

JOURNAL OF THE ASSEMBLY (April 1, 1974)

STATE OF WISCONSIN

# Assembly Journal

Eighty-First Regular Session

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MONDAY, April 1, 1974.

The chief clerk makes the following entries under the above date:

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## COMMUNICATIONS

The State of Wisconsin  
Department of Justice  
Madison 53702

April 1, 1974

The Honorable, The Assembly  
State Capitol  
Madison, Wisconsin 53702

Dear Representatives:

Resolution 32, 1973 session, although divided into five questions, can be summarized as inquiring whether the constitutional rights of the physically disabled are denied by the failure of the state to require buildings, both public and private as defined in sec. 101.01 (2) (a) and (h), Stats., to be so constructed and maintained as to be accessible to those whose mobility is limited because of such physical disability. The Resolution directs my attention to the federal and state constitutional rights of "reasonable access" to such premises, to the "equal protection of the laws" in respect to equal employment opportunities or otherwise, to "access to the seats of government," and to "travel and freedom of movement." In addition, the Resolution inquires whether the state, other units of government, and the owners of other buildings have "an affirmative duty" to provide such disabled persons "with equal access to such buildings."

## JOURNAL OF THE ASSEMBLY (April 1, 1974)

### I. THE CONSTITUTIONAL RIGHTS INVOLVED

The First Amendment to the United States Constitution provides:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The Fourteenth Amendment to the United States Constitution, Section 1, provides:

“\*\*\* No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Article I, Section 1 of the Wisconsin Constitution, provides:

“All men are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.”

Article I, Section 3 of the Wisconsin Constitution, provides:

“Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press. \*\*\*”

Article I, Section 4 of the Wisconsin Constitution, provides:

“The right of the people peaceably to assembly, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.”

The First Amendment to the United States Constitution applies to the states through the operation of the Fourteenth Amendment. See Redrup v. New York (1967), 386 U.S. 767, 87 S.Ct. 1414, 18 L.Ed. 2d 515.

## JOURNAL OF THE ASSEMBLY (April 1, 1974)

The right of "access" derives from the First Amendment. See Cruz v. Beto (1972), 405 U.S. 319, 321, 92 S.Ct. 1079, 31 L.Ed. 2d 263. The right of "access" is usually identified with the right to be heard. See United Transportation Union v. State Bar of Michigan (1971), 401 U.S. 576, 585, 91 S. Ct. 1076, 28 L.Ed. 2d 399; Johnson v. Avery (1969), 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed. 2d 718. The supreme court has, however, spoken of "access" in the sense of physical access to a public place. Grayned v. City of Rockford (1972), ————U.S.———, 92 S.Ct. 2294, 2304, 35 L.Ed. 2d 222. Such physical access to a public place for the purpose of exercising First Amendment rights cannot be broadly denied. Grayned, supra, 92S.Ct. at 2304.

There is no constitutional right of access to private property, except where a private entity assumes the functions of a government, as in the case of the modern shopping center complex, Food Employees v. Logan Valley Plaza (1972), 391 U.S. 308, 319, 88 S.Ct. 1601, 20 L.Ed. 2d 603, and the company-owned town, Marsh v. Alabama (1946), 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265.

Thus, there is a First Amendment right to access to public properties, including seats of governments, but not to private properties with certain limited exceptions.

### II. THE NATURE OF PROHIBITED STATE ACTION

The Fourteenth Amendment denies to states the power to "abridge" privileges and immunities, to "deprive" any person of life, liberty or property, and to "deny" any person the equal protection of the laws. These key words--"abridge," "deprive," and "deny"--are collectively defined as prohibited "state action."

At the outset it should be noted that the Fourteenth Amendment does not ban private discrimination however wrongful the conduct may be. Shelley v. Kraemer (1948), 334 U.S. 1, 13, 68 S.Ct. 836, 92 L.Ed. 1161. Private action is transformed into state action where state involvement is so significant that it commands the result. Adickes v. S. H. Kress and Company (1970), 398 U.S. 144, 170, 90 S.Ct 1598, 26 L.Ed. 2d 142. Such a command occurs "by imposing sanctions or withholding benefits." Adickes, supra, 398 U.S. at 168.

Thus, private action is transformed into prohibited state action only where the state involvement commands the result or is of similar significance. In order for state activity in this area to be

## JOURNAL OF THE ASSEMBLY (April 1, 1974)

considered prohibited, existing legal precedent concludes that the connection must be proximate, not remote.

The Wisconsin Supreme Court has held that state action consists in affirmative conduct requiring or permitting that impairment. See Ford v. Wisconsin Real Estate Examining Bd. (1970), 48 Wis. 2d 91, 110-111, 179 N.W. 2d 786.

Thus, state action must affirmatively impair or discriminate albeit in a permissive manner. See also Vanden Broek (Town of) v. Reitz (1971), 53 Wis. 2d 87, 58, 98, 191 N.W. 2d 913.

This concept may be expressed as a requirement of a proximate cause-effect relationship between the state action and the adverse impairment of discrimination.

### III. APPLICATION TO RESOLUTION 32 OF THE CONSTITUTIONAL RIGHTS INVOLVED AND THE NATURE OF PROHIBITED STATE ACTION

The general principle involved is that the prohibited state action must bear a proximate cause or relationship with the particular activity or rights in question. This relationship has been expressed as "significant" or "affirmative" and, though it need not be direct, it must be other than remote.

Existing legal precedent would conclude that the condition of a physical disability which impedes the exercise of constitutional rights does not get its impetus from the state. This fact means that the requisite state action must be shown to be affirmative in the sense that it enforces, encourages or fosters the impairment or discrimination.

In the absence of a total denial of protected freedoms, in order for state action to be considered prohibited state action, the state action must be affirmative action that actually encourages or fosters the impairment of said protected freedoms.

The enactments and requirements envisioned by Resolution 32 are obviously desirable, if not absolutely essential. However, under the present case law, they are not constitutionally mandated.

While these essential ingredients are not constitutionally mandated under the present case law, it is far more important to recognize that they are not constitutionally prohibited. The Wisconsin Legislature has already taken certain steps to aid the physically handicapped by empowering the Department of Industry, Labor and Human Relations with the authority to provide

## JOURNAL OF THE ASSEMBLY (April 1, 1974)

by rule minimum requirements to facilitate the use of public buildings by physically handicapped persons where such traffic might reasonably be expected by such persons. The Legislature now also requires a provision for reasonable ingress and egress by the physically handicapped to newly constructed public buildings (sec. 101.13, Stats.), and to require curb ramps at newly constructed city and village crosswalks (sec. 66.616, Stats.).

I believe that the Legislature has a fundamental duty to seriously consider exercising its discretion in this area and remove the various barriers that presently confront our handicapped citizens on a daily basis in existing public buildings and facilities throughout the state of Wisconsin.

There are today certain restrictions and burdens imposed upon physically disabled who, but for architectural barriers in public buildings and government buildings, could effectively pursue an occupation or profession. We should not, in light of our alleged modern-day social standards and awareness, allow the construction or maintenance of public buildings which are inaccessible to handicapped citizens. Government is and should be the social entity to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy means and goals.

While we have no direct authority from any recognized appellate court of last resort in this particular area, a recent enlightened decision of the United States District Court for the District of Columbia held that handicapped children constitute a class entitled to equal protection under the due process and equal protection clauses of the United States Constitution. Mills v. Board of Education, 348 F. Supp. 866 (DDC, 1972). In Mills, the court held that, so long as the District of Columbia had undertaken to provide a system of publicly supported education for the children of the District, it must be made available to all children in equal terms. In extending and further applying this concept, a fortiori, the government's conduct of denying handicapped citizens as a class not just equal access to public buildings, but in most instances no appreciable access at all, while providing such access to other citizens, could be construed or interpreted as violative of the due process clause of the United States Constitution. Other lower courts have also suggested their support for this proposition, though not reaching the specific merits of any particular fact situation appreciably analogous to the content of Resolution 32.

## JOURNAL OF THE ASSEMBLY (April 1, 1974)

While present legal precedent compels me to conclude that the Constitution does not demand such remedial measures, I am of the opinion that the Legislature has an affirmative duty to ensure equal access to public buildings, seats of government and other government buildings to all constituted classes of citizens, including the physically handicapped.

Sincerely Yours,  
ROBERT W. WARREN  
Attorney General

### CAPTION:

While neither the United States Constitution nor the Wisconsin Constitution compels states to require that public buildings and seats of government be constructed and maintained as to be accessible to the physically handicapped, the Legislature has an affirmative duty to address this problem and assure equal access to all constituted classes of citizens, including the physically handicapped.

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### REPORT OF SPECIAL COMMITTEE

Wisconsin Legislature  
Assembly Chamber  
Madison 53702

March 27, 1974

Norman C. Anderson, Speaker  
211 West  
State Capitol

Dear Mr. Speaker:

I am happy to transmit to you and the members of the Assembly the Report of the Special Committee on Telephone and Electric Rate Disparities.

The Report is lengthy due to the voluminous amount of verbal and written testimony received at four public hearings and also garnered from numerous public documents supplied to the Committee by the Public Service Commission.

On behalf of the Committee, I wish to express appreciation to the Public Service Commission, its staff, and representatives of the electric and telephone utilities which collectively were most helpful

## JOURNAL OF THE ASSEMBLY (April 1, 1974)

and cooperative in carrying out our charge from the Assembly under Resolution 14.

Also, our staff consisting of Roth Judd as Administrative Assistant and Georgia Schneider, Clerical Secretary, must be commended. Mr. Judd brought broad knowledge of the utility industry to the task at hand and was very instrumental in having the Committee function in an expeditious and objective manner. I am personally grateful to his dedication beyond the normal demands expected of staff personnel.

Separately, I am sending a personal note to you on some observations I have as a chairman of a specially-created committee of the Assembly such as ours.

Your confidence in my abilities by appointing me as acting chairman after the incapacitation of the chairman is also appreciated. I found it a rewarding experience in an intricate part of the legislative process.

Sincerely yours,  
GARY J. BARCZAK,  
State Representative

Both the majority and minority reports of the Special Committee on Telephone and Electric Rate Disparities have been received and placed on file in the office of the chief clerk.

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### COMMITTEE REPORTS

The committee on Enrolled Bills reports and recommends:

**Assembly Bill 533**

**Assembly Bill 573**

**Assembly Bill 837**

Correctly enrolled.

GERVASE A. HEPHNER,  
Chairman

The committee on Judiciary reports and recommends:

**Assembly Bill 497**

Relating to causing building regulation violations to be recorded as an encumbrance upon affected property.

Indefinite postponement:

**JOURNAL OF THE ASSEMBLY (April 1, 1974)**

**Ayes: (6) Noes: (5)**

**Assembly Bill 1510**

Providing for the election of a district attorney in Menominee county.

**Passage: Ayes: (7) Noes: (4)**

**LLOYD A. BARBEE,**  
Chairman

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**MESSAGE FROM THE SENATE**

By William P. Nugent, chief clerk.

**Mr. Speaker:**

I am directed to inform you that the senate has concurred in:

**Motions under Joint Rule 26,**

**A Joint Certificate of Congratulations and Commendation by Representatives Barbee, McEssy, Looby, O'Malley, Donoghue, Keegan and Day; co-sponsored by Senator Devitt for Eamonn Keane on the presentation of the Joseph McGee Memorial Lecture;**

**A Joint Certificate of Commendation by Representatives Cyrak and Luckhardt; co-sponsored by Senators Bidwell and Hollander for Mayor Alvin J. Beers on his retirement;**

**A Joint Certificate of Congratulations by Representative Thompson; co-sponsored by Senator Bidwell for Dennis Schultz on his representation of Wisconsin at a national convention;**

**A Joint Certificate of Commendation by Representative Cyrak; co-sponsored by Senator Bidwell for Henry Derleth on his retirement;**

**A Joint Certificate of Congratulations by Representatives Ellis and Bradley; co-sponsored by Senator Steinhilber for Lakeview School Troopers, Neenah, Wisconsin on receiving the Wisconsin Wildlife Federation State Award for Conservation;**

**A Joint Certificate of Congratulations by Representatives Barbee and Sanasarian; co-sponsored by Senators Parys and Swan for The Milwaukee Lincoln Basketball Team and their participation in the Championship Finals.**



**JOURNAL OF THE ASSEMBLY (April 1, 1974)**

**A Joint Certificate of Commendation by Representatives Giese and Oberle; co-sponsored by Senator Bidwell for Stan Hinkley (1973-74 Captain) on his outstanding UW Hockey Career;**

**A Joint Certificate of Commendation by Representative Giese; co-sponsored by Senator Bidwell for Gary Winchester on his outstanding hockey career;**

**A Joint Certificate of Commendation by Representative Giese; co-sponsored by Senator Bidwell for Billy Reay, Jr. on his outstanding hockey career;**

**A Joint Certificate of Commendation by Representative Giese; co-sponsored by Senator Bidwell for David "Smokey" Arundel on his outstanding UW hockey career;**

**A Joint Certificate of Commendation by Representative Giese; co-sponsored by Senator Bidwell for the 1973-74 University of Wisconsin Hockey team on their outstanding 1973-74 record;**

**A Joint Certificate of Congratulations by Representative Duren; co-sponsored by Senator Roseleip for the UW Richland Center Basketball Team on its fine performance at the NJCAA Regional 13 finals;**

**A Joint Certificate of Congratulations by Representative Duren; co-sponsored by Senator Roseleip for Rich Lawinger on winning the 1974 NCAA 142-pound Class Wrestling Championship;**

**A Joint Certificate of Commendation by Representative Earl; co-sponsored by Senator Risser for Stephen Holmgren for his service as liason between the Governor and the Legislature;**

**A Joint Certificate of Commendation by Representative Ducholm; co-sponsored by Senator Knowles for Trade Lake Town Mutual Fire Insurance Company on its 100 anniversary;**

**A Joint Certificate of Congratulations by Representative Murray; co-sponsored by Senator Theno for Messr. Al Gagne and Thomas Wright on being members of the 1965 World Champion Curling Rink;**

**A Joint Certificate of Commendation by Representative Everson; co-sponsored by Senator McKenna for Dr. Gerald J. Derus on his retirement as President of the State Medical Society of Wisconsin.**

**Adopted and asks concurrence in:**

## JOURNAL OF THE ASSEMBLY (April 1, 1974)

### Motions under Joint Rule 26,

A Joint Certificate of Congratulations by Senator Hollander, co-sponsored by Representative McEssy for Rosendale Mutual Insurance Company on the occasion of their 100th anniversary;

A Joint Certificate of Congratulations by Senator Hollander, co-sponsored by Representative Lewis for Waupun Ripon Mutual Insurance Company on the occasion of their 100th anniversary; and

A Joint Certificate of Congratulations by Senator Hollander, co-sponsored by Representative Lewis for Ashford Mutual Fire Insurance Company on their 100th anniversary.

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### MESSAGE FROM THE SENATE

By William P. Nugent, chief clerk.

Mr. Speaker:

I am directed to inform you that the senate has amended and concurred in as amended:

**Assembly Bill 730, (senate substitute amendment 1 adopted)**

Concurred in:

**Assembly Bill 89,  
Assembly Bill 109,  
Assembly Bill 213,  
Assembly Bill 241,  
Assembly Bill 247,  
Assembly Bill 275,  
Assembly Bill 391,  
Assembly Bill 402,  
Assembly Bill 408,  
Assembly Bill 443,  
Assembly Bill 493,  
Assembly Bill 500,  
Assembly Bill 509,  
Assembly Bill 511,  
Assembly Bill 541,  
Assembly Bill 547,  
Assembly Bill 565,  
Assembly Bill 601,  
Assembly Bill 602,  
Assembly Bill 613,  
Assembly Bill 632,**

JOURNAL OF THE ASSEMBLY (April 1, 1974)

**Assembly Bill 646,  
Assembly Bill 740,  
Assembly Bill 754,  
Assembly Bill 796,  
Assembly Bill 809,  
Assembly Bill 836,  
Assembly Bill 865,  
Assembly Bill 890,  
Assembly Bill 925,  
Assembly Bill 954,  
Assembly Bill 962,  
Assembly Bill 987,  
Assembly Bill 1026,  
Assembly Bill 1027,  
Assembly Bill 1028,  
Assembly Bill 1042,  
Assembly Bill 1046,  
Assembly Bill 1076,  
Assembly Bill 1079,  
Assembly Bill 1116,  
Assembly Bill 1189,  
Assembly Bill 1210,  
Assembly Bill 1224,  
Assembly Bill 1237,  
Assembly Bill 1241,  
Assembly Bill 1242,  
Assembly Bill 1268,  
Assembly Bill 1275,  
Assembly Bill 1278,  
Assembly Bill 1300,  
Assembly Bill 1308,  
Assembly Bill 1351,  
Assembly Bill 1352,  
Assembly Bill 1354,  
Assembly Bill 1362,  
Assembly Bill 1387,  
Assembly Bill 1408,  
Assembly Bill 1478,  
Assembly Bill 1511,  
Assembly Bill 1514,  
Assembly Bill 1541,  
Assembly Bill 1542,  
Assembly Bill 1543,  
Assembly Bill 1544,**

JOURNAL OF THE ASSEMBLY (April 1, 1974)

**Assembly Bill 1547,**  
**Assembly Bill 1560,**  
**Assembly Bill 1567,**  
**Assembly Joint Resolution 58,**  
**Assembly Joint Resolution 113,**  
**Assembly Joint Resolution 120,**  
**Assembly Joint Resolution 131,**  
**Assembly Joint Resolution 133,**  
**Assembly Joint Resolution 145,**

Nonconcurring in:

**Assembly Bill 245 and**  
**Assembly Joint Resolution 87.**

Refused to concur in:

**Assembly Bill 23 and**  
**Assembly Bill 73.**

Concurring in:

**Assembly amendment 1 to Senate Joint Resolution 55,**  
**Assembly amendments 2, 3, 4, 5, 6, 7 and 8 to Senate Bill 16,**  
**Assembly amendments 2, 4, and 5 to Senate Bill 98,**  
**Assembly substitute amendment 1 to Senate Bill 411,**  
**Assembly amendments 1, 3, 4 and 5 to Senate Bill 462,**  
**Assembly amendment 3 to Senate Bill 544,**  
**Assembly amendments 1, 2 and 3 to Senate Bill 639,**  
**Assembly amendment 1 to Senate Bill 670 and**  
**Assembly substitute amendment 1 to Senate Bill 713.**

Passed and asks concurrence in:

**Senate Bill 46,**  
**Senate Bill 157,**  
**Senate Bill 433,**  
**Senate Bill 472,**  
**Senate Bill 509,**  
**Senate Bill 511,**  
**Senate Bill 551,**  
**Senate Bill 600,**  
**Senate Bill 614,**  
**Senate Bill 616,**  
**Senate Bill 619,**  
**Senate Bill 621,**  
**Senate Bill 623,**

JOURNAL OF THE ASSEMBLY (April 1, 1974)

**Senate Bill 626,**  
**Senate Bill 663,**  
**Senate Bill 687,**  
**Senate Bill 692,**  
**Senate Bill 698,**  
**Senate Bill 736,**  
**Senate Bill 744,**  
**Senate Bill 777,**  
**Senate Bill 790,**  
**Senate Bill 792,**  
**Senate Bill 798,**  
**Senate Bill 846, and**  
**Senate Bill 863.**

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LEGISLATIVE REFERENCE BUREAU CORRECTIONS

Assembly substitute amendment 1 to **Assembly Bill 1387**

On page 29, line 3, after the comma insert "this act shall take effect on".