DISABILITY RIGHTS MAINE

February 7, 2024

HAND DELIVERED

Senator Anne Carney, Chair
Representative Matt Moonen, Chair
Joint Standing Committee on Judiciary
State House, Room 438
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 Members of the Joint Committee on the Judiciary:

My name is Atlee Reilly and I serve as the Legal Director of Disability Rights Maine, Maine's protection and advocacy agency for people with disabilities. We are here 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".*

Under the Maine Human Rights Act (MHRA), equal access to places of public accommodation is a *civil right.*[1] And denying the full and equal enjoyment of a public accommodation on account of a protected class (race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin) is unlawful discrimination.[2] Unlawful public accommodations discrimination includes the "failure to remove architectural barriers and communication barriers" or, when barrier removal is not "readily achievable", the

[1] 5 M.R.S. § 4591
[2] 5 M.R.S. § 4592(1)

"failure to make the goods, services, facilities, privileges, advantages or accommodations available through alternative methods."[3] Roughly equivalent protections exist in Title III of the Americans with Disabilities Act[4], which was enacted "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities".[5]

LD 2195 would weaken state law protections for people with disabilities while federal protections (and corresponding obligations on businesses) would of course remain in place. Given this, the primary impact of LD 2195 would be to further burden people with disabilities as they attempt to enforce their civil rights, especially those whose disabilities might make it more difficult to negotiate new procedural barriers.

After experiencing unlawful public accommodations discrimination, and before being able to file an administrative complaint to address it, LD 2195 would require people with disabilities to:

1) Identify the owner (and/or "operator, lessor or lessee") of the place of public accommodation;
2) Deliver a notice to the owner by "regular mail" that provides:
    a. a specific description of the unlawful discrimination;
    b. a specific and detailed description of the circumstances under which they were subjected to unlawful discrimination;
    c. an explanation of whether the individual requested assistance while being subjected to unlawful discrimination; and
    d. a determination about whether the barrier that caused the unlawful public accommodations discrimination was temporary or permanent;
3) Wait for up to 60 days for a letter with information about plans for addressing the ongoing unlawful discrimination;
4) Wait for up to 60 additional days for the unlawful discrimination to be addressed; and
5) Continue to wait, perhaps indefinitely, so long as "substantial progress" is being made toward addressing the unlawful discrimination.

Try working through the above list with any other protected class under the MHRA.[6] That exercise might make it easier to see why the approach contained within LD 2195 should be rejected out of hand.[7] In Maine, civil rights should not be subject to a 120-day waiting period.

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[3] 5 M.R.S. § 4592(1)(D)
[4] 42 U.S.C. § 12101(b)(1)
[5] 42 U.S.C. § 12182
[6] "race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin"
[7] It is our understanding that an amendment may be proposed that would limit the reach of the bill to the digital world. Although that would harm fewer people with disabilities, it would not change our position because the approach is fundamentally flawed.

Senator Tammy Duckworth, joined by 42 other Senators, wrote the following in a letter opposing an attempt to enact the same type of notice and cure barriers proposed by LD 2195:

> When supporters of the discriminatory H.R. 620 argue for its necessity by citing examples of alleged "minor" accessibility infractions, they miss the point that this bill undermines the rights of people with disabilities, rather than protects them. There is nothing minor about a combat Veteran with a disability having to suffer the indignity of being unable to independently access a restaurant in the country they were willing to defend abroad. There is nothing minor about a child with cerebral palsy being forced to suffer the humiliation of being unable to access a movie theater alongside her friends. Simply put, we reject in the strongest terms the offensive suggestion by supporters of H.R. 620 that a civil rights violation denying access to a public space could ever be "minor."
> ...
> It would be more productive to enhance funding for existing ADA education and mediation programs rather than requiring lengthy notice periods that remove any incentive to follow the law until violations are detected and civil rights are denied.[8]

To echo Senator Duckworth, we would much prefer to be in Augusta testifying in support of legislation designed to help Maine businesses meet their legal obligations to people with disabilities. But for now, we ask that you vote ought not to pass on LD 2195.

Respectfully,

Atlee Reilly
Legal Director
Disability Rights Maine

[8] Joint Letter to Majority Leader Opposing H.R. 620 (March 28, 2018).