

**Chapter 5: PUBLIC ACCOMMODATIONS REGULATIONS RELATING TO PHYSICAL OR MENTAL DISABILITY DISCRIMINATION IN PUBLIC CONVEYANCES OF THE MAINE HUMAN RIGHTS COMMISSION**

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**PART I. GENERALLY**

**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, 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.

**B. Effect**

These regulations shall be accorded the full force and effect of interpretive administrative regulations.

**C. Construction**

- (1) Consistent with the public policy underlying the Act (as expressed in §4552) and with firmly established principles for the interpretation of such humanitarian legislation, the remedial provisions of the Act shall be given broad construction and its exceptions shall be construed narrowly.
- (2) The provisions of these regulations are severable. If any provision or the application of any provision of these regulations to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

**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. Accessible**

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

**C. Separate Service**

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

**D. 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.

**E. 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 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. 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 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, 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.

**PART III. UNLAWFUL 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 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 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 disability, or that the patronage of any person having any particular physical or mental 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 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 with a physical or mental disability using 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 Disability**

- (1) Harassment on the basis of physical or mental disability is a violation of §4592 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 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 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 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 persons with and without physical or mental disabilities the same will not provide the opportunity for equal access to a public conveyance for persons with physical or mental disabilities, then reasonable accommodations to the needs of 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 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 persons with and without physical or mental disabilities. 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 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 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 persons with physical or mental disabilities to the same extent as the conveyance is accessible to 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 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 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 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.

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- (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 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 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 persons with physical or mental disabilities as well as persons without physical or mental disabilities;
  - (l) the extent to which resources saved by failing to make an accommodation for 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 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 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 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 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 physical or mental disabilities as an integrated part of the mainstream.

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STATUTORY AUTHORITY: 5 M.R.S.A., Subchapter II §4566(7).

EFFECTIVE DATE::

March 30, 1987

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 12, 1996

NON-SUBSTANTIVE CORRECTIONS:

October 2, 1996 - minor spelling.

AMENDED:

July 20, 2005 – filing 2005-294 added Part II.B.(4). At the same time the APA office also restored from the original filing (87-105) Part II.C. which had evidently been accidentally dropped during the electronic conversion. Numbering throughout was corrected and standardized. Finally, the agency changed the title of the chapter from “Public Accommodations Regulations Relating to Handicap Discrimination in Public Conveyances of the Maine Human Rights Commission” to “Public Accommodations Regulations Relating to Physical or Mental Disability Discrimination in Public Conveyances of the Maine Human Rights Commission”.

March 21, 2007 – filing 2007-105, redefined “physical or mental disability” in II(B), changed all occurrences of the word “handicapped” and its variants to “person with physical or mental disability” and variants

April 14, 2008 - filing 2008-162, repealed Part II(B), renumbered as appropriate