HOSPITALITY MAINE

Testimony of Nate Cloutier

Before the Joint Standing Committee on Judiciary
February 7, 2024

In Support of LD 2195, "*An Act to Protect Businesses from Fraudulent or Predatory Financial Settlements by Allowing Those Businesses Opportunities to Remove Architectural Barriers in Noncompliance with the Maine Human Rights Act*"

Senator Carney, Representative Moonen, and distinguished members of the Committee on Judiciary: My name is Nate Cloutier, and I am here today on behalf of HospitalityMaine representing more than 1,300 restaurant and lodging operators of all sizes across the state. HospitalityMaine supports LD 2195, "*An Act to Protect Businesses from Fraudulent or Predatory Financial Settlements by Allowing Those Businesses Opportunities to Remove Architectural Barriers in Noncompliance with the Maine Human Rights Act.*"

We'd like to thank Senator Daughtry for bringing this important legislation forward.

The bill would amend the Maine Human Rights Act to provide that the owner, operator, lessor or lessee of a place of public accommodation the opportunity to remove an architectural barrier to accessing a place of public accommodation by an individual who is disabled. An individual whose access was limited or prevented to a place of public accommodation must provide written notice, including specifics about the circumstances of the limited or prevented access to the owner. If the owner fails to provide a response to the notice within 60 days and fails to remove or make substantial progress in removing the barrier to access within 60 days after providing the response, the individual may file a complaint with the Maine Human Rights Commission or file a civil action in the Superior Court. We understand that there may be an amendment from the Sponsor that focuses on the issue of online e-commerce Americans with Disabilities (ADA) complaints, which we would support.

This bill provides a much-needed notice provision in the Maine Human Rights Act (MHRA). HospitalityMaine and our national partner, the American Hotel and Lodging Association, strongly support the ADA and MHRA. We strive to ensure that individuals with disabilities are provided unencumbered access to physical properties and online services.

The notice requirement provisions created in the bill are an important mechanism for businesses who are trying to comply with the law. I likely don't have to tell you that Maine has many lodging establishments that are older and have unique architectural features. Given this uniqueness, the State has developed different standards for compliance depending on when buildings were built or altered. For some buildings there is a cost test while others use a "readily achievable" standard from the US ADA's definition that considers costs and additional circumstances.

We see value in keeping but amending the language regarding physical structures in the bill to include resolutions other than removal. For example, some of our members have grandfathered properties where the check-in is a separate building from the cottages on the property. If an individual is unable to come

inside to complete the check-in process, there should be allowable resolutions, such as permitting staff to come outside to the customer to check-in on a tablet as one example.

We are additionally supportive of expanding this to online/e-commerce claims. There was a recent United States Supreme Court case, Laufer v. Acheson Hotels LLC that was ultimately dismissed but is relevant to the issue being considered today. The quick history is that a woman by the name of Deborah Laufer sued a Wells, Maine property for not being in compliance federal law. The case considered what scope "testers" (self-appointed people with disabilities who file lawsuits for alleged digital accessibility issues) are able to do. It's important to note that in many cases, testers do not actually intend to use the company's products or services. In full disclosure, our organization, and our national counterpart were supportive of a ruling that would have limited the ability of testers to file lawsuits against hotels that fail to disclose accessibility information on their websites and reservation services if they had no intention of visiting that establishment. Acheson Hotels countersued Laufer and asserted that because Laufer had no intention of visiting Maine she had no right to file the original lawsuit. Laufer sued 600 other hotels for the same allegations. Laufer ultimately withdrew her original lawsuit ahead of opening arguments ultimately leading SCOTUS to dismiss the case.

We do not downplay the seriousness and important of accessibility for customers. We believe the right to cure provisions in this bill would relieve so many businesses who are worried they are next on the tester list. My experience in working with members who have been involved in ADA complaints is that they were unaware of the issue—nefarious neglect is certainly the exception and not the rule. Owners are often apologetic and quickly offer to remedy any issue a customer has experienced. One small business member of our organization unrelated to the SCOTUS case received the threat of a lawsuit if they did not settle a tester's alleged accessibility dispute. The demand letter mentioned damages in the tens of thousands of dollars. Worried that the owner would be on the hook for a lawsuit that would put him out of business, he quickly paid the settlement offered. There are costs to every respondent to a lawsuit regardless of the disposition—adding a right to cure would give good faith actors the chance to resolve any problems while disincentivizing mass litigation.

We urge you to please vote ought to pass on LD 2195. Thank you, and I would be happy to answer any questions you may have.