

7139--A

I N S E N A T E

May 1, 2012

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to the definition of "place of public accommodation, resort or amusement" for the purposes of the human rights law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 9 of section 292 of the executive law, as
2 amended by chapter 262 of the laws of 1994, is amended to read as
3 follows:
4 9. The term "place of public accommodation, resort or amusement" shall
5 include, REGARDLESS OF WHETHER THE OWNER OR OPERATOR OF SUCH PLACE IS A
6 STATE OR LOCAL GOVERNMENT ENTITY OR A PRIVATE INDIVIDUAL OR ENTITY,
7 except as hereinafter specified, all places included in the meaning of
8 such terms as: inns, taverns, road houses, hotels, motels, whether
9 conducted for the entertainment of transient guests or for the accommo-
10 dation of those seeking health, recreation or rest, or restaurants, or
11 eating houses, or any place where food is sold for consumption on the
12 premises; buffets, saloons, barrooms, or any store, park or enclosure
13 where spirituous or malt liquors are sold; ice cream parlors, confec-
14 tionaries, soda fountains, and all stores where ice cream, ice and fruit
15 preparations or their derivatives, or where beverages of any kind are
16 retailed for consumption on the premises; wholesale and retail stores
17 and establishments dealing with goods or services of any kind, dispen-
18 saries, clinics, hospitals, bath-houses, swimming pools, laundries and
19 all other cleaning establishments, barber shops, beauty parlors, thea-
20 tres, motion picture houses, airdromes, roof gardens, music halls, race
21 courses, skating rinks, amusement and recreation parks, trailer camps,
22 resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting
23 galleries, billiard and pool parlors; garages, all public conveyances
24 operated on land or water or in the air, as well as the stations and
25 terminals thereof; travel or tour advisory services, agencies or

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 bureaus; public halls [and], PUBLIC ROOMS, public elevators, AND ANY
2 PUBLIC AREAS of [buildings and structures occupied by two or more
3 tenants, or by the owner and one or more tenants] ANY BUILDING OR STRUC-
4 TURE. Such term shall not include [public libraries,] kindergartens,
5 primary and secondary schools, high schools, academies, colleges and
6 universities, extension courses, and all educational institutions under
7 the supervision of the regents of the state of New York; any such
8 [public library,] kindergarten, primary and secondary school, academy,
9 college, university, professional school, extension course or other
10 education facility, supported in whole or in part by public funds or by
11 contributions solicited from the general public; or any institution,
12 club or place of accommodation which proves that it is in its nature
13 distinctly private. In no event shall an institution, club or place of
14 accommodation be considered in its nature distinctly private if it has
15 more than one hundred members, provides regular meal service and regu-
16 larly receives payment for dues, fees, use of space, facilities,
17 services, meals or beverages directly or indirectly from or on behalf of
18 a nonmember for the furtherance of trade or business. An institution,
19 club, or place of accommodation which is not deemed distinctly private
20 pursuant to this subdivision may nevertheless apply such selective
21 criteria as it chooses in the use of its facilities, in evaluating
22 applicants for membership and in the conduct of its activities, so long
23 as such selective criteria do not constitute discriminatory practices
24 under this article or any other provision of law. For the purposes of
25 this section, a corporation incorporated under the benevolent orders law
26 or described in the benevolent orders law but formed under any other law
27 of this state or a religious corporation incorporated under the educa-
28 tion law or the religious corporations law shall be deemed to be in its
29 nature distinctly private.

30 No institution, club, organization or place of accommodation which
31 sponsors or conducts any amateur athletic contest or sparring exhibition
32 and advertises or bills such contest or exhibition as a New York state
33 championship contest or uses the words "New York state" in its announce-
34 ments shall be deemed a private exhibition within the meaning of this
35 section.

36 S 2. Paragraphs (c) and (d) of subdivision 2 of section 296 of the
37 executive law, as added by chapter 394 of the laws of 2007, are amended
38 to read as follows:

39 (c) For the purposes of paragraph (a) of this subdivision, "discrimi-
40 natory practice" includes:

41 (i) a refusal to make reasonable modifications in policies, practices,
42 or procedures, when such modifications are necessary to afford facili-
43 ties, privileges, advantages or accommodations to individuals with disa-
44 bilities, unless such person can demonstrate that making such modifica-
45 tions would fundamentally alter the nature of such facilities,
46 privileges, advantages or accommodations;

47 (ii) a refusal to take such steps as may be necessary to ensure that
48 no individual with a disability is excluded or denied services because
49 of the absence of auxiliary aids and services, unless such person can
50 demonstrate that taking such steps would fundamentally alter the nature
51 of the facility, privilege, advantage or accommodation being offered or
52 would result in an undue burden;

53 (iii) a refusal to remove architectural barriers, and communication
54 barriers that are structural in nature, in existing facilities, and
55 transportation barriers in existing vehicles and rail passenger cars
56 used by an establishment for transporting individuals (not including

1 barriers that can only be removed through the retrofitting of vehicles
2 or rail passenger cars by the installation of a hydraulic or other
3 lift), where such removal is readily achievable; [and]

4 (iv) WHERE SUCH PERSON IS A LOCAL OR STATE GOVERNMENT ENTITY, A
5 REFUSAL TO REMOVE ARCHITECTURAL BARRIERS, AND COMMUNICATION BARRIERS
6 THAT ARE STRUCTURAL IN NATURE, IN EXISTING FACILITIES, AND TRANSPORTA-
7 TION BARRIERS IN EXISTING VEHICLES AND RAIL PASSENGER CARS USED BY AN
8 ESTABLISHMENT FOR TRANSPORTING INDIVIDUALS (NOT INCLUDING BARRIERS THAT
9 CAN ONLY BE REMOVED THROUGH THE RETROFITTING OF VEHICLES OR RAIL PASSEN-
10 GER CARS BY THE INSTALLATION OF A HYDRAULIC OR OTHER LIFT), WHERE SUCH
11 REMOVAL DOES NOT CONSTITUTE AN UNDUE BURDEN; EXCEPT AS SET FORTH IN
12 PARAGRAPH (E) OF THIS SUBDIVISION; NOTHING IN THIS SECTION WOULD REQUIRE
13 A PUBLIC ENTITY TO: NECESSARILY MAKE EACH OF ITS EXISTING FACILITIES
14 ACCESSIBLE TO AND USABLE BY INDIVIDUALS WITH DISABILITIES; TAKE ANY
15 ACTION THAT WOULD THREATEN OR DESTROY THE HISTORICAL SIGNIFICANCE OF AN
16 HISTORIC PROPERTY; OR TO MAKE STRUCTURAL CHANGES IN EXISTING FACILITIES
17 WHERE OTHER METHODS ARE EFFECTIVE IN ACHIEVING COMPLIANCE WITH THIS
18 SECTION;

19 (V) where such person can demonstrate that the removal of a barrier
20 under subparagraph (iii) of this paragraph is not readily achievable, a
21 failure to make such facilities, privileges, advantages or accommo-
22 dations available through alternative methods if such methods are readi-
23 ly achievable.

24 (d) For the purposes of this subdivision:

25 (i) "Readily achievable" means easily accomplishable and able to be
26 carried out without much difficulty or expense. In determining whether
27 an action is readily achievable, factors to be considered include:

28 (A) the nature and cost of the action needed under this subdivision;

29 (B) the overall financial resources of the facility or facilities
30 involved in the action; the number of persons employed at such facility;
31 the effect on expenses and resources or the impact otherwise of such
32 action upon the operation of the facility;

33 (C) the overall financial resources of the place of public accommo-
34 dation, resort or amusement; the overall size of the business of such a
35 place with respect to the number of its employees; the number, type and
36 location of its facilities; and

37 (D) the type of operation or operations of the place of public accom-
38 modation, resort or amusement, including the composition, structure and
39 functions of the workforce of such place; the geographic separateness,
40 administrative or fiscal relationship of the facility or facilities in
41 question to such place.

42 (ii) "Auxiliary aids and services" include:

43 (A) qualified interpreters or other effective methods of making aural-
44 ly delivered materials available to individuals with hearing impair-
45 ments;

46 (B) qualified readers, taped texts or other effective methods of
47 making visually delivered materials available to individuals with visual
48 impairments;

49 (C) acquisition or modification of equipment or devices; and

50 (D) other similar services and actions.

51 (iii) "Undue burden" means significant difficulty or expense. In
52 determining whether an action would result in an undue burden, factors
53 to be considered shall include:

54 (A) The nature and cost of the action needed under this article;

55 (B) The overall financial resources of the site or sites involved in
56 the action; the number of persons employed at the site; the effect on

1 expenses and resources; legitimate safety requirements that are neces-
2 sary for safe operation, including crime prevention measures; or the
3 impact otherwise of the action upon the operation of the site;

4 (C) The geographic separateness, and the administrative or fiscal
5 relationship of the site or sites in question to any parent corporation
6 or entity;

7 (D) If applicable, the overall financial resources of any parent
8 corporation or entity; the overall size of the parent corporation or
9 entity with respect to the number of its employees; the number, type,
10 and location of its facilities; and

11 (E) If applicable, the type of operation or operations of any parent
12 corporation or entity, including the composition, structure, and func-
13 tions of the workforce of the parent corporation or entity.

14 S 3. This act shall take effect on the one hundred twentieth day after
15 it shall have become a law.