

94-348 – ADOPTED CHANGES TO RULES

Sec. 1. Me. Hum. Rights Comm'n Reg. Ch. 3, Section 3.02, is amended to read:

3.02 DEFINITIONS

A. Unlawful Discrimination.

- (1) As in the Maine Human Rights Act.
- (2) The Commission interprets the term, "unlawful employment discrimination," as defined in the Act, to encompass three concepts:
 - a. Overt Discrimination - an intentional, purposeful act of discrimination;
 - b. Unequal or Disparate Treatment - treating members of a protected class in a different and less favorable manner than members of the similarly situated majority group. Proof of discriminatory motive is required;
 - c. Disparate Impact - conduct which, although applied equally to all, has an adverse effect on membership of a protected class as compared to the effect on members of the majority class; in other words, practices fair in form but discriminatory in operation. Intent or motive is of no consequence. See *Griggs v. Duke Power Company*, 401, U.S. 424, 91S. CT. 849, 3 FEP Cases 175 (1971).
- (3) A prima facie case of discrimination exists if the complainant establishes that membership in a protected class, even though not the sole factor, was nonetheless a substantial factor motivating the employer's conduct. If the complainant would not have been rejected, discharged or otherwise treated differently, but for membership in the protected class, the existence of other reasonable grounds for the employer's action does not relieve the employer from liability. *Wells v. Franklin Broadcasting Corp.*, 403 A 2d 771, 20 FEP Cases 548 (1979).

B. Tests.

The word "test" means all employee selection procedures used to make employment decisions. Employee selection procedures include the evaluation of applicants, candidates or employees on the basis of stated minimum and preferred job qualifications, application forms, interviews,

performance examinations, paper and pencil examinations, performance in training programs or probationary periods and any other procedures used to make an employment decision whether administered by an employer, employment agency, labor organization, licensing or certification board or apprenticeship committee.

Employment decisions include, but are not limited to hiring, promotion, demotion, membership in a labor organization, referral, retention, licensing, certification and membership in an apprenticeship program.

C. ~~Physical or Mental Disability.~~

~~(1) — An applicant or employee who has a "physical or mental disability" means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such an impairment.~~

~~(2) — As used in paragraph (1) of this subsection, the phrase:~~

~~(a) — "Physical or mental impairment" means~~

~~(i) — any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:~~

~~Neurological; musculoskeletal; special sense organs; respiratory; genitourinary; hemic and lymphatic; skin; and endocrine;~~

~~or~~

~~(ii) — any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.~~

~~The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.~~

~~(b) — "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

~~(c) — “Has a record of such an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.~~

~~(d) — “Is regarded as having an impairment” means~~

~~(i) — has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation;~~

~~(ii) — has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or~~

~~(iii) — has none of the impairments defined in paragraph C (2) (a) of this section but is treated by an employer as having such an impairment and as being substantially limited by such impairment in one or more major life activities.~~

~~(3) — Mitigating Measures.~~

~~The existence of a disability is determined without regard to whether its effect is or can be mitigated by measures such as medication, auxiliary aids, prosthetic devices or other ameliorative measures.~~

C. Physical or Mental Disability.

(1) “Physical or mental disability” means:

(a) Any disability, infirmity, malformation, disfigurement, congenital defect, or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions, or illness;

(b) The physical or mental condition of a person that constitutes a substantial disability as determined by a physician or, in the case of mental disability, by a psychiatrist or psychologist; or

- (c) Any other health or sensory impairment that requires special education, vocational rehabilitation, or related services.
- (2) For purposes of subsection (C)(1)(a) only, the following terms have the following meaning:
- (a) “Disability” means a physiological or mental condition that limits one or more major life activities, including, but not limited to, functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, lifting, reproduction, eating, sleeping, driving, and working. The term “limits one or more major life activities” means makes achievement of a major life activity or activities difficult.
- (b) “Infirmity” means a physiological disorder affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
- (c) “Malformation” means a defective or abnormal bodily formation affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
- (d) “Disfigurement” means an externally visible malformation.
- (e) “Congenital defect” means a bodily defect present at birth affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
- (f) “Mental condition” means any mental or psychological disorder, including, but not limited to, mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (3) Mitigating measures.

The existence of a “physical or mental disability” is determined without regard to whether its effect is or can be mitigated by measures such as medication, auxiliary aids, prosthetic devices, or other ameliorative measures.

(4) Exceptions.

The term “physical or mental disability” does not include the following:

(a) Conditions that are ordinarily experienced by the average person in the general population or are both transitory and minor, although episodic conditions shall not be considered transitory. Conditions that fit within this exception include, but are not limited to, minor cuts or bruises, the common cold, typical flu, upset stomach, or ordinary headaches;

(i) The term “minor” refers to conditions with minimal adverse impact on an individual. Any one or more of the following factors may be considered in determining whether a condition is minor:

The nature and severity of the condition;

The duration or expected duration of the condition;

The nature and severity of any symptoms associated with the condition, including, but not limited to, pain, discomfort, loss of enjoyment of life, disfigurement, or impairment of functioning;

The nature and severity of any adverse physiological or psychological effects of the condition;

The nature and severity of any adverse social or economic consequences of the condition;

The extent of medical care, if any, required or expected to treat the condition;

The perceptions or expectations of others with respect to any of these factors; or

The extent to which the condition is susceptible to prejudice, stigma, stereotype, or fears.

- (b) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavior disorders, compulsive gambling, kleptomania, pyromania; or
- (c) Psychoactive substance use disorders resulting from current illegal use of drugs, although this shall not be construed to exclude an individual who –
 - (i) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
 - (ii) is participating in a supervised rehabilitation program and is no longer engaging in such use;
 - (iii) is erroneously regarded as engaging in such use, but is not engaging in such use; or
 - (iv) in the context of a reasonable accommodation, is seeking treatment or has successfully completed treatment.

(5) Person with physical or mental disability.

"Person with physical or mental disability" or "individual with a physical or mental disability" means a person who:

- (a) Has a physical or mental disability;
- (b) Has a record of a physical or mental disability; or
- (c) Is regarded as having a physical or mental disability.

Sec. 2. Me. Hum. Rights Comm'n Reg. Ch. 3, Section 3.04(B)(2) is amended to read:

It is unlawful practice for any employer, employment agency or labor organization to handwrite, print or circulate any interoffice or interagency communication, job order, advertisement, brochure, or notice which expresses

directly or indirectly a preference or specification on the basis of race or color, sex, ~~physical or mental handicap~~ physical or mental disability, religion, ancestry or national origin, or age unless the expression is based on a bona fide occupational qualification or made in accordance with a corrective employment program such as an affirmative action plan.

Sec. 3. Me. Hum. Rights Comm'n Reg. Ch. 3, Section 3.08(E) is amended to read:

E. Pre-employment Inquiries

- (1) Except as provided in paragraphs (2) and (3) of this sub-section, an employer may not conduct a pre-employment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is an individual with a physical or mental disability or as to the nature or severity of a physical or mental disability. An employer may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.
- (2) When an employer is taking remedial action to correct the effects of past discrimination, when an employer is taking voluntary action to overcome the effects of conditions that, in the past, resulted in limited employment opportunities for individuals with physical or mental disabilities or when an employer is taking other affirmative action, the employer may ask applicants to what extent they ~~are disabled~~ have a physical or mental disability, provided that:
 - a) The employer states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and
 - b) The employer states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (4) of this sub-section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.
- (3) Nothing in this sub-section shall prohibit an employer from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:
 - a) All entering employees are subjected to such an examination regardless of physical or mental disability, and

- b) the results of such an examination are used in accordance with the requirements of the Maine Human Rights Act.
- (4) Information obtained in accordance with this sub-section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:
- a) Supervisors and managers may be informed regarding restrictions on the work or duties of individuals with physical or mental disabilities and regarding necessary accommodations; and
 - b) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; ~~and.~~
- (5) No person shall be denied equal consideration for employment, employment promotion, or any other term, condition, or privilege of employment because that person refused to answer a pre-employment inquiry, if that pre-employment inquiry is prohibited by these regulations and the Maine Human Rights Act.

Sec. 4. Me. Hum. Rights Comm'n Reg. Ch. 3, Section 3.08(F)(1) is amended to read:

- F. Separate Lines of Progression and Seniority Systems
- (1) It is an unlawful employment practice to classify any job according to the presence or absence of physical or mental disability or to maintain separate lines of progression or separate seniority lists based on the presence or absence of such disability unless the absence of such disability is a bona fide occupational qualification for that job.
 - (2) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a form of classification based on the presence or absence of physical or mental disability or creates unreasonable obstacles to the advancement of individuals with physical or mental disabilities into jobs which such individuals with disabilities are capable of performing.

Sec. 5. Me. Hum. Rights Comm'n Reg. Ch. 3, Section 3.08(I) is amended to read:

- I. Harassment on the Basis of Physical or Mental Disability

- (1) Harassment on the basis of physical or mental disability is a violation of Section 4572 of the Maine Human Rights Act. Unwelcome comments, jokes, acts and other verbal or physical conduct related to physical or mental disability constitute harassment on the basis of physical or mental disability when:
 - a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - c) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

- (2) An employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to physical or mental disability harassment. When the supervisor's harassment culminates in a tangible employment action, such as, but not limited to, discharge, demotion, or undesirable reassignment, liability attaches to the employer regardless of whether the employer knew or should have known of the harassment, and regardless of whether the specific acts complained of were authorized or even forbidden by the employer. When the supervisor's harassment does not culminate in a tangible employment action, the employer may raise an affirmative defense to liability or damages by proving by a preponderance of the evidence:
 - a) that the employer exercised reasonable care to prevent and correct promptly any harassing behavior based on physical or mental disability, and
 - b) that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

- (3) With respect to persons other than those mentioned in paragraph 2 of this section, an employer is responsible for acts of physical or mental disability harassment in the workplace where the employer, or its agents or supervisory employees, knows or should have known of the conduct. An employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action.

Sec. 6. Me. Hum. Rights Comm'n Reg. Ch. 5, Part I(A) is amended to read:

A. Purpose.

Pursuant to Title 5 M.R.S.A., §4566(7), the Maine Human Rights Commission has adopted the following regulations which are designed to inform owners and agents of public conveyances, ~~handicapped persons~~ persons with physical or mental disabilities, and other interested parties of the Commission's interpretation of the Maine Human Rights Act, Title 5 M.R.S.A., §4551, *et seq.*, hereafter referred to as "The Act" and in particular Subchapter V, Public Accommodations, §4591 and §4592.

Sec. 7. Me. Hum. Rights Comm'n Reg. Ch. 5, Part II, is amended to read:

PART II. DEFINITIONS

A. Public Conveyance.

"Public conveyance" means any vehicle or any other means of transport operated on land, water or in the air, which in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from the general public. "Public conveyance" includes any person who is the owner, lessee, operator, proprietor, manager, superintendent, agent or employee or any public conveyance. As defined in 14553 (7) of the Act, "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.

~~B. Handicap.~~

~~(1) "Handicap" includes physical or mental handicap.~~

~~(2) A person who has a "physical or mental handicap" means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such an impairment.~~

~~(3) As used in paragraph (2) of this subsection, the phrase:~~

~~(a) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory; genitourinary; hemic and~~

lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

- (b) — "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (c) — "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (d) — "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but is treated by a public conveyance as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph C (2)(a) of this section but is treated by a public conveyance as having such an impairment and as being substantially limited by such impairment in one or more major life activities. C. Accessible. "Accessible" means able to be entered, exited, and used safely, efficiently, and as independently as possible by persons with a physical or mental handicap.

(4) — Mitigating Measures.

The existence of a disability is determined without regard to whether its effect is or can be mitigated by measures such as medication, auxiliary aids, prosthetic devices or other ameliorative measures.

B. Physical or Mental Disability.

- (1) "Physical or mental disability" means:

- (a) Any disability, infirmity, malformation, disfigurement, congenital defect, or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions, or illness;
 - (b) The physical or mental condition of a person that constitutes a substantial disability as determined by a physician or, in the case of mental disability, by a psychiatrist or psychologist; or
 - (c) Any other health or sensory impairment that requires special education, vocational rehabilitation, or related services.
- (2) For purposes of subsection (B)(1)(a) only, the following terms have the following meaning:
- (a) “Disability” means a physiological or mental condition that limits one or more major life activities, including, but not limited to, functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, lifting, reproduction, eating, sleeping, driving, and working. The term “limits one or more major life activities” means makes achievement of a major life activity or activities difficult.
 - (b) “Infirmity” means a physiological disorder affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
 - (c) “Malformation” means a defective or abnormal bodily formation affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
 - (d) “Disfigurement” means an externally visible malformation.
 - (e) “Congenital defect” means a bodily defect present at birth affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular,

reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.

(f) “Mental condition” means any mental or psychological disorder, including, but not limited to, mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) Mitigating measures.

The existence of a “physical or mental disability” is determined without regard to whether its effect is or can be mitigated by measures such as medication, auxiliary aids, prosthetic devices, or other ameliorative measures.

(4) Exceptions.

The term “physical or mental disability” does not include the following:

(a) Conditions that are ordinarily experienced by the average person in the general population or are both transitory and minor, although episodic conditions shall not be considered transitory. Conditions that fit within this exception include, but are not limited to, minor cuts or bruises, the common cold, typical flu, upset stomach, or ordinary headaches;

(i) The term “minor” refers to conditions with minimal adverse impact on an individual. Any one or more of the following factors may be considered in determining whether a condition is minor:

The nature and severity of the condition;

The duration or expected duration of the condition;

The nature and severity of any symptoms associated with the condition, including, but not limited to, pain, discomfort, loss of enjoyment of life, disfigurement, or impairment of functioning;

The nature and severity of any adverse physiological or psychological effects of the condition;

The nature and severity of any adverse social or economic consequences of the condition;

The extent of medical care, if any, required or expected to treat the condition;

The perceptions or expectations of others with respect to any of these factors; or

The extent to which the condition is susceptible to prejudice, stigma, stereotype, or fears.

- (b) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavior disorders, compulsive gambling, kleptomania, pyromania; or
- (c) Psychoactive substance use disorders resulting from current illegal use of drugs, although this shall not be construed to exclude an individual who –

 - (i) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
 - (ii) is participating in a supervised rehabilitation program and is no longer engaging in such use; or
 - (iii) is erroneously regarded as engaging in such use, but is not engaging in such use.
- (5) Person with physical or mental disability.

"Person with physical or mental disability" or "individual with a physical or mental disability" means a person who:

- (a) Has a physical or mental disability;
- (b) Has a record of a physical or mental disability; or
- (c) Is regarded as having a physical or mental disability.

C. Accessible

“Accessible” means able to be entered, exited, and used safely, efficiently, and as independently as possible by persons with a physical or mental handicap.

D. Separate Service.

"Separate service" means a conveyance that is available for the special use of handicapped persons and that uses vehicle(s) separate from the public conveyance available for use by all persons.

E. Bus.

"Bus" means intra-city or commuter transportation by bus or van which regularly serves the general public on a fixed route without restrictions on trip purpose.

F. Unlawful Discrimination.

- (1) As in the Maine Human Rights Act, Title 5 M.R.S.A., §4551, *et seq.*
- (2) The Commission interprets the term, "unlawful public accommodations discrimination" as defined in the Act and as applied to handicap discrimination in public conveyances, to encompass three concepts:
 - (a) Overt Discrimination - an intentional, purposeful act of discrimination;
 - (b) Unequal or Disparate Treatment - treating members of a protected class in a different and less favorable manner than members of the similarly situated group. Proof of discriminatory motive is required;
 - (c) Disparate Impact - conduct which, although applied equally to all, has an adverse effect on members of a protected class as compared to the effect on members of the majority class; in other words, practices fair in form, but discriminatory in operation. intent or motive is of no consequence. See *Griggs v. Duke Power Company*, 401 U.S. 424, 915 S.Ct. 849, 3 FEP Cases 175 (1971).

- (3) A prima facie case of discrimination exists if the Complainant establishes that membership in a protected class, even though not the sole factor, was nonetheless a substantial factor motivating the conduct of the public conveyance. If the Complainant would not have been denied service or otherwise treated differently, but for membership in the protected class, the existence of other reasonable grounds for the action by the public conveyance does not relieve the public conveyance from liability. See *Wells v. Franklin Broadcasting Corp.*, 403 A.2d 771, 20 FEP Cases 548 (1979).
- (4) Unlawful discrimination includes separation or segregation of handicapped persons, except where separate facilities or services are the only way to provide access to a public conveyance without imposing an undue burden on the operation of the public conveyance. See Part III (D) and (E).
- (5) Unlawful discrimination includes the failure or refusal by a public conveyance to make reasonable accommodations to a person's physical or mental limitations, Unless the public conveyance can demonstrate that a reasonable accommodation does not exist or that an accommodation would impose an undue burden on the operation of the public conveyance.

Sec. 8. Me. Hum. Rights Comm'n Reg. Ch. 5, Part II(C) is amended to read:

C. Accessible.

"Accessible" means able to be entered, exited, and used safely, efficiently, and as independently as possible by persons with a physical or mental ~~handicap~~ disabilities.

Sec. 9. Me. Hum. Rights Comm'n Reg. Ch. 5, Part II(D) is amended to read:

C. Separate Service.

"Separate service" means a conveyance that is available for the special use of ~~handicapped~~ persons with physical or mental disabilities and that uses vehicle(s) separate from the public conveyance available for use by all persons.

Sec. 10. Me. Hum. Rights Comm'n Reg. Ch. 5, Part II(F) is amended to read:

F. Unlawful Discrimination.

- (1) As in the Maine Human Rights Act, Title 5 M.R.S.A., §4551, *et seq.*

- (2) The Commission interprets the term, "unlawful public accommodations discrimination" as defined in the Act and as applied to ~~handicap~~ discrimination on the basis of physical or mental disability in public conveyances, to encompass three concepts:
- (a) Overt Discrimination - an intentional, purposeful act of discrimination;
 - (b) Unequal or Disparate Treatment - treating members of a protected class in a different and less favorable manner than members of the similarly situated group. Proof of discriminatory motive is required;
 - (c) Disparate Impact - conduct which, although applied equally to all, has an adverse effect on members of a protected class as compared to the effect on members of the majority class; in other words, practices fair in form, but discriminatory in operation. ~~I~~ntent or motive is of no consequence. See *Griggs v. Duke Power Company*, 401 U.S. 424, 915 S.Ct. 849, 3 FEP Cases 175 (1971).
- (3) A prima facie case of discrimination exists if the Complainant establishes that membership in a protected class, even though not the sole factor, was nonetheless a substantial factor motivating the conduct of the public conveyance. If the Complainant would not have been denied service or otherwise treated differently, but for membership in the protected class, the existence of other reasonable grounds for the action by the public conveyance does not relieve the public conveyance from liability. See *Wells v. Franklin Broadcasting Corp.*, 403 A.2d 771, 20 FEP Cases 548 (1979).
- (4) Unlawful discrimination includes separation or segregation of ~~handicapped~~ persons with physical or mental disabilities, except where separate facilities or services are the only way to provide access to a public conveyance without imposing an undue burden on the operation of the public conveyance. See Part III (D) and (E).
- (5) Unlawful discrimination includes the failure or refusal by a public conveyance to make reasonable accommodations to a person's physical or mental limitations, u~~u~~nless the public conveyance can demonstrate that a reasonable accommodation does not exist or that an accommodation would impose an undue burden on the operation of the public conveyance.

Sec. 11. Me. Hum. Rights Comm'n Reg. Ch. 5, Part III is amended to read:

PART III. UNLAWFUL ~~HANDICAP~~ PHYSICAL OR MENTAL

DISABILITY DISCRIMINATION IN PUBLIC
CONVEYANCES

A. Unlawful Discrimination Specified in §4591 and §4592 of the Act.

- (1) As stated in §4591 of the Act, the opportunity for every individual to have equal access to places of public accommodation without discrimination because of physical or mental ~~handicap~~ disability is recognized as and declared to be a civil right. §4553 (8) defines "place of public accommodation" as including "all public conveyances operated on land, water or in the air as well as the stations and terminals thereof."

- (2) As stated in §4592 of the Act, it shall be unlawful public accommodations discrimination for any person, being the owner, operator, lessee, proprietor, manager, superintendent, agent or employee of any public conveyance, to directly or indirectly refuse, withhold from or deny to any person, on account of physical or mental ~~handicap~~ disability, any of the accommodations, advantages, facilities or privileges of such public conveyance, or for such reason in any manner discriminate against any person in the price, terms or conditions upon which access to such accommodation, advantages, facilities and privileges may depend.

As stated in §4592 of the Act, it shall be unlawful public accommodations discrimination for any person to directly or indirectly publish, circulate, issue, display, post or mail any written, printed, painted or broadcast communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities or privileges of any public conveyance shall be refused, withheld from or denied to any person on account of physical or mental ~~handicap~~ disability, or that the patronage of any person having any particular physical or mental ~~handicap~~ disability is unwelcome, objectionable, or not acceptable, desired or solicited, or that the clientele thereof is restricted to members who do not have a particular physical or mental ~~handicap~~ disability. The production of any such written, printed, painted or broadcast communication, notice or advertisement, purporting to relate to any such conveyance, shall be presumptive evidence in any action that the same was authorized by its owners, manager or proprietor.

B. Use of Personal Care Attendants, Animal Aides and Devices to Assist in Mobility.

It shall be unlawful public accommodations discrimination for any public conveyance to directly or indirectly refuse, withhold from or deny to any

person with a physical or mental disability, on account of such a person's use of a personal care attendant, animal aide, cane, wheelchair, crutches or any device used to assist in mobility, any of the accommodations, advantages, facilities, or privileges of a public conveyance, or for such reason in any manner discriminate against any person in the price, terms or conditions upon which access to such accommodations, advantages, facilities, or privileges may depend. A public conveyance may require a person with a physical or mental disability using a personal care attendant to obtain authorization from a physician and have a designated sticker, provided by the public conveyance on their Medicaid card and/or bus pass.

It shall be unlawful discrimination for any public conveyance to require payment of an extra charge on account of a person's with a physical or mental disability ~~using~~ of a personal care attendant, animal aide, cane, wheelchair, crutches, or any device used to assist in mobility.

C. Harassment on the Basis of Physical or Mental ~~Handicap~~ Disability.

- (1) Harassment on the basis of physical or mental ~~handicap~~ disability is a violation of §4592 of the Maine Human Rights Act.

Unwelcome comments, jokes, acts and other verbal or physical conduct related to ~~handicap~~ physical or mental disability constitute harassment on the basis of ~~handicap~~ physical or mental disability when:

- (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's access to or use of any of the accommodations, advantages, facilities or privileges of any public conveyance; or
- (b) submission to or rejection of such conduct by an individual is used as a basis for decisions or actions on behalf of the public conveyance affecting such individual's access to any of the accommodations, advantages, facilities, or privileges of any public conveyance; or
- (c) such conduct has the purpose or effect of unreasonably interfering with an individual's access to or use of any of the accommodations, facilities, advantages, or privileges of a public conveyance, or has the purpose or effect of creating an intimidating, hostile, or offensive environment on the public conveyance.
- (2) A public conveyance is responsible for its acts and those of its supervisory employees and employees whose job includes regular

contact with the public with respect to ~~handicap~~ physical or mental disability harassment regardless of whether the specific acts complained of were authorized or even forbidden by the public conveyance, and regardless of whether the public conveyance knew or should have known of their occurrence.

- (3) With respect to persons other than those mentioned in paragraph 2 of this section, a public conveyance is responsible for acts of ~~handicap~~ physical or mental disability harassment in the public conveyance where the public conveyance knows or should have known of the conduct. A public conveyance may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action.

D. Obligation to Make Reasonable Accommodations.

- (1) Equal Access Required.

As stated in §4591 of the Act, the opportunity to have equal access to public conveyance is a civil right. If treating ~~handicapped and non-handicapped persons~~ with and without physical or mental disabilities the same will not provide the opportunity for equal access to a public conveyance for ~~handicapped~~ persons with physical or mental disabilities, then reasonable accommodations to the needs of ~~handicapped~~ such persons must be made.

It is unlawful public accommodations discrimination for a public conveyance to fail or refuse to make reasonable accommodations to the physical or mental limitations of ~~handicapped persons~~ with physical or mental disabilities unless the public conveyance can demonstrate that a reasonable accommodation does not exist or that an accommodation would impose an undue burden on the operation of the public conveyance.

- (2) Integration Required.

Reasonable accommodation shall be made in a way that maximizes integration of ~~handicapped persons with and without physical or mental disabilities and non-handicapped persons~~. Separate service is not an acceptable substitute for making a public conveyance accessible, if a public conveyance can be made accessible without undue burden.

- (3) Separate Service.

If reasonable accommodations cannot be made to provide access for a ~~handicapped~~ person with a physical or mental disability to a regular, integrated public conveyance, then separate service must be provided.

Separate service, where used to provide access to transportation to persons who cannot be reasonably accommodated on a regular public conveyance without undue burden, should provide service that is as nearly equal as possible to the service provided by the regular public conveyance in terms of the following criteria:

- (a) area covered;
 - (b) times of service;
 - (c) notice required;
 - (d) fares; and
 - (e) restrictions on trip purpose;
 - (f) persons who may accompany the rider.
- (4) Types of Reasonable Accommodations Required.

Reasonable accommodations to ensure access to public conveyances shall include but not be limited to the following types of accommodations:

- (a) removing or modifying physical barriers, installing equipment, or designing retrofitting conveyances so that ~~handicapped~~ persons with physical or mental disabilities have access to the conveyance and its accommodations, advantages, facilities, and privileges.
- (b) ensuring that any accessible conveyance and any equipment or facility used to make a conveyance accessible is regularly maintained in proper operating condition so that the public conveyance is accessible to ~~handicapped~~ persons with physical or mental disabilities to the same extent as the conveyance is accessible to ~~non-handicapped~~ persons without physical or mental disabilities.
- (c) ensuring that personnel are trained and supervised to safely and properly operate any accessible conveyance and any

equipment or facility used to make, a conveyance accessible.

- (d) ensuring that, in keeping with the courteous and respectful treatment befitting and normally given to all members of the public, personnel are trained and supervised with regard to the particular needs and concerns of people who have ~~handicaps~~ physical or mental disabilities.
- (e) ensuring that effective means of communication are provided so that persons with impaired hearing or vision can have full access to the public conveyance.
- (f) ensuring that information about accessible conveyances is adequately publicized to ~~handicapped~~ persons with physical or mental disabilities. Accessible conveyances shall be prominently marked with the International Symbol of Accessibility.
- (g) ensuring that adequate assistance and instruction on the use of accessible conveyances is available to ~~handicapped~~ persons with physical or mental disabilities.

E. UNDUE BURDEN

- (1) No accommodation is required that would impose an undue burden on the operation of the public conveyance.
- (2) This exception for undue burden shall be construed narrowly as an exception to the general rule requiring reasonable accommodation in light of the policy stated in §4591 of the Act that the opportunity to have equal access to public conveyance is a civil right.
- (3) The public conveyance has the burden of proving that an accommodation would impose an undue burden on the operation of the public conveyance. Undue burden can be established only upon a factual basis, not on mere speculation.
- (4) Even if a proposed accommodation imposes an undue burden, any other accommodation which does not create an undue burden must still be made to ensure the fullest possible access to the public conveyance.
- (5) The following factors will be used to determine whether an accommodation imposes undue burden:

- (a) the costs of the accommodation;
- (b) all the resources available to meet the costs of the accommodation, including any government funding or other grants available for making conveyances accessible;
- (c) the availability of equipment and technology for the accommodation;
- (d) the safety of other users of a public conveyance;
- (e) whether an accommodation would result in a fundamental change in the nature of the public conveyance;
- (f) efforts to minimize costs by spreading costs over time; for example, by phasing in new accessible conveyances;
- (g) efforts to minimize costs by arranging for joint purchases of accessible equipment or for otherwise sharing costs of accommodations with other public conveyances;
- (h) documented good faith efforts to explore less restrictive or less expensive alternatives;
- (i) the extent of consultation with knowledgeable disabled persons and organizations; the extent to which current costs of accommodations have been minimized by past efforts to provide equal access to ~~handicapped~~ persons with physical or mental disabilities;
- (j) the extent to which current costs of accommodations have been minimized by past efforts to provide equal access to ~~handicapped~~ persons with physical or mental disabilities;
- (k) 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 ~~handicapped~~ persons with physical or mental disabilities as well as ~~non-handicapped~~ persons without physical or mental disabilities;
- (l) the extent to which resources saved by failing to make an accommodation for ~~handicapped~~ persons with physical or mental disabilities could have been saved by cutting costs in equipment or services for the general public;

- (m) the extent to which the accommodation would provide access to ~~handicapped~~ persons with physical or mental disabilities or improve the usability for all persons.
- (6) Factors which should not contribute to a determination that an accommodation imposes an undue burden shall include but are not limited to:
- (a) a preference by users or employees of a public conveyance not to have an integrated public conveyance;
 - (b) costs of making a public conveyance accessible which have resulted from a past refusal to make public conveyances accessible as required by the Act; and
 - (c) assumptions on the part of the operator of the conveyance about ~~handicapped~~ persons with physical or mental disabilities.
- F. Accommodations Required for Buses Purchased, Leased, or Substantially Altered After the Effective Date of the Regulations.
- (1) For buses purchased, leased or substantially altered after the effective date of the regulations, the Commission finds that the technology and equipment readily exist to make buses accessible to wheelchair users, and that the costs of purchasing accessible low-floored buses and the costs of purchasing buses with lifts do not impose undue burdens.
 - (2) Therefore, bus systems must make reasonable accommodations so that the requirements of F (3) are met, unless the bus system can prove, based on specific factual evidence, that the requirements would result in an undue burden on the operation of the public conveyance.
 - (3) All buses purchased, leased, or substantially altered after the effective date of the regulations, must meet the following requirements:
 - (a) Buses must be accessible to persons using a wide variety of wheelchairs, including electric wheelchairs, without carrying. Buses should be designed so that there is sufficient space to maneuver a wheelchair with minimal effort through doors and aisles within the bus to seating areas.

- (b) Buses having a seating capacity for 21 or more passengers must have seating areas and securement devices for at least two people with wheelchairs. Buses having a seating capacity for 20 or fewer passengers must have seating areas and securement devices for at least one person with a wheelchair.
 - (c) Lifts or ramps must be designed to allow safe use by all persons with mobility impairments.
 - (d) Lifts, ramps, securement devices and other equipment used to make buses accessible must be consistently maintained in proper operating condition so that the bus is consistently accessible. Bus systems using lifts must have a program of appropriate preventive maintenance.
- (4) Even if the bus system is exempt from the requirements of F (3) because they would result in an undue burden, the bus system must still make other reasonable accommodations to make the bus system as accessible as is possible without undue burden.
- (5) Operation of public conveyance systems must include the following:
- (a) Bus drivers and maintenance personnel must be trained and supervised to safely and properly operate lifts, ramps, and other equipment used to make buses accessible.
 - (b) To ensure sensitivity to the particular needs and concerns of people who have ~~handicaps~~ physical or mental disabilities and in keeping with the courteous and respectful treatment befitting and normally given to all members of the public, public conveyances shall implement appropriate training and supervision measures for their personnel in consultation with organizations representative of ~~handicapped~~ persons with physical or mental disabilities.
 - (c) Instructions for wheelchair users and other persons with mobility impairments on how to use lifts and other equipment must be readily available. Instruction shall include the opportunity to practice using lifts and other equipment used to make the bus accessible.
 - (d) Advertising for buses must include publicity about accessible buses. Accessible buses must be marked with the International Symbol of Accessibility. Schedules must

include information on accessible buses and routes. Media images should show persons with ~~handicaps~~ physical or mental disabilities as an integrated part of the mainstream.

Sec. 12. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.01 is amended to read:

7.01 Definitions

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

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

Commercial Facilities means facilities that are intended for nonresidential use.

Construct means build a free-standing building or facility.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Date means the date the application for a building permit to construct, remodel or enlarge is filed. If a building permit is not required, the date of construction, remodeling or enlarging is the date the construction work begins on the project.

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

~~Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such impairment.~~

~~(1) The phrase physical or mental impairment means~~

~~(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;~~

- ~~(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;~~
- ~~(iii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism;~~
- ~~(iv) The phrase physical or mental impairment does not include homosexuality or bisexuality.~~
- ~~(2) The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~
- ~~(3) The phrase has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.~~
- ~~(4) The phrase is regarded as having an impairment means—~~
 - ~~(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public or private entity as constituting such a limitation;~~
 - ~~(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or~~
 - ~~(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public or private entity as having such an impairment.~~
- ~~(5) The term disability does not include—~~
 - ~~(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;~~

- ~~————— (ii) ——— Compulsive gambling, kleptomania, or pyromania; or~~
- ~~————— (iii) ——— Psychoactive substance use disorders resulting from current illegal use of drugs.~~

~~(6) ——— Mitigating Measures.~~

~~————— The existence of a disability is determined without regard to whether its effect is or can be mitigated by measures such as medication, auxiliary aids, prosthetic devices or other ameliorative measures.~~

Drug means a controlled substance, as defined in the State or federal Controlled Substances Act.

Enlarge means expand, extend, or increase the gross floor area or an existing building or facility.

Estimated total cost means all costs associated with remodeling or enlarging, including but not limited to costs associated with electrical, mechanical and plumbing systems. If the work performed on a building or facility is divided into separate phases or projects under separate building permits, the total cost of such work in any three year period shall be added together. Estimated total costs shall be calculated in good faith. A substantial difference between estimated costs and actual costs, when actual costs to remodel or enlarge exceed the statutory dollar amount, will result in application of these rules.

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

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the State or federal Controlled Substances Act. The term “illegal use of drugs” does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the State or federal Controlled Substances Act or other provisions of State or federal law.

~~————— Individual with a disability means a person who has a disability. The term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, when the public or private entity acts on the basis of such use.~~

Physical or Mental Disability.

- (1) "Physical or mental disability" means:
- (a) Any disability, infirmity, malformation, disfigurement, congenital defect, or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions, or illness;
 - (b) The physical or mental condition of a person that constitutes a substantial disability as determined by a physician or, in the case of mental disability, by a psychiatrist or psychologist; or
 - (c) Any other health or sensory impairment that requires special education, vocational rehabilitation, or related services.
- (2) For purposes of subsection (1)(a) only, the following terms have the following meaning:
- (a) "Disability" means a physiological or mental condition that limits one or more major life activities, including, but not limited to, functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, lifting, reproduction, eating, sleeping, driving, and working. The term "limits one or more major life activities" means makes achievement of a major life activity or activities difficult.
 - (b) "Infirmity" means a physiological disorder affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
 - (c) "Malformation" means a defective or abnormal bodily formation affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
 - (d) "Disfigurement" means an externally visible malformation.
 - (e) "Congenital defect" means a bodily defect present at birth affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs,

respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.

(f) “Mental condition” means any mental or psychological disorder, including, but not limited to, mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) Mitigating measures.

The existence of a “physical or mental disability” is determined without regard to whether its effect is or can be mitigated by measures such as medication, auxiliary aids, prosthetic devices, or other ameliorative measures.

(4) Exceptions.

The term “physical or mental disability” does not include the following:

(a) Conditions that are ordinarily experienced by the average person in the general population or are both transitory and minor, although episodic conditions shall not be considered transitory. Conditions that fit within this exception include, but are not limited to, minor cuts or bruises, the common cold, typical flu, upset stomach, or ordinary headaches;

(i) The term “minor” refers to conditions with minimal adverse impact on an individual. Any one or more of the following factors may be considered in determining whether a condition is minor:

The nature and severity of the condition;

The duration or expected duration of the condition;

The nature and severity of any symptoms associated with the condition, including, but not limited to, pain, discomfort, loss of enjoyment of life, disfigurement, or impairment of functioning;

The nature and severity of any adverse physiological or psychological effects of the condition;

The nature and severity of any adverse social or economic consequences of the condition;

The extent of medical care, if any, required or expected to treat the condition;

The perceptions or expectations of others with respect to any of these factors; or

The extent to which the condition is susceptible to prejudice, stigma, stereotype, or fears.

(b) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavior disorders, compulsive gambling, kleptomania, pyromania; or

(c) Psychoactive substance use disorders resulting from current illegal use of drugs, although this shall not be construed to exclude an individual who –

(i) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(ii) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) is erroneously regarded as engaging in such use, but is not engaging in such use.

(5) Person with physical or mental disability.

"Person with physical or mental disability" or "individual with a physical or mental disability" means a person who:

(a) Has a physical or mental disability;

(b) Has a record of a physical or mental disability; or

(c) Is regarded as having a physical or mental disability.

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:

- (1) 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;
- (2) A restaurant, eating house, bar, tavern, buffet, saloon, soda fountain, ice cream parlor or other establishment serving or selling food or drink;
- (3) A motion picture house, theater, concert hall, stadium, roof garden, airdome or other place of exhibition or entertainment;
- (4) An auditorium, convention center, lecture hall or other place of public gathering;
- (5) A bakery, grocery store, clothing store, hardware store, shopping center, garage, gasoline station or other sales or rental establishment;
- (6) A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, * office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, dispensary, clinic, bathhouse or other service establishment;
- (7) 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;
- (8) A museum, library, gallery or other place of public display or collection;
- (9) 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;
- (10) A nursery, elementary, secondary, undergraduate or postgraduate school or other place of education;

- (11) A day-care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment;
- (12) Public elevators of buildings occupied by 2 or more tenants or by the owner and one or more tenants;
- (13) A municipal building, courthouse, town hall or other establishment of the State or a local government; and
- (14) Any establishment that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public.

Private club means a private club or establishment exempted from coverage under Title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a (e)).

Private entity means a person or entity other than a public entity.

Public accommodation means a building or facility where patronage from the general public is accepted or where services, goods, or the facilities themselves are offered to members of the general public, including (in addition to the establishments listed in Title 5 M.R.S.A. §4553 (8)) parking lots and offices of physicians, realtors, architects, personnel services, and building managers, as examples.

Public entity means -

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of the State or local government.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

Reconstruct, remodel, renovate means to change or rearrange the structural parts or elements of a building or facility or means of egress. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical systems are not alterations unless they affect the usability of the building or facility.

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

- (1) The nature and cost of the action needed under this subchapter;
- (2) The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or other impacts of the action on the operation of the facility;
- (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees and the number, type and location of its facilities; and
- (4) The type of operation or operations of the covered entity, including the composition, structure and functions of the entity's work force, the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity.

Religious entity means a religious organization, including a place of worship.

Service animal means any animal which has been prescribed for an individual with a physical or mental disability by a physician, psychiatrist, or psychologist, and any guide dog, signal dog, or other 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 with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

Standard of construction means the 1981 (ANSI A117.1-1980) or the 1986 (ANSI A117.1-1986) standards of the American National Standards Institute as set forth in their publications, or the Americans with Disabilities Act Accessibility Guidelines as adopted by the U.S. Department of Justice.

Undue hardship or undue burden means an action requiring undue financial or administrative hardship. In determining whether an action would result in an undue hardship, factors to be considered include:

- (1) The nature and cost of an accommodation needed under this Act;
- (2) The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the

effect on expenses and resources or the impact otherwise of the action upon the operation of the facility;

- (3) 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;
- (4) 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;
- (5) 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;
- (6) The extent to which current costs of accommodations have been minimized by past efforts to provide equal access to persons with physical or mental disabilities;
- (7) 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 physical or mental disabilities, as well as the individuals without physical or mental disabilities;
- (8) Documented good faith efforts to explore less restrictive or less expensive alternatives;
- (9) The availability of equipment and technology for the accommodation;
- (10) Whether an accommodation would result in a fundamental change in the nature of the public accommodation;
- (11) Efforts to minimize costs by spreading costs over time; and
- (12) The extent to which resources saved by failing to make an accommodation for persons who have physical or mental disabilities could have been saved by cutting cost in equipment or services for the general public.

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

Sec. 13. Me. Hum. Rights Comm’n Reg. Ch. 7, Section 7.02 is amended to read as follows:

7.02 General

- (a) Prohibition of discrimination. No individual shall be discriminated against on the basis of physical or mental disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any public or private entity who owns, leases (or leases to), or operates a place of public accommodation.
- (b) Landlord and tenant responsibilities. Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

Sec. 14. Me. Hum. Rights Comm’n Reg. Ch. 7, Section 7.03 is amended to read as follows:

7.03 Activities

- (a) Denial of participation. A public accommodation shall not subject an individual or class of individuals on the basis of a physical or mental disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.
- (b) Participation in unequal benefit. A public accommodation shall not afford an individual or class of individuals, on the basis of physical or mental disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.
- (c) Separate benefit. A public accommodation shall not provide an individual or class of individuals, on the basis of a physical or mental disability or

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

- (d) Individual or class of individuals. For purposes of this subsection, the term “individual” or “class of individuals” refers to the clients or customers of the covered public accommodation that enters into a contractual, licensing or other arrangement.

Sec. 15. Me. Hum. Rights Comm’n Reg. Ch. 7, Section 7.04 is amended to read as follows:

7.04 Integrated Settings

- (a) General. A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a physical or mental disability in the most integrated setting appropriate to the needs of the individual.
- (b) Opportunity to participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a public accommodation shall not deny an individual with a physical or mental disability an opportunity to participate in such programs or activities that are not separate or different.
- (c) Accommodations and services.
 - (1) Nothing in this part shall be construed to require an individual with a physical or mental disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.
 - (2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

Sec. 16. Me. Hum. Rights Comm’n Reg. Ch. 7, Section 7.05 is amended to read as follows:

7.05 Administrative Methods

A public accommodation shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods or administration that have the effect of discriminating on the basis of physical or mental disability, or that perpetuate the discrimination of others who are subject to common administrative control.

Sec. 17. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.06 is amended to read as follows:

7.06 Association

A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known physical or mental disability of an individual with whom the individual or entity is known to have a relationship.

Sec. 18. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.12 is amended as follows:

7.12 Maintenance of Accessible features

- (a) A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with physical or mental disabilities by the Act or this Chapter.
- (b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

Sec. 19. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.13 is amended as follows:

7.13 Insurance

- (a) This Chapter shall not be construed to prohibit or restrict-
 - (1) An insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
 - (2) A person or organization covered by this Chapter from establishing the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

- (3) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.
- (b) Paragraphs (a) (1), and (3) of this section shall not be used as a subterfuge to evade the purposes of the Act or this Chapter.
- (c) A public accommodation shall not refuse to serve an individual with a physical or mental disability because its insurance company conditions coverage or rates on the absence of individuals with physical or mental disabilities.

Sec. 20. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.15 is amended as follows:

7.15 Eligibility Criteria

- (a) General. A public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a physical or mental disability or any class of individuals with physical or mental disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.
- (b) Safety. A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with physical or mental disabilities.
- (c) Charges. A public accommodation may not impose a surcharge on a particular individual with a physical or mental disability or any group if individuals with physical or mental disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this Chapter.

Sec. 21. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.16 is amended as follows:

7.16 Modifications in policies, practices, or procedures

- (a) General. A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with physical or mental disabilities, unless the public accommodation can demonstrate that making the modifications

would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) Specialties

(1) General. A public accommodation may refer an individual with a physical or mental disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a physical or mental disability who seeks or requires the same treatment or services.

(2) Illustration - medical specialties. A health care provider may refer an individual with a physical or mental disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a physical or mental disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition is not required to treat the individual for a different condition.

(c) Service Animals

(1) General. Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a physical or mental disability.

(2) Care or supervision of service animals. Nothing in this Chapter requires a public accommodation to supervise or care for a service animal.

(d) Check-out aisles. A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles are kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with physical or mental disabilities as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

Sec. 22. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.17 is amended as follows:

7.17 Auxiliary Aids and Services

- (a) General. A public accommodation shall take those steps that may be necessary to ensure that no individual with a physical or mental disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.
- (b) Examples. The term “auxiliary aids and services” includes:
 - (1) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed captioning, decoders, open and closed captioning, telecommunications devices for deaf persons (TDD’s), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
 - (2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
 - (3) Acquisition or modification of equipment or devices; and
 - (4) Other similar services and actions.
- (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with physical or mental disabilities.
- (d) Telecommunication devices for the deaf (TDD’s).
 - (1) A public accommodation that offers customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.
 - (2) This part does not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operations.

- (e) Closed caption decoders. Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.
- (f) Alternatives. If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, service, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with physical or mental disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

Sec. 23. Me. Hum. Rights Comm'n Reg. Ch. 7, Sections 7.18(d), (e) are amended as follows:

- (d) Relationship to alterations requirements of Part Four of this Chapter.
 - (1) Except as provided in paragraph (d) (2) of this section, measures taken to comply with the barrier removal requirements of this section shall comply with the applicable requirements for alterations in Sec. 7.26 and Secs. 7.28-7.30 of this Chapter for the element being altered. The path of travel requirements of Sec. 7.27 shall not apply to measures taken solely to comply with the barrier removal requirements of this section.
 - (2) If, as a result of compliance with the alterations requirements specified in paragraph (d) (1) of this section, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. Such measures include, for example, providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. No measure shall be taken, however, that poses a significant risk to the health or safety of individuals with physical or mental disabilities or others.
- (e) Portable ramps. Portable ramps should be used to comply with this section only when installation of a permanent ramp is not readily achievable. In order to avoid any significant risk to the health or safety of individuals with physical or mental disabilities or others in using portable ramps, due

consideration shall be given to safety features such as non-slip surfaces, railings, anchoring, and strength of materials.

Sec. 24. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.21 is amended as follows:

7.21 Accessible or Special goods

- (a) This Chapter does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with physical or mental disabilities.
- (b) A public accommodation shall order accessible or special goods at the request of an individual with physical or mental disabilities, if, in the normal course of its operation, it makes special orders on request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business.
- (c) Examples of accessible or special goods include items such as Brailled versions of books, books on audio cassettes, closed-captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary needs.

Sec. 25. Me. Hum. Rights Comm'n Reg. Ch. 7, Section 7.23 is amended as follows:

7.23 Examinations and Courses

- (a) General. Any public or private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with physical or mental disabilities or offer alternative accessible arrangements for such individuals.
- (b) Examinations.
 - (1) Any public or private entity offering an examination covered by this section must assure that-
 - (i) The examination is selected and administered so as to best ensure that when the examination is administered to an individual with a physical or mental disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired

sensory, manual, or speaking skills (except where those skills are the factors that the examination purports to measure);

- (ii) An examination that is designed for individuals with impaired sensory, manual, or speaking skills is offered at equally convenient locations, as often, and in as timely a manner as are other examinations; and
 - (iii) The examination is administered in facilities that are accessible to individuals with physical or mental disabilities or alternative accessible arrangements are made.
- (2) Required modifications to an examination may include changes in the length of time permitted for completion of the examination and adaptation of the manner in which the examination is given.
 - (3) A public or private entity offering an examination covered by this section shall provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that public or private entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden. Auxiliary aids and services required by this section may include taped examinations, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print examinations and answer sheets or qualified readers for individuals with visual impairments or learning disabilities, transcribers for individuals with manual impairments, and other similar services and actions.
 - (4) Alternative accessible arrangements may include, for example, provision of an examination at an individual's home with a proctor if accessible facilities or equipment are unavailable. Alternative arrangements must provide comparable conditions to those provided for non-disabled individuals.
- (c) Courses
- (1) Any private entity that offers a course covered by this section must make such modifications to that course as are necessary to ensure that the place and manner in which the course is given are accessible to individuals with physical or mental disabilities.

- (2) Required modifications may include changes in the length of time permitted for the completion of the course, substitution of specific requirements, or adaptation of the manner in which the course is conducted or course materials are distributed.
- (3) A public or private entity that offers a course covered by this section shall provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills, unless the public or private entity can demonstrate that offering a particular auxiliary aid or service would fundamentally alter the course or would result in an undue burden. Auxiliary aids and services required by this section may include taped texts, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print texts or qualified readers for individuals with visual impairments and learning disabilities, classroom equipment adapted for use by individuals with manual impairments, and other similar services and actions.
- (4) Courses must be administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements must be made.
- (5) Alternative accessible arrangements may include, for example, provision of the course through videotape, cassettes, or prepared notes. Alternative arrangements must provide comparable conditions to those provided for non-disabled individuals.

Sec. 26. Me. Hum. Rights Comm'n Reg. Ch. 7, Sections 7.25(a), (c) are amended as follows:

7.25 New Construction

(a) General.

- (1) Except as provided in paragraphs (b) and (c) of this section, discrimination for purposes of this part includes a failure to design and construct facilities for first occupancy after January 1, 1996, that are readily accessible to and usable by individuals with physical or mental disabilities.
- (2) For purposes of this section, a facility is designed and constructed for first occupancy after January 1, 1996, only if the last application for a building permit or permit extension for the facility is certified to be complete, by the State, County, or local government after January 1, 1996 (or, in those jurisdictions where the government

does not certify completion of applications, if the last application for a building permit or permit extension for the facility is received by the State, County, or local government after January 1, 1996).

...

(c) Exception for structural impracticability.

- (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.
- (2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.
- (3) If providing accessibility in conformance with this section to individuals with certain physical or mental disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of physical or mental disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

Sec. 27. Me. Hum. Rights Comm'n Reg. Ch. 7, Sections 7.26(a), (c) are amended as follows:

7.26 Alterations

(a) General.

- (1) Any alteration to a place of public accommodation or a commercial facility, after January 1, 1996, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with physical or mental disabilities, including individuals who use wheelchairs.
- (2) An alteration is deemed to be undertaken after January 1, 1996, if the physical alteration of the property begins after that date.

...

- (c) To the maximum extent feasible. The phrase “to the maximum extent feasible,” as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain physical or mental disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of physical or mental disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

Sec. 28. Me. Hum. Rights Comm’n Reg. Ch. 7, Section 7.27(a) is amended as follows:

7.27 Alterations: Path of Travel

- (a) General. An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with physical or mental disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

Sec. 29. Me. Hum. Rights Comm’n Reg. Ch. 8, Section 8.03 is amended as follows:

8.03 DEFINITIONS

Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical or mental disabilities. The phrase *readily accessible to and usable by* is synonymous with accessible. A public or common use area that complies with ANSI A117.1-1986 or a comparable standard is *accessible* within the meaning of this paragraph.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other physical or mental disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A

route that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is an *accessible route*.

Aggrieved person includes any person who –

- (a) Claims to have been injured by a discriminatory housing practice; or
- (b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Broker or Agent includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions. “Real estate broker”, “associate real estate broker”, and “real estate sales agent” have the same definitions as are given respectively in Title 32, sections 13198, 13199 and 13200; but include all persons meeting those definitions, whether or not they are licensed or required to be licensed.

Building means a structure, facility or portion thereof that contains or serves one or more dwelling units.

Building entrance on an accessible route means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1-1986 or a comparable standard complies with this paragraph

Common use areas means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

Controlled substance means any drug or other substance, or immediate precursor as defined in State or Federal Controlled Substance Acts.

Covered multifamily dwellings means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more units.

Discriminatory housing practice means an act that is unlawful under Subchapter IV of the Maine Human Rights Act.

Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

Dwelling unit means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home, an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

Entrance means any access point to a building or portion of a building used by residents for the purpose of entering.

Exterior means all areas of the premises outside of an individual dwelling unit.

Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with –

- (a) A parent or another person having legal custody of such individual or individuals; or
- (b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

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

First occupancy means a building that has never before been used for any purpose.

Ground floor means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

~~*Disability* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such impairment.~~

- ~~(a) — The phrase *physical or mental impairment* means~~

- (i) — ~~Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;~~
- (ii) — ~~Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;~~
- (iii) — ~~The phrase *physical or mental impairment* includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction and alcoholism;~~
- (iv) — ~~The phrase *physical or mental impairment* does not include homosexuality or bisexuality.~~
- (b) — ~~The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~
- (c) — ~~The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.~~
- (d) — ~~The phrase *is regarded as having an impairment* means —~~
 - (i) — ~~Has a physical or mental impairment that does not substantially limit major life activities but that is treated by another person as constituting such a limitation;~~
 - (ii) — ~~Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or~~
 - (iii) — ~~Has none of the impairments defined in paragraph (1) of this definition but is treated by another person as having such an impairment.~~

~~(e) — The term *disability* does not include —~~

~~(i) — Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;~~

~~(ii) — Compulsive gambling, kleptomania, pyromania; or~~

~~(iii) — Psychoactive substance use disorders resulting from current illegal use of drugs.~~

~~(f) — Mitigating Measures.~~

~~The existence of a disability is determined without regard to whether its effect is or can be mitigated by measures such as medication, auxiliary aids, prosthetic devices or other ameliorative measures.~~

Interior means the spaces, parts, components or elements of an individual dwelling unit.

Modification means any change to the public or common use areas of a building or any change to a dwelling unit.

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.

Person in the business of selling or renting dwellings means any person who:

- (a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;
- (b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
- (c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Physical or Mental Disability.

- (1) "Physical or mental disability" means:
- (a) Any disability, infirmity, malformation, disfigurement, congenital defect, or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions, or illness;
 - (b) The physical or mental condition of a person that constitutes a substantial disability as determined by a physician or, in the case of mental disability, by a psychiatrist or psychologist; or
 - (c) Any other health or sensory impairment that requires special education, vocational rehabilitation, or related services.
- (2) For purposes of subsection (1)(a) only, the following terms have the following meaning:
- (a) "Disability" means a physiological or mental condition that limits one or more major life activities, including, but not limited to, functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, lifting, reproduction, eating, sleeping, driving, and working. The term "limits one or more major life activities" means makes achievement of a major life activity or activities difficult.
 - (b) "Infirmity" means a physiological disorder affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
 - (c) "Malformation" means a defective or abnormal bodily formation affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.
 - (d) "Disfigurement" means an externally visible malformation.

(e) “Congenital defect” means a bodily defect present at birth affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.

(f) “Mental condition” means any mental or psychological disorder, including, but not limited to, mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) Mitigating measures.

The existence of a “physical or mental disability” is determined without regard to whether its effect is or can be mitigated by measures such as medication, auxiliary aids, prosthetic devices, or other ameliorative measures.

(4) Exceptions.

The term “physical or mental disability” does not include the following:

(a) Conditions that are ordinarily experienced by the average person in the general population or are both transitory and minor, although episodic conditions shall not be considered transitory. Conditions that fit within this exception include, but are not limited to, minor cuts or bruises, the common cold, typical flu, upset stomach, or ordinary headaches;

(i) The term “minor” refers to conditions with minimal adverse impact on an individual. Any one or more of the following factors may be considered in determining whether a condition is minor:

The nature and severity of the condition;

The duration or expected duration of the condition;

The nature and severity of any symptoms associated with the condition, including, but not limited to, pain, discomfort, loss of enjoyment of life, disfigurement, or impairment of functioning;

The nature and severity of any adverse physiological or psychological effects of the condition;

The nature and severity of any adverse social or economic consequences of the condition;

The extent of medical care, if any, required or expected to treat the condition;

The perceptions or expectations of others with respect to any of these factors; or

The extent to which the condition is susceptible to prejudice, stigma, stereotype, or fears.

(b) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavior disorders, compulsive gambling, kleptomania, pyromania; or

(c) Psychoactive substance use disorders resulting from current illegal use of drugs, although this shall not be construed to exclude an individual who –

(i) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(ii) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) is erroneously regarded as engaging in such use, but is not engaging in such use.

(5) Person with physical or mental disability.

"Person with physical or mental disability" or "individual with a physical or mental disability" means a person who:

(a) Has a physical or mental disability;

(b) Has a record of a physical or mental disability; or

(c) Is regarded as having a physical or mental disability.

Premises means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

Public use areas means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

Residential real estate-related transactions means:

- (a) The making or purchasing of loans or providing other financial assistance-
 - (i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or
 - (ii) Secured by residential real estate; or
- (b) The selling, brokering or appraising of residential real property.

Site means a parcel of land bounded by a property line or a designated portion of a public right of way.

Standards of construction means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A117.1-1986.

Sec. 30. Me. Hum. Rights Comm'n Reg. Ch. 8, Sections 8.06(A-D) are amended as follows:

8.06 **PROHIBITION AGAINST DISCRIMINATION BECAUSE OF
PHYSICAL OR MENTAL DISABILITY**

A. General prohibitions against discrimination because of physical or mental disability.

- (1) It shall be unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a physical or mental disability of:

- (a) That buyer or renter;

- (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
 - (c) Any person associated with that person.
- (2) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a physical or mental disability of:
 - (a) That buyer or renter;
 - (b) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (c) Any person associated with that person.
- (3) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person, has a physical or mental disability or to make inquiry as to the nature or severity of a disability of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have physical or mental disabilities.
 - (a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy.
 - (b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with physical or mental disabilities or to persons with a particular type of physical or mental disability.
 - (c) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with physical or mental disabilities or to persons with a particular type of physical or mental disability;
 - (d) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;
 - (e) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

- (4) Nothing in this subpart requires that a dwelling be made to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

B. Reasonable modifications of existing premises.

- (1) It shall be unlawful for any person to refuse to permit, at the expense of a person with a physical or mental disability, reasonable modifications of existing premises, occupied or to be occupied by a person with such a disability, if the proposed modifications may be necessary to afford the person with such a disability full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for persons with physical or mental disabilities any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.
- (2) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

C. Reasonable accommodations.

It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a physical or mental disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

D. Design and construction requirements.

- (1) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if the dwelling is occupied by that date, or if the last building permit or renewal thereof for the dwelling is issued by a State, county, or local government on or before June 15, 1990. The burden of establishing impracticality because of terrain or unusual circumstances is on the person or persons who designed or constructed the housing facility.

- (2) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that –
 - (a) The public and common use areas are readily accessible to and usable by persons with physical or mental disabilities;
 - (b) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and
 - (c) All premises within covered multifamily dwelling units contain the following features of adaptable design:
 - (i) An accessible route into and through the covered dwelling unit;
 - (ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided; and
 - (iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

- (d) Compliance with the appropriate requirements of ANSI A117.1-1986 suffices to satisfy the requirements of paragraph (2) of this section.
- (3) All covered buildings must obtain a certification and inspection as follows:
- (a) The builder of a facility to which this section applies must obtain a certification from a design professional that the plans of the facility meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the certification to:
 - (i) The municipal authority that reviews plans in the municipality where the facility is to be constructed; or
 - (ii) If the municipality where the facility is to be constructed has no authority who reviews plans, the municipal officers of the municipality.
 - (b) 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 the facility inspected to meet the construction standards of this section before the municipal officials permit the facility to be occupied.