An Act to Ensure Civil Rights and Prevent Discrimination.

Reference to the Committee on Judiciary suggested and ordered printed.

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

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

§4552. Policy

To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing or access to public accommodations on account of race, color, sex, sexual orientation, physical or mental disability, 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.

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

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

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

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

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

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

F. Unlawful educational discrimination as defined and limited by subchapter V-B;i and
Sec. 5. 5 MRSA §4553, sub-§10, ¶G is enacted to read:

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

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

§4571. Right to freedom from discrimination in employment

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

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

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

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

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

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

Sec. 8. 5 MRSA §4572, sub-§1, ¶D, as amended by PL 1995, c. 393, §12, 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, sexual orientation, 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;

(2) Make or keep a record of race or color, sex, sexual orientation, 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, sexual orientation, 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. This section does not prohibit any officially recognized government agency from keeping records permitted to be kept under this Act in order to provide free services to individuals 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, sexual orientation, 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; 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, sexual orientation, 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. 9. 5 MRSA §4573-A, sub-§2, as enacted by PL 1995, c. 393, §21, is amended to read:

2. Religious entities. This except as provided in section 4553, subsection 10, paragraph G, 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. 10. 5 MRSA §4581, first ¶, as amended by PL 1991, c. 99, §12, is further amended to read:

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

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

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

For any real estate broker or real estate sales person, or
agent of one of them, to fail or refuse to show any applicant for
a housing accommodation any accommodation listed for sale, lease
or rental, because of the race or color, sex, sexual orientation,
physical or mental disability, religion, ancestry, national
origin or familial status of the applicant or of any intended
occupant of the accommodation, or to misrepresent, for the
purpose of discriminating because of the race or color, sex,
sexual orientation, physical or mental disability, religion,
ancestry, national origin or familial status of the applicant or
intended occupant, the availability or asking price of a housing
accommodation listed for sale, lease or rental; or for any reason
to fail to communicate to the person having the right to sell or
lease the housing accommodation any offer for the same made by
any applicant; or in any other manner to discriminate against any
applicant for housing because of race or color, sex, sexual
orientation, physical or mental disability, religion, ancestry, sexual
orientation, physical or mental disability, religion, ancestry, national
origin or familial status of the applicant or of any
intended occupant of the housing accommodation, or to make or
cause to be made any written or oral inquiry or record concerning
the race or color, sex, sexual orientation, physical or mental
disability, religion, ancestry, national origin or familial
status of any applicant or intended occupant, or to accept for
listing any housing accommodation when the person having the
right to sell or lease the same has directly or indirectly
indicated an intention of discriminating among prospective
tenants or purchasers on the ground of their race or color, sex,
sexual orientation, physical or mental disability, religion,
ancestry, national origin or familial status, or when the broker

Page 6-LR0204(1)
knows or has reason to know that the person having the right to
sell or lease the housing accommodation has made a practice of
discrimination since July 1, 1972;

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

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

§4583. Application

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
housing accommodation to set up and enforce specifications in the
selling, renting, leasing or letting or in the furnishings of
facilities or services in connection with the facilities which
that are not based on the race, color, sex, sexual orientation,
physical or mental disability, religion, country of ancestral
origin, familial status or the receipt of public assistance
payments of any prospective or actual purchaser, lessee, tenant
or occupant. Nothing in this Act may be construed to prohibit
or limit the exercise of the privilege of every person and the
agent of any person making loans for or offering financial
assistance in the acquisition, construction, rehabilitation,
repair or maintenance of housing accommodations, to set standards
and preferences, terms, conditions, limitations or specifications
for the granting of loans or financial assistance which that are
not based on the race, color, sex, sexual orientation, physical
or mental disability, religion, country of ancestral origin,
familial status or the receipt of public assistance payments of
the applicant for a loan or financial assistance or, of any
existing or prospective owner, lessee, tenant or occupant of
housing accommodation.
Sec. 13. 5 MRSA §4591, as amended by PL 1991, c. 99, §20, is further amended to read:

§4591. Equal access to public accommodations

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

Sec. 14. 5 MRSA §4592, sub-§§1 and 2, as amended by PL 1995, c. 393, §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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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, sexual orientation, 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;
Sec. 15. 5 MRSA §4595, as repealed and replaced by PL 1975, c. 770, §40, is amended to read:

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

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

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

§4596. Unlawful credit extension discrimination

It shall be unlawful credit discrimination for any creditor to refuse the extension of credit to any person solely on the basis of any one or more of the following factors: Age; race; color; sex; sexual orientation; marital status; ancestry; religion or national origin in any credit transaction. It shall not be unlawful credit discrimination to comply with the terms and conditions of any bona fide group credit life, accident and health insurance plan, for a financial institution extending credit to a married person to require both the husband and the 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 the terms upon which credit will be extended.

Sec. 17. 5 MRSA §4612, sub-§4, ¶A, as amended by PL 1993, c. 303, §2, 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, 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.
Sec. 18. Statutory referendum procedure; submission at general
election; form of question; effective date. This Act must be submitted
to the legal voters of the State of Maine at the next general
election in the month of November following passage of this Act.
The municipal officers of this State shall notify the inhabitants
of their respective cities, towns and plantations to meet, in the
manner prescribed by law for holding a statewide election, to
vote on the acceptance or rejection of this Act by voting on the
following question:

"Do you favor ratifying the action of the 119th Legislature
whereby it passed an Act extending to all citizens
regardless of their sexual orientation the same civil rights
 protections now guaranteed to citizens on the basis of race,
color, religion, sex, age, national origin and physical or
mental disability in the areas of employment, housing,
public accommodations and credit and where the Act expressly
states that nothing in the Act confers legislative approval
of, or special rights to, any person or group of persons?"

The legal voters of each city, town and plantation shall
vote by ballot on this question and shall designate their choice
by a cross or check mark placed within a corresponding square
below the word "Yes" or "No." The ballots must be received,
sorted, counted and declared in open ward, town and plantation
meetings and returns made to the Secretary of State in the same
manner as votes for members of the Legislature. The Governor
shall review the returns and, if it appears that a majority of
the legal votes are cast in favor of the Act, the Governor shall
proclaim that fact without delay, and the Act takes effect 30
days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each
city, town and plantation all ballots, returns and copies of this
Act necessary to carry out the purpose of this referendum.

SUMMARY

This bill ensures that all citizens, regardless of their
sexual orientation, have the same civil rights protections now
guaranteed in employment, housing, public accommodations and
credit to citizens on the basis of race, color, religion, sex,
age, national origin and physical or mental handicap. A
religious organization that does not receive public funds is
exempt from the prohibition against discrimination based on
sexual orientation. The bill makes it clear that this change in
the Maine Human Rights Act does not confer legislative approval
of or special rights to anyone or any group. The bill also
requires that this change in law be submitted to the voters at
the next general election.

Page 11-LR0204(1)