503

An Act To Promote School Attendance and Increase School Achievement

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

Sec. 1. 4 MRSA §152, sub-§4, as corrected by RR 2001, c. 2, Pt. A, §2, is amended to read:

4. Exclusive jurisdiction. Original jurisdiction, not concurrent with that of the Superior Court, of mental health commitment hearings under Title 34-B, chapter 3, subchapter 4, mental retardation certification hearings under Title 34-B, chapter 5, ~~habitual~~ truancy actions under Title 20-A, chapters 119 and 211 under which equitable relief may be granted and small claims actions under Title 14, chapter 738;

Sec. 2. 20-A MRSA §1, sub-§2-A, ¶C, as enacted by PL 2007, c. 667, §3, is amended to read:

C. Is ~~habitually~~ truant; or

Sec. 3. 20-A MRSA §1001, sub-§8-A is enacted to read:

8-A. Due process standards for expulsion proceedings. Following a proper investigation of a student's behavior, a school board that intends to consider expulsion shall ensure proceedings include the following due process provisions.

A. Before a hearing on the expulsion, the superintendent shall:

(1) Provide written notice to the parents and the student of:

(a) The date, time and location of the hearing;

(b) A description of the incident or incidents that occasioned the expulsion hearing;

(c) The student's and parents' right to review the school records prior to the hearing;

(d) A description of the hearing process; and

(e) An explanation of the consequences of an expulsion; and

(2) Invite the parents and student to a meeting prior to the expulsion hearing to discuss the procedures of the hearing.

B. At a hearing on the expulsion:

(1) The student has the right to present and cross-examine witnesses;

(2) The student has the right to an attorney or other representation; and

(3) Witnesses must be sworn in and the chair of the hearing has the authority to swear in witnesses.

C. After a hearing on the expulsion, the school board shall provide written notice of its decision to the parents and the student by certified mail. The notice of the school board's written decision may include a reentry plan developed in accordance with subsection 9-C.

Sec. 4. 20-A MRSA §1001, sub-§9, as amended by PL 1997, c. 298, §1, is further amended to read:

9. Students expelled or suspended. Following a proper investigation of a student's behavior and due process proceedings pursuant to subsection 8-A, if found necessary for the peace and usefulness of the school, ~~they~~ a school board shall expel any student:

A. Who is deliberately disobedient or deliberately disorderly;

B. For infractions of violence;

C. Who possesses on school property a firearm as defined in Title 17-A, section 2, subsection 12-A or a dangerous weapon as defined in Title 17-A, section 2, subsection 9 without permission of a school official;

D. Who, with use of any other dangerous weapon as defined in Title 17-A, section 2, subsection 9, paragraph A, intentionally or knowingly causes