

AIELLO LAW

167 Water Street, Hallowell, ME 04347

Kristin@AielloLawMaine.com

207-248-6055

207-248-6077 (fax)

Kristin L. Aiello

TESTIMONY OF KRISTIN AIELLO IN OPPOSITION TO 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

My name is Kristin Aiello. I am a disability rights attorney, having served as Attorney with Disability Rights Maine for most of my career, and now with Aiello Law in Hallowell. I formerly served as a Commissioner on the Maine Human Rights Commission.

I am here today to ask members of the Committee to oppose LD 2195.

First, LD 2195 puts the Maine Human Rights Act (MHRA) out of compliance with the Americans with Disabilities Act (ADA).

Currently, the standards for access under the MHRA and the ADA are nearly identical. Both of these laws require architectural changes to existing structures only when such changes are “readily achievable,” i.e., easily accomplishable, and able to be carried out without much difficulty or expense. The law defines “readily achievable” with explicit reference to the size and resources of the business in order to accommodate small businesses. 28 CFR 36.304(a). This is a result of careful compromise with the business community.

LD 2195 upsets this balance, creating two standards, which is neither good nor helpful for businesses or for people with disabilities.

Second, LD 2195 discriminates against people with disabilities. No other protected class in the MHRA (such as sex, gender, color, race, sexual orientation or gender identity, religion, age) is required to draft a detailed, onerous notice and have a waiting period as a condition precedent to enforcing their rights.

Third, LD 2195 imposes notice requirements and requirements that will gut the protections of the MHRA for many people with disabilities. Not everyone who

experiences a barrier will be able to meet the bill's demanding notice standards which are detailed and time consuming. Many will require a lawyer, another barrier. One misstep and the notice is not valid and the person with a disability cannot enforce their rights. Many will give up. Moreover, persons who are blind or visually impaired who experience inaccessible websites of public accommodations would not be able to meet the notice standard of going to the physical public accommodation, putting this bill in conflict with existing law. In addition, the notice requirements require mailing by US Mail, meaning one must be able to read and write on paper, which individuals who are blind or visually impaired and those with other print disabilities are likely unable to do independently. They will be shut out of the protections of the Maine Human Rights Act, too.

Fourth, LD 2195 removes incentives for businesses to comply with the law. Under LD 2195, a business can delay doing anything to ensure access until it receives notice that someone was not able to access their public accommodation.

This is because, once notice is received, LD 2195 would grant the business up to two months to make "substantial progress" in removing the barrier described in the notice. This means a business could spend years without actually removing barriers to come into compliance with longstanding access standards and face no penalty.

Fifth, LD 2195 would remove the right of individuals to seek immediate injunctive relief for access, unlike every other protected class, regardless of the circumstances.

Sixth, LD 2195 does not effectively address unscrupulous attorneys. We can all agree that unethical attorneys can and should be held accountable for their actions. Fortunately, there are effective and extensive methods already available to courts and state bar associations to deal with a very few frivolous lawsuits or unscrupulous attorneys. We should use those existing legal mechanisms when needed, rather than deny the civil rights established by the MHRA that aid people with disabilities every day.

LD 2195 is a major roll-back on the rights of individuals with disabilities and it's not helpful for businesses, either, because it creates inconsistent standards with the ADA that businesses must meet in any event. This bill ought not to pass.

Thank you for your consideration.