

5 M.R.S.A. § 4553



MAINE REVISED STATUTES ANNOTATED
TITLE 5. **ADMINISTRATIVE PROCEDURES AND SERVICES**
PART 12. **HUMAN RIGHTS**
CHAPTER 337. **HUMAN RIGHTS ACT**
SUBCHAPTER 1. **GENERAL PROVISIONS**
→ § 4553. **Definitions**

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

1. Commission. "Commission" means the Maine Human Rights Commission established by this Act.

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

1-B. Covered entity. For purposes of subchapter III, [FN1] "covered entity" means an employer, employment agency, labor organization or joint labor-management committee. For purposes of subchapter V, [FN2] "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.

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.

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.

3. Employee. "Employee" means an individual employed by an employer. "Employee" does not include any individual employed by 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 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. "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.

5. Employment agency. "Employment agency" includes any person undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees; it includes, without limitation, placement services, training **schools** and centers, and labor organizations, to the extent that they act as employee referral sources; and it includes any agent of such person.

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

- A. A parent or another person having legal custody of the individual or individuals; or
- B. The designee of the parent or other person having custody, with the written permission of the parent or other person.

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

6. Housing accommodation. "Housing accommodation" includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, which 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.

6-A. Normal retirement age. "Normal retirement age" means the specified age, the years of service requirement or any age and years of service combination at which a member may become eligible for retirement benefits. This subsection may not be construed to require the mandatory retirement of a member or to deny employment to any person based solely on that person's normal retirement age.

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, and includes the State and all agencies thereof.

7-A. Physical or mental disability. "Physical or mental disability" has the meaning set forth in section 4553-A.

7-B. Repealed. Laws 2007, c. 385, § 2, eff. June 21, 2007.

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.

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). [\[FN3\]](#)

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. Real estate broker and salesman. "Real estate broker" and "real estate salesman" have the same definitions as are given respectively in Title 32, section 4001, subsections 2 and 3; but include all persons meeting those definitions, whether or not they are licensed or required to be licensed.

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.

9-C. Sexual orientation. "Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality or **gender identity** or expression.

9-D. Service animal. "Service animal" means:

A. Any animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician's assistant, nurse practitioner or licensed social worker; or

B. Any animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or fetching dropped items.

10. Unlawful discrimination. "Unlawful discrimination" includes:

A. Unlawful employment discrimination as defined and limited by subchapter III;

B. Unlawful housing discrimination as defined and limited by subchapter IV;

C. Unlawful public accommodations discrimination as defined by subchapter V;

D. Aiding, abetting, inciting, compelling or coercing another to do any of such types of unlawful discrimination; obstructing or preventing any person from complying with this Act or any order issued in this subsection; attempting to do any act of unlawful discrimination; and punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act or for com-

plaining of a violation of this Act or for testifying in any proceeding brought in this subsection;

E. In determining whether a person is acting as an agent or employee of another person so as to make such other person responsible for that person's acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling;

F. Unlawful educational discrimination as defined and limited by subchapter 5- B; [FN4] and

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.

[FN1] [5 M.R.S.A. § 4571 et seq.](#)

[FN2] [5 M.R.S.A. § 4591 et seq.](#)

[FN3] Repealed. See, now, [49 U.S.C.A. § 24102.](#)

[FN4] [5 M.R.S.A. § 4601 et seq.](#)

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