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An Act To Clarify the Definition of "Physical or Mental Disability" in the Maine Human Rights Act

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, after the Maine Supreme Judicial Court's ruling in Whitney v. Wal-Mart 2006 ME 37 invalidated rules providing guidance for interpretation of the definition of "physical or mental disability" in the Maine Human Rights Act; and

Whereas, there may be confusion in the application of the existing statutory definition without the guidance of the rules; and

Whereas, this Act provides a new statutory definition of "physical or mental disability" that is narrower than the existing law after the Whitney decision, and the enactment of the new definition removes any confusion; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §4553, sub-§7-A, as amended by PL 1991, c. 99, §2, is repealed and the following enacted in its place:

7-A. Physical or mental disability. "Physical or mental disability" has the meaning set forth in section 4553-A.

Sec. 2. 5 MRSA §4553, sub-§7-B, as enacted by PL 1995, c. 393, §6, is repealed.

Sec. 3. 5 MRSA §4553-A is enacted to read:

§ 4553-A. Physical or mental disability

1. Physical or mental disability, defined. "Physical or mental disability" means:

A. A physical or mental impairment that:

(1) Substantially limits one or more of a person's major life activities;

(2) Significantly impairs physical or mental health; or

(3) Requires special education, vocational rehabilitation or related services;

B. Without regard to severity unless otherwise indicated: absent, artificial or replacement limbs, hands, feet or vital organs; alcoholism; amyotrophic lateral sclerosis; bipolar disorder; blindness or abnormal vision loss; cancer; cerebral palsy; chronic obstructive pulmonary disease; Crohn's

disease; cystic fibrosis; deafness or abnormal hearing loss; diabetes; substantial disfigurement; epilepsy; heart disease; HIV or AIDS; kidney or renal diseases; lupus; major depressive disorder; mastectomy; mental retardation; multiple sclerosis; muscular dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; and acquired brain injury;

C. With respect to an individual, having a record of any of the conditions in paragraph A or B; or

D. With respect to an individual, being regarded as having or likely to develop any of the conditions in paragraph A or B.

2. Additional terms. For purposes of this section:

A. The existence of a physical or mental disability is determined without regard to the ameliorative effects of mitigating measures such as medication, auxiliary aids or prosthetic devices; and

B. "Significantly impairs physical or mental health" means having an actual or expected duration of more than 6 months and impairing health to a significant extent as compared to what is ordinarily experienced in the general population.

3. Exceptions. "Physical or mental disability" does not include:

A. Pedophilia, exhibitionism, voyeurism, sexual behavior disorders, compulsive gambling, kleptomania, pyromania or tobacco smoking;

B. Any condition covered under section 4553, subsection 9-C; or

C. Psychoactive substance use disorders resulting from current illegal use of drugs, although this may not be construed to exclude an individual who:

(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use;

(3) Is erroneously regarded as engaging in such use, but is not engaging in such use; or

(4) In the context of a reasonable accommodation in employment, is seeking treatment or has successfully completed treatment.

Sec. 4. 5 MRSA §4554, sub-§4 is enacted to read:

4. Physical or mental disability. The definition of "physical or mental disability" in section 4553-A is intended to be interpreted broadly to create greater coverage than under the federal Americans with Disabilities Act of 1990.

Sec. 5. 5 MRSA §4566, sub-§7, as amended by PL 1977, c. 694, §29, is further amended to read:

7. Rules and regulations. To adopt, amend and rescind rules and regulations to effectuate this Act, such adoption, amendment and rescission to be made in the manner provided by chapter 375, subchapter H2. Rules adopted to implement section 4553-A are major substantive rules as defined in chapter 375, subchapter 2-A;

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 21, 2007.