AIELLO LAW

167 Water Street, Hallowell, ME 04347
Kristin@AielloLawMaine.com
207-248-6055
207-248-6077 (fax)

Kristin L. Aiello

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The Honorable Anne Carney, Senate Chair
The Honorable Matt Moonen, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, Maine 04333

Re: 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"

Dear Senator Carney, Representative Moonen and Honorable Members of the Joint Committee on the Judiciary:

I am writing to urge this Committee to oppose LD 2195.

I have spent over 25 years representing Maine people who have been discriminated against because of their disabilities, as a former Attorney at Disability Rights Maine and currently in private law practice. I have also served as a Commissioner on the Maine Human Rights Commission. I am not often at the Maine Legislature, but I am compelled to appear before you today to urge you to reject LD 2195, which would amend Subchapter 5 of the MHRA to limit the rights of people with disabilities.

Subchapter 5 of the MHRA gave its protections a broad sweep, declaring that "[t]he opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin is recognized as and declared to be a civil right." 5 M.R.S. § 4591 ("Equal access to public accommodations). Congress similarly gave Maine's federal analogue, Title III of the ADA, broad protections to "afford people with disabilities equal access to the wide variety of establishments available to the nondisabled." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 662 (2001).

Subchapter 5 prohibits discrimination in the "full and equal enjoyment to any person, on account of race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin, any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodations, advantages,

facilities, goods, services and privileges may depend." 5 M.R.S. §4592(1) (Denial of public accommodations).

LD 2195 would amend the Maine Human Rights Act (MHRA)—which prevents discrimination by public accommodations such as stores, theaters, arenas, professional offices, and any establishment that offers goods or services to the general public—to require an exacting written notice letter and then a two-month waiting period for the business to remove the barrier or to simply show "substantial progress" toward removing it.

This waiting period would apply equally to older buildings and to those built since 1993, which have had the benefit of the Department of Justice Standards for Accessible Design—promulgated in 1991—since long before they were constructed.

No other rights under the Maine Human Rights Act have a similar waiting period. Imagine, for example, if a business could pay its employees less than minimum wage and then, when called on it, take two months to remedy the situation (or simply make "substantial progress" toward remedying it) with no obligation to repay the shortfall before or after the notice? Imagine a business with a "whites only" sign being permitted two months to revise that policy?

Moreover, LD 2195 removes any incentive for businesses to comply proactively with the Maine Human Rights Act. Instead, they would be able to wait for a person with a disability to send a letter before even considering accessibility. And because the letter is required to contain specified information,[1] it may well require a person with a disability to retain an attorney to request access to an inaccessible business in a fashion that would ultimately be enforceable.

An unrepresented person with a disability could, assuming they don't have a print disability,[2] write a demand letter, mail their letter by "regular mail," wait 60 days, receive a response "delivered by regular mail" and find that -- after two months -- the business's only response was that their letter was inadequate. LD 2195 requires the individual to visit a location, even if they cannot get in the front door due to barriers. It places the burden squarely on the individual with the disability to get it right or they can't meet the notice requirement and seek to enforce their rights. Moreover, because the law encompasses online addresses and storefronts, there may be no physical location for an individual to visit in Maine, so they, too, cannot meet the requirements of LD 2195.

[1] The "Notice" in proposed section 4594-I requires that the notice from an individual with a disability must "(A) be in writing; (B) be delivered by regular mail; (C) Contain a description of the architectural barrier specific enough to allow the owner to identify the barrier; and (D) Specify in detail the circumstances under which the individual was actually limited in or prevented from accessing the place of public accommodation, including the address of the place of public accommodation, the date of the limitation or prevention, whether the individual requested assistance with removal of the architectural barrier and whether the barrier was temporary or permanent."

[2] Individuals with print disabilities may include individuals who cannot effectively read or write print because they may have a visual, physical, perceptual, developmental, cognitive, learning disability, or traumatic brain injury, for example. These individuals may not not be able to comply with LD 2195's notice requirements, which require the ability to write on paper, see and read words on paper, mail paper, receive and review paper, for starters.

Rather than reducing the power of the plaintiff's lawyers as its proponents intend, LD 2195 would effectively turn those attorneys into gatekeepers of accessibility. It would also make access lawsuits longer and more expensive because the first motion to dismiss will likely be based on the form of the demand letter.

It is my understanding that there may be an amendment proposed to make LD 2195 applicable to digital technology only, not architectural barriers such as storefronts. But this would not solve the problem, it would only burden the rights of blind or visually impaired individuals or others with print disabilities who are denied access to accessible digital technology.

Digital technology, such as websites and social media, is central to peoples' lives, and has transformed the way we all communicate, get news, shop, are educated and even make friends. Businesses are required to have accessible websites and media.[3] As one court aptly said, "[n]ow that the Internet plays such a critical role in the personal and professional lives of Americans, excluding disabled persons from access to covered entities that use it as their principal means of reaching the public would defeat the purpose of this important civil rights legislation." *Natl' Fed'n of the Blind v. Scribd Inc*., 97 F. Supp. 3d 565, 575 (D. Vt. 2015).

The vast majority of ADA and MHRA attorneys and plaintiffs are seeking solutions to fix real denials of access. But LD 2195, at least by its title, "An Act to Protect Businesses from Fraudulent or Predatory Financial Settlements …" attempts to portray a few bad apples as a landslide and "fraudulent or predatory financial settlements" as an epidemic. This just isn't so.

To the extent that there are unethical attorneys, they should be held accountable for their actions. Fortunately, there are effective and extensive methods already available to courts and state bar overseers to deal with a very few frivolous lawsuits or unscrupulous attorneys. We should use those existing legal mechanisms when needed, rather than deny civil rights established by the MHRA that aid people with disabilities every day.

LD 2195 would discourage voluntary compliance and would even discourage informal resolution -- since everyone would have to have a lawyer. It would punish people with disabilities without in any way deterring the bad guys. The vast majority of honest citizens who just want access to businesses would have to wait an extra two months (or more), while the very small handful of dishonest lawyers using Title III to extort settlements would simply move their extortion to the demand letter stage.

[3] Title III of the ADA covers services offered electronically, such as through websites and smartphone apps. See, e.g., *Andrews v. Blick Arts Materials, LLC*, 268 F. Supp. 3d 381, 393 (E.D.N.Y. 2017); *Del-Orden v. Bonobos, Inc*., 17 Civ. 2744 (PAE), 2017 WL 6547902, at *1 (S.D.N.Y. Dec. 20, 2017). As one influential decision put it, the alternative is "arbitrary" disparities in Title III's coverage, given the ubiquity of electronic commerce today. *Natl' Fed'n of the Blind v. Scribd Inc*., 97 F. Supp. 3d 565, 572 (D. Vt. 2015). In *Scribd*, the Court found that Title III requires an entity that sells a subscription service to books and other publications online and through apps to make its service accessible to people with visual impairments. Also see *Carparts Distribution Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England, Inc*. 37 F.3d 12, 19 (1st Cir. 1994) (service establishments do not require a person to physically enter a space).

LD 2195 is a barrier to ensuring full participation of people with disabilities in society. I urge this Committee to vote ought not to pass.

Thank you.

Sincerely,

Kristin Aiello

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