

July 24, 2007

The Honorable Rod Blagojevich
Governor, State of Illinois
207 Statehouse
Springfield, IL 62706

Re: Senate Bill 593

Dear Governor Blagojevich:

Senate Bill 593, sponsored by Sen. Cullerton and Rep. Fritchey and unanimously approved by both chambers of the Illinois General Assembly, restores a common sense meaning of “place of public accommodation” under the IHRA so that Illinoisans – especially those with disabilities – may take advantage of a group of services offered to the public without fear of unlawful discrimination. To that end, Senate Bill 593 adopts the federal “public accommodations” definition from the Americans with Disabilities Act (ADA) to overcome the unduly narrow interpretation the current definition has been given by Illinois courts.

Senate Bill 593 is the result of an ongoing collaboration between key stakeholders, led by the Coalition of Citizens with Disabilities of Illinois and including the ACLU of Illinois, the AIDS Foundation of Chicago, the AIDS Legal Council of Chicago, the Arc of Illinois, the Autism Society of Illinois, Equip for Equality, and the Illinois Network of Centers for Independent Living. We, along with this larger coalition of allied organizations, urge you to sign Senate Bill 593 into law.

Although the present definition of public accommodations in the IHRA seems to offer broad coverage, it has been narrowly interpreted by Illinois courts to exclude a number of important service providers from its protections, such as medical facilities, that should neither be closed to nor otherwise out of reach for persons because of disability or other protected status. *See Ex. A at Category I.* As a result of this steady judicial narrowing over the years, Illinois has become *one of only two states* in the country that excludes medical providers from state public accommodation nondiscrimination standards. Only the state of Florida, like Illinois, *excludes* medical providers from among those public services secured for people with disabilities under state anti-discrimination law. *See Id.* The manifest weight of state law nationwide clearly demonstrates how Illinois’ current approach is out of step with the rest of the nation. *See Ex. A. at Categories II-V.*

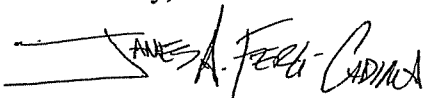
Senate Bill 593 amends the IHRA to better protect more people with disabilities than the ADA. Over the recent years, federal courts have narrowly interpreted the definition of disability under the ADA so that many persons with serious disabling conditions, such as, for example, some persons whose epilepsy and diabetes have responded well to treatment, no longer have a federal remedy against disability discrimination.

In contrast, because of the different state statutory definition for disability, Illinois courts have interpreted the state statute to “provide[] that an individual may be protected by the [IHRA] when he or she has a determinable physical characteristic which results from a disease and which is unrelated to his or her ability to perform a particular job or function, or when his or her condition is perceived as a handicap.” *Owens v. Dep’t of Human Rights*, 826 N.E.2d 539, 545 (Ill. App. Ct. 1 Dist. 2005); *accord Ill. Bell Tel. Co. v. Human Rights Comm’n*, 547 N.E.2d 499, 506 (Ill. App. Ct. 1 Dist. 1989). Consequently, many Illinoisans with disabilities only have the IHRA as legal protection against disability discrimination. Accordingly, Senate Bill 593 does not displace this positive development in Illinois case law.

The IHRA offers advantages over the ADA, even for those persons still covered by the ADA’s narrow definition of disability. The remedies of the IHRA offer better incentives to victims of discrimination to take action against the business or persons who discriminated against them; the better availability of attorney’s fees under the IHRA makes it easier for victims to find an attorney and the Illinois administrative process makes it much easier for those victims unable to find an attorney. Title III of the ADA (covering public accommodations) only provides injunctive relief (rather than damages or civil penalties) to plaintiffs who file cases on their own. Persons who have been discriminated against in public accommodations based on disability can only get damages if the U.S. Department of Justice intervenes in their case.

Strengthening the IHRA with the enactment of Senate Bill 593 increases the odds that disability discrimination will no longer go unchallenged and reinforces the State of Illinois’ commitment to ending discrimination in places and services made available to the public. For these reasons, we respectfully ask you to sign Senate Bill 593 into law. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "James A. Ferg-Cadima". The signature is written in a cursive style and is positioned above the printed name and title.

James A. Ferg-Cadima
Legislative Counsel

Encl. (1)

Cc: Joseph Handley, Deputy Chief of Staff-Legislative Affairs

EXHIBIT A

CATEGORY I: STATES EXCLUDING MEDICAL PROVIDERS

Only two states *exclude* medical providers from among those public services secured for people with disabilities under state anti-discrimination law.

- **FLA. STAT. ANN.** § 760.08 (West 2007) (prohibiting, in part, “handicap” discrimination in “any place of public accommodation”); §760.02(11) (defining “public accommodations” in terms of only lodging, dining, and entertainment facilities or subunit located therein); § 760.07 (excluding private lodge halls or other similar facilities made available for public use on occasion);
- **ILLINOIS:** *Bd. of Trs. of S. Ill. Univ. v. Dep’t of Human Rights*, 636 N.E.2d 528, 531-32 (Ill. 1994) (interpreting the phrase “place of public accommodation” narrowly through a strict application of the doctrine of *ejusdem generis*, even though the statutory definition covered, “a[n] . . . accommodation . . . of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public”); *Duffy v. Ill. Dep’t of Human Rights*, 820 N.E.2d 1186, 1189 (Ill. App. Ct. 4 Dist. 2004) (holding medical clinics are not places of public accommodation); *Baksh v. Human Rights Comm’n*, 711 N.E.2d 416, 424 (Ill. App. Ct. 1 Dist. 1999) (determining dental offices are not places of public accommodation so no damages allowed for dentist’s refusal to treat HIV positive patient).

CATEGORY II: STATE STATUTES THAT INCLUDES MEDICAL PROVIDERS

Like the approach taken in Senate Bill 593, eighteen states explicitly include medical providers in their anti-discrimination statutes.

- **ARIZ. REV. STAT. ANN.** § 41-1492(9)(f) (West 2007) (defining “public accommodation” for purposes of disability discrimination to include “professional office of a health care provider, hospital or other service establishment”);
- **COLO. REV. STAT. ANN.** §24-34-601(1) (West 2007) (defining “place of public accommodation” to include “a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm”);
- **D.C. CODE ANN.** § 2-1401.02(24) (West 2007) (defining “place of public accommodation” to include “dispensaries, clinics, hospitals”);
- **HAW. REV. STAT. ANN.** § 489-2(9)-(10) (West 2006) (defining “place of public accommodation” to include “[a] comfort station; or a dispensary, clinic, hospital, convalescent home, or other institution for the infirm” and “[a] professional office of a health care provider, . . . or other similar service establishment”);
- **ME. REV. STAT. ANN.** tit. 5, § 4533(8)(F) (West 2007) (defining “place of public accommodation” to include “professional office of a health care provider, hospital, dispensary, [and] clinic”);
- **MASS. GEN. LAWS ANN.** ch. 272, § 92A(10) (West 2007) (defining “place of public accommodation” to include “a hospital, dispensary or clinic operating for profit”);
- **MICH. COMP. LAWS ANN.** § 37.2301(a) (West 2007) (defining “place of public accommodation” to include “health . . . facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public”);
- **MO. ANN. STAT.** § 213.010(15) (West 2007) (defining “places of public accommodation” to include “all places or businesses offering or holding out to the general public, goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public”);
- **MONT. CODE ANN.** § 49-2-101(20)(a) (West 2005) (defining “public accommodation” to include a “hospital and all other . . . business establishments”);
- **N.H. REV. STAT. ANN.** § 354-A:2(XIV) (West 2007) (defining “place of public accommodation” to include places and businesses “conducted . . . for the benefit, use or accommodations of those seeking health” and a “health care provider . . . which caters or offers its services or facilities or goods to the general public”);
- **NEV. REV. STAT. ANN.** § 651.050(g) (West 2007) (defining “place of public accommodation” to include “[a]ny . . . office of a provider of health care, hospital or other service establishment”);
- **N.J. STAT. ANN.** § 10:5-5(l) (West 2007) (defining “place of public accommodation” to include “any dispensary, clinic or hospital”);
- **N.Y. CIV. RIGHTS LAW** § 40 (West 2007) (defining “places of public accommodations” to include “dispensaries, clinics, hospitals”);
- **43 PA. STAT. ANN.** § 954(l) (West 2006) (defining “public accommodation, resort or amusement” to include “dispensaries, clinics, hospitals, [and] bathhouses”);
- **R.I. GEN. LAWS ANN.** § 11-24-3 (West 2006) (defining “place of public accommodation, resort, or amusement” for purposes of civil and criminal law to include “dispensaries, clinics, [and] hospitals”);
- **S.C. CODE ANN.** § 45-9-10(B)(3) (West 2006) (defining “place of public accommodation” to include “any hospital, clinic, or other medical facility which provides overnight accommodations”);

- **WASH. REV. CODE. ANN. § 49.60.040** (West 2007) (defining “place of public resort, accommodation, assemblage, or amusement” to include “any place, licensed or unlicensed, kept for . . . the benefit, use, or accommodation of those seeking health . . . or where medical service or care is made available”);
- **WISC. STAT. ANN. § 106.52(e)(1)** (West 2007) (defining “public place of accommodation or amusement” to include “nursing homes; clinics; [and] hospitals”).

CATEGORY III: STATE REGULATIONS INCLUDE MEDICAL PROVIDERS

Similar to the approach taken in Senate Bill 593, one state covers medical providers through regulations implementing its anti-discrimination statute.

- **OHIO ADMIN. CODE § 4112-5-02(I)** (West 2007) (defining “place of public accommodation” to include “all places . . . conducted . . . for the accommodation of those seeking health” and “dispensaries, clinics, [and] hospitals”).

CATEGORY IV: CASE LAW OR ATTORNEY GENERAL OPINION INCLUDE MEDICAL PROVIDERS

Legal authority in seven other states – through case law or state attorney general opinion – affirmatively or broadly interpret their respective public accommodation statutes to cover medical providers, producing in result what Senate Bill 593 explicitly attempts.

- **CALIFORNIA:** *Leach v. Drummond Med. Group, Inc.*, 192 Cal. Rptr. 650, 654 (Cal. Ct. App. 1983) (holding businesses providing medical services are public accommodations); *Washington v. Blampin*, 38 Cal. Rptr. 234, 238 (Cal. Dist. Ct. App. 1964) (same); *Williams v. Kaiser Found. Health Plan*, No. C 98-4754 JL, 2001 WL 590036, at *2 (N.D. Cal. May 23, 2001) (same);
- **CONNECTICUT:** *Conn. Bank & Trust Co. v. Cyril & Julia C. Johnson Mem'l Hosp.*, 294 A.2d 586, 590 (Conn. Super. Ct. 1972) (holding public accommodations statute applies to a private hospital);
- **DELAWARE:** *HIV Infected Pers.' Handicapped Status & Doctors' & Dentists' Offices as Places of Pub. Accommodation*, Del. Op. Atty. Gen. 90-I012 (June 28, 1990) (finding definition of the term “a place of public accommodation” under Delaware law to cover physicians’ and dentists’ offices that provide health care services to all members of the general public);
- **MARYLAND:** 81 Op. Md. Att’y Gen. 62 (1996) (upholding position of Maryland Human Relations Commission that electrologists’ offices are “public accommodations” under Maryland law because they are analogous to physicians’ and dentists’ offices);
- **MINNESOTA:** *State v. Clausen*, 491 N.W.2d 662, 665, 668 (Minn. App. 1992) (accepting ALJ finding that a dentist’s office is a place of public accommodation);
- **NEBRASKA:** *Lowenstein v. Amateur Softball Ass’n of Am.*, 418 N.W.2d 231, 233 (Neb. 1988) (construing public accommodations provision covering people with disabilities very broadly and holding said protections “apply whenever the general public is invited to a given place at a given time . . . whether the local of invitation is private or public in nature”);
- **VIRGINIA:** *Grimes v. Canadian Am. Transp., C.A.T.*, 72 F.Supp.2d 629, 634 (W.D. Va. 1999) (holding Virginia Human Rights Act is coterminous with federal anti-discrimination law).

CATEGORY V: STATE STATUTE BROAD ENOUGH TO INCLUDE MEDICAL PROVIDERS THAT HAS NOT BEEN JUDICIALLY NARROWED

Unlike Illinois, however, another twenty-three states have broad enough statutory language that has *not* been judicially narrowed to ensure medical providers are covered under their respective public accommodation laws.

- **ALA. CODE. ANN. § 21-7-3** (West 2006) (requiring “accommodations” to be open to “the blind, the visually handicapped[,] and the otherwise physically disabled” on equal terms to others, for purposes of criminal law, and defining “accommodations” to include “facilities and . . . places of public accommodation . . . and other places to which the general public is invited”);
- **ALASKA STAT. ANN. § 18.80.300(16)** (West 2006) (defining “public accommodation” broadly to include “a place that caters or offers its services, goods, or facilities to the general public”);
- **ARK. CODE ANN. § 20-14-303(a)(5)** (West 2006) (ensuring “places of public accommodation” are open to “[v]isually handicapped, hearing impaired, and other physically handicapped persons” and defining “places of public accommodation” to include “places to which the general public is invited”);
- **GA. CODE ANN. § 30-402** (West 2007) (ensuring “places of public accommodation . . . and other places to which the general public is invited” are open on equal terms to “[b]lind persons, persons with visual disabilities, persons with physical disabilities, and deaf persons” as they are to others);

- **IDAHO CODE ANN.** § 67-5902(9) (West 2007) (defining “[p]lace of public accommodation” to include “a business, . . . whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public”);
- **IND. CODE ANN.** § 22-9-1-3(m) (West 2007) (defining “[p]ublic accommodation” to include “any establishment that caters or offers its services or facilities or goods to the general public”);
- **IOWA CODE ANN.** § 216.2(12) (West 2007) (defining “[p]ublic accommodation” to include “each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge”);
- **KAN. STAT. ANN.** § 44-1002(h) (West 2006) (defining “[p]ublic accommodations” to mean “any person who caters or offers goods, services, facilities and accommodations to the public”);
- **K.Y. REV. STAT. ANN.** § 344.130 (West 2006) (defining “place of public accommodation, resort, or amusement” to include “any place, store, or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public”);
- **LA. REV. STAT. ANN.** § 51:2232(3), (10) (West 2006) (defining “[p]lace of public accommodations, resort, or amusement” to include “any place, store, or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public”);
- **MISS. CODE ANN.** § 43-6-5 (West 2007) (ensuring “[b]ind persons, visually handicapped persons, deaf persons and other physically disabled persons” are entitled to equal access to “places of public accommodation, . . . and other places to which the general public is invited” as others enjoy);
- **N.M. STAT. ANN.** § 28-1-2(H) (West 2007) (defining “public accommodation” to include “any establishment that provides or offers its services, facilities, accommodations or goods to the public”);
- **N.C. GEN. STAT. ANN.** § 168A-3(8) (West 2007) (defining “[p]lace of public accommodations” to include “any place, facility, store, other establishment . . . which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person”);
- **N.D. CENT. CODE** § 14-02.4-02(14) (West 2005 & Supp. 2007) (defining “[p]ublic accommodation” to include “every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity”);
- **OKLA. STAT. ANN.** tit. 25, § 1401 (West 2007) (defining “place of public accommodation” to include “any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public”);
- **OR. REV. STAT. ANN.** § 659A.400(1) (West 2007) (defining “place of public accommodation” to include “any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise”);
- **S.D. CODIFIED LAW** §20-13-1(12) (West 2007) (defining “[p]ublic accommodations” to include “any place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuitously”);
- **TENN. CODE ANN.** § 4-21-102(15) (West 2007) (defining “[p]laces of public accommodation, resort or amusement” to include “any place, store or other establishment, either licensed or unlicensed, that supplies goods or services to the general public or that solicits or accepts the patronage or trade of the general public”);
- **TEX. HUM. RES. CODE ANN.** § 121.002(5) (West 2007) (defining “[p]ublic facilities” to include “a building to which the general public is invited; . . . and any other place of public accommodation . . . to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited”);
- **UTAH CODE ANN.** § 13-7-2(1) (West 2007) (defining “place of public accommodation” to include “every place, establishment, or facility of whatever kind, nature, or class that caters or offers its services, facilities, or goods to the general public for a fee or charge”);
- **VT. STAT. ANN.** tit. 9, § 4501(1) (West 2007) (defining “[p]lace of public accommodation” to include “any . . . establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public”);
- **W. VA. CODE ANN.** § 5-11-3(j) (West 2007) (defining “place of public accommodations” to include “any establishment or person, . . . which offers its services, goods, facilities or accommodations to the general public”);
- **WYO. STAT. ANN.** § 6-9-101(a) (West 2007) (defining “public accommodations and facilities” for purposes of Wyoming criminal law to include “all accommodations, advantages, facilities and privileges of all places or agencies which are public in nature, or which invite the patronage of the public” and ensuring access “without any distinction, discrimination or restriction on account of race, religion, color, sex or national origin”).

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