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Legislative Document

No. 2239

S.P. 840

In Senate, May 24, 1999

An Act to Ensure Civil Rights and Prevent Discrimination.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator ABROMSON of Cumberland.
Cosponsored by Representative SAXL of Portland and
Senators: AMERO of Cumberland, President LAWRENCE of York, MacKINNON of York,
MITCHELL of Penobscot, Representatives: QUINT of Portland, STANWOOD of Southwest
Harbor, WILLIAMS of Orono, CAMERON of Rumford, NORBERT of Portland, Speaker
ROWE of Portland, STEVENS of Orono.

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

4 **Sec. 1. 5 MRSA §4552**, as amended by PL 1993, c. 327, §1, is further amended to read:

6 **§4552. Policy**

8 To protect the public health, safety and welfare, it is
10 declared to be the policy of this State to keep continually in
12 review all practices infringing on the basic human right to a
14 life with dignity, and the causes of these practices, so that
16 corrective measures may, where possible, be promptly recommended
18 and implemented, and to prevent discrimination in employment,
20 housing or access to public accommodations on account of race,
22 color, sex, sexual orientation, physical or mental disability,
24 religion, ancestry or national origin; and in employment,
discrimination on account of age or because of the previous
assertion of a claim or right under former Title 39 or Title 39-A
and in housing because of familial status; and to prevent
discrimination in the extension of credit on account of age,
race, color, sex, sexual orientation, marital status, religion,
ancestry or national origin; and to prevent discrimination in
education on account of sex or physical or mental disability.

26 Nothing in this chapter confers legislative approval of, or
special rights to, any person or group of persons.

28 **Sec. 2. 5 MRSA §4553, sub-§9-C** is enacted to read:

30 **9-C. Sexual orientation.** "Sexual orientation" means having
32 an orientation for heterosexuality, homosexuality or bisexuality,
having a history of that orientation or being identified with
that orientation.

34 **Sec. 3. 5 MRSA §4553, sub-§10, ¶E**, as amended by PL 1983, c.
36 578, §2, is further amended to read:

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

46 **Sec. 4. 5 MRSA §4553, sub-§10, ¶F**, as enacted by PL 1983, c.
578, §2, is amended to read:

48 F. Unlawful educational discrimination as defined and
50 limited by subchapter V-B; and

2 **Sec. 5. 5 MRSA §4553, sub-§10, ¶G** is enacted to read:

4 G. Discrimination in employment, housing, public
6 accommodations and credit on the basis of sexual
8 orientation, except that a religious corporation,
 association or organization that does not receive public
 funds is exempt from these provisions.

10 **Sec. 6. 5 MRSA §4571**, as amended by PL 1991, c. 99, §6, is
further amended to read:

12 **§4571. Right to freedom from discrimination in employment**

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

20 **Sec. 7. 5 MRSA §4572, sub-§1, ¶¶A, B and C**, as amended by PL
22 1991, c. 885, Pt. E, §7 and affected by §47, are further amended
to read:

24 A. For any employer to fail or refuse to hire or otherwise
26 discriminate against any applicant for employment because of
28 race or color, sex, sexual orientation, physical or mental
30 disability, religion, age, ancestry or national origin,
32 because of the applicant's previous assertion of a claim or
34 right under former Title 39 or Title 39-A or because of
36 previous actions taken by the applicant that are protected
38 under Title 26, chapter 7, subchapter V-B; or, because of
40 those reasons, to discharge an employee or discriminate with
42 respect to hire, tenure, promotion, transfer, compensation,
44 terms, conditions or privileges of employment or any other
matter directly or indirectly related to employment; or, in
recruiting of individuals for employment or in hiring them,
to utilize any employment agency that the employer knows or
has reasonable cause to know discriminates against
individuals because of their race or color, sex, sexual
orientation, physical or mental disability, religion, age,
ancestry or national origin, because of their previous
assertion of a claim or right under former Title 39 or Title
39-A or because of previous actions that are protected under
Title 26, chapter 7, subchapter V-B;

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

50 B. For any employment agency to fail or refuse to classify
properly, refer for employment or otherwise discriminate
against any individual because of race or color, sex, sexual

2 orientation, physical or mental disability, religion, age,
ancestry or national origin, because of the individual's
4 previous assertion of a claim or right under former Title 39
or Title 39-A or because of previous actions taken by the
6 individual that are protected under Title 26, chapter 7,
subchapter V-B; or to comply with an employer's request for
8 the referral of job applicants if a request indicates either
directly or indirectly that the employer will not afford
10 full and equal employment opportunities to individuals
regardless of their race or color, sex, sexual orientation,
12 physical or mental disability, religion, age, ancestry or
national origin, because of previous assertion of a claim or
14 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;

16
18 C. For any labor organization to exclude from
apprenticeship or membership or to deny full and equal
20 membership rights to any applicant for membership because of
race or color, sex, sexual orientation, physical or mental
22 disability, religion, age, ancestry or national origin,
because of the applicant's previous assertion of a claim or
24 right under former Title 39 or Title 39-A or because of
previous actions taken by the applicant that are protected
26 under Title 26, chapter 7, subchapter V-B; or, because of
those reasons, to deny a member full and equal membership
28 rights, expel from membership, penalize or otherwise
discriminate with respect to hire, tenure, promotion,
30 transfer, compensation, terms, conditions or privileges of
employment, representation, grievances or any other matter
32 directly or indirectly related to membership or employment,
whether or not authorized or required by the constitution or
34 bylaws of that labor organization or by a collective labor
agreement or other contract; to fail or refuse to classify
36 properly or refer for employment or otherwise discriminate
orientation, physical or mental disability, religion, age,
38 ancestry or national origin, because of the member's
previous assertion of a claim or right under former Title 39
40 or Title 39-A or because of previous actions taken by the
member that are protected under Title 26, chapter 7,
42 subchapter V-B; or to cause or attempt to cause an employer
to discriminate against an individual in violation of this
44 section, except that it is lawful for labor organizations
and employers to adopt a maximum age limitation in
46 apprenticeship programs, if the employer or labor
organization obtains prior approval from the Maine Human
48 Rights Commission of any maximum age limitation employed in
an apprenticeship program. The commission shall approve the
50 age limitation if a reasonable relationship exists between

2 the maximum age limitation employed and a legitimate
3 expectation of the employer in receiving a reasonable return
4 upon the employer's investment in an apprenticeship
5 program. The employer or labor organization bears the
6 burden of demonstrating that such a relationship exists;

7 **Sec. 8. 5 MRSA §4572, sub-§1, ¶D**, as amended by PL 1995, c.
8 393, §12, is further amended to read:

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

12 (1) Elicit or attempt to elicit information directly
13 or indirectly pertaining to race or color, sex, sexual
14 orientation, physical or mental disability, religion,
15 age, ancestry or national origin, any previous
16 assertion of a claim or right under former Title 39 or
17 Title 39-A or any previous actions that are protected
18 under Title 26, chapter 7, subchapter V-B;

19 (2) Make or keep a record of race or color, sex,
20 sexual orientation, physical or mental disability,
21 religion, age, ancestry or national origin, any
22 previous assertion of a claim or right under former
23 Title 39 or Title 39-A or any previous actions that are
24 protected under Title 26, chapter 7, subchapter V-B,
25 except under physical or mental disability when an
26 employer requires a physical or mental examination
27 prior to employment, a privileged record of that
28 examination is permissible if made and kept in
29 compliance with this Act;

30 (3) Use any form of application for employment, or
31 personnel or membership blank containing questions or
32 entries directly or indirectly pertaining to race or
33 color, sex, sexual orientation, physical or mental
34 disability, religion, age, ancestry or national origin,
35 any previous assertion of a claim or right under former
36 Title 39 or Title 39-A or any previous actions that are
37 protected under Title 26, chapter 7, subchapter V-B.
38 This section does not prohibit any officially
39 recognized government agency from keeping records
40 permitted to be kept under this Act in order to provide
41 free services to individuals requesting rehabilitation
42 or employment assistance;

43 (4) Print, publish or cause to be printed or published
44 any notice or advertisement relating to employment or
45 membership indicating any preference, limitation,
46

2 specification or discrimination based upon race or
3 color, sex, sexual orientation, physical or mental
4 disability, religion, age, ancestry or national origin,
5 any previous assertion of a claim or right under former
6 Title 39 or Title 39-A or any previous actions that are
7 protected under Title 26, chapter 7, subchapter V-B; or

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

18 **Sec. 9. 5 MRSA §4573-A, sub-§2**, as enacted by PL 1995, c. 393,
19 §21, is amended to read:

20 **2. Religious entities.** This Except as provided in section
21 4553, subsection 10, paragraph G, this subchapter does not
22 prohibit a religious corporation, association, educational
23 institution or society from giving preference in employment to
24 individuals of its same religion to perform work connected with
25 the carrying on by the corporation, association, educational
26 institution or society of its activities. Under this subchapter,
27 a religious organization may require that all applicants and
28 employees conform to the religious tenets of that organization.

30 **Sec. 10. 5 MRSA §4581, first ¶**, as amended by PL 1991, c. 99,
31 §12, is further amended to read:

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

40 **Sec. 11. 5 MRSA §4582, 2nd, 3rd and 4th ¶¶**, as amended by PL
41 1991, c. 99, §14, are further amended to read:

44 For any owner, lessee, sublessee, managing agent or other
45 person having the right to sell, rent, lease or manage a housing
46 accommodation, or any agent of these to make or cause to be made
47 any written or oral inquiry concerning the race or color, sex,
48 sexual orientation, physical or mental disability, religion,
49 ancestry, national origin or familial status of any prospective
50 purchaser, occupant or tenant of the housing accommodation; or to

2 refuse to show or refuse to sell, rent, lease, let or otherwise
3 deny to or withhold from any individual housing accommodation
4 because of the race or color, sex, sexual orientation, physical
5 or mental disability, religion, ancestry, national origin or
6 familial status of the individual; or to issue any advertisement
7 relating to the sale, rental or lease of the housing
8 accommodation ~~which~~ that indicates any preference, limitation,
9 specification or discrimination based upon race or color, sex,
10 sexual orientation, physical or mental disability, religion,
11 ancestry, national origin or familial status; or to discriminate
12 against any individual because of race or color, sex, sexual
13 orientation, physical or mental disability, religion, ancestry,
14 national origin or familial status in the price, terms,
15 conditions or privileges of the sale, rental or lease of any
16 housing accommodations or in the furnishing of facilities or
17 services in connection with any housing accommodations; or to
18 evict or attempt to evict any tenant of any housing accommodation
19 because of the race or color, sex, sexual orientation, physical
20 or mental disability, religion, ancestry, national origin or
21 familial status of the tenant;

22 For any real estate broker or real estate sales person, or
23 agent of one of them, to fail or refuse to show any applicant for
24 a housing accommodation any accommodation listed for sale, lease
25 or rental, because of the race or color, sex, sexual orientation,
26 physical or mental disability, religion, ancestry, national
27 origin or familial status of the applicant or of any intended
28 occupant of the accommodation, or to misrepresent, for the
29 purpose of discriminating because of the race or color, sex,
30 sexual orientation, physical or mental disability, religion,
31 ancestry, national origin or familial status of the applicant or
32 intended occupant, the availability or asking price of a housing
33 accommodation listed for sale, lease or rental; or for any reason
34 to fail to communicate to the person having the right to sell or
35 lease the housing accommodation any offer for the same made by
36 any applicant; or in any other manner to discriminate against any
37 applicant for housing because of race or color, sex, sexual
38 orientation, physical or mental disability, religion, ancestry,
39 national origin or familial status of the applicant or of any
40 intended occupant of the housing accommodation, or to make or
41 cause to be made any written or oral inquiry or record concerning
42 the race or color, sex, sexual orientation, physical or mental
43 disability, religion, ancestry, national origin or familial
44 status of any applicant or intended occupant, or to accept for
45 listing any housing accommodation when the person having the
46 right to sell or lease the same has directly or indirectly
47 indicated an intention of discriminating among prospective
48 tenants or purchasers on the ground of their race or color, sex,
49 sexual orientation, physical or mental disability, religion,
50 ancestry, national origin or familial status, or when the broker

2 knows or has reason to know that the person having the right to
sell or lease the housing accommodation has made a practice of
discrimination since July 1, 1972;

4
6 For any person to whom application is made for a loan or
other form of financial assistance for the acquisition,
8 construction, rehabilitation, repair or maintenance of any
housing accommodation, whether secured or unsecured, or agent of
10 the person, to make or cause to be made any oral or written
inquiry concerning the race or color, sex, sexual orientation,
12 physical or mental disability, religion, ancestry, national
origin or familial status of any individual seeking financial
14 assistance, or of existing or prospective occupants or tenants of
housing accommodations; or to discriminate in the granting of
16 financial assistance, or in the terms, conditions or privileges
relating to the obtaining or use of any financial assistance,
18 against any applicant because of the race or color, sex, sexual
orientation, physical or mental disability, religion, ancestry,
national origin or familial status of the applicant or of the
20 existing or prospective occupants or tenants;

22 **Sec. 12. 5 MRSA §4583**, as amended by PL 1991, c. 99, §19, is
further amended to read:

24
26 **§4583. Application**

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

2 **Sec. 13. 5 MRSA §4591**, as amended by PL 1991, c. 99, §20, is
further amended to read:

4 **§4591. Equal access to public accommodations**

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

12 **Sec. 14. 5 MRSA §4592, sub-§§1 and 2**, as amended by PL 1995, c.
393, §22, are further amend to read:

14 **1. Denial of public accommodations.** For any public
16 accommodation or any person who is the owner, lessor, lessee,
proprietor, operator, manager, superintendent, agent or employee
18 of any place of public accommodation to directly or indirectly
refuse, discriminate against or in any manner withhold from or
20 deny the full and equal enjoyment to any person, on account of
race or color, sex, sexual orientation, physical or mental
22 disability, religion, ancestry or national origin, any of the
accommodations, advantages, facilities, goods, services or
24 privileges of public accommodation, or in any manner discriminate
against any person in the price, terms or conditions upon which
26 access to accommodation, advantages, facilities, goods, services
and privileges may depend.

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

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

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

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

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

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

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

30
31
32 **2. Communication, notice or advertisement.** For any person
33 to directly or indirectly publish, display or communicate any
34 notice or advertisement to the effect that any of the
35 accommodations, advantages, facilities and privileges of any
36 place of public accommodation are refused, withheld from or
37 denied to any person on account of race or color, sex, sexual
38 orientation, physical or mental disability, religion, ancestry or
39 national origin, or that the patronage or custom of any person
40 belonging to or purporting to be of any particular race or color,
41 sex, sexual orientation, physical or mental disability, religion,
42 ancestry or national origin is unwelcome, objectionable or not
43 acceptable, desired or solicited, or that the clientele is
44 restricted to any particular race or color, sexual orientation,
45 physical or mental disability, religion, ancestry or national
46 origin. The production of any communication, notice or
47 advertisement purporting to relate to any place of accommodation
48 is presumptive evidence in any action that the action was
49 authorized by its owner, manager or proprietor;
50

2 **Sec. 15. 5 MRSA §4595**, as repealed and replaced by PL 1975,
c. 770, §40, is amended to read:

4
6 **§4595. Right to freedom from discrimination solely on the basis**
of age, race, color, sex, sexual orientation, marital
8 status, ancestry, religion or national origin in any
credit transaction

10 The opportunity for every individual to be extended credit
without discrimination solely because of any one or more of the
12 following factors: Age age; race; color; sex; sexual orientation;
marital status; ancestry; religion or national origin is
14 recognized as and declared to be a civil right.

16 **Sec. 16. 5 MRSA §4596**, as repealed and replaced by PL 1975,
c. 770, §41, is amended to read:

18 **§4596. Unlawful credit extension discrimination**

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

34 **Sec. 17. 5 MRSA §4612, sub-§4, ¶A**, as amended by PL 1993, c.
303, §2, is further amended to read:

36
38 A. If the commission finds reasonable grounds to believe
that unlawful discrimination has occurred, and further
believes that irreparable injury or great inconvenience will
40 be caused the victim of such discrimination or to members of
a racial, color, sex, sexual orientation, physical or mental
42 disability, religious, nationality group or age group if
relief is not immediately granted, or if conciliation
44 efforts under subsection 3 have not succeeded, the
commission may file in the Superior Court a civil action
46 seeking such relief as is appropriate, including temporary
restraining orders.

