

1405

2015-2016 Regular Sessions

I N S E N A T E

January 12, 2015

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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

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

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

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

38 S 2. Paragraph (c) of subdivision 2 of section 296 of the executive
39 law, as added by chapter 394 of the laws of 2007, is amended to read as
40 follows:

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

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

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

55 (iii) a refusal to remove architectural barriers, and communication
56 barriers that are structural in nature, in existing facilities, and

1 transportation barriers in existing vehicles and rail passenger cars
2 used by an establishment for transporting individuals (not including
3 barriers that can only be removed through the retrofitting of vehicles
4 or rail passenger cars by the installation of a hydraulic or other
5 lift), where such removal is readily achievable; [and]

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

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

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