



Maine Human Rights Commission Program Evaluation Report

*State Government Evaluation Act
Second Regular Session of the 130th Maine Legislature*



Amy Sneirson
Executive Director

Maine Human Rights Commission

51 State House Station - Augusta, ME 04333

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November 1, 2021

Senator Anne Carney, Chair
Representative Thom Harnett, Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta ME 04333

RE: Government Evaluation Act Program Review: Maine Human Rights Commission

Dear Senator Carney, Representative Harnett, and members of the Joint Standing Committee on Judiciary:

The Maine Human Rights Commission is pleased to submit its program evaluation report, pursuant to your letter to the Commission of April 30, 2021.

For convenience, we have followed the numbering system of requested items contained in the Program Evaluation report section of the Government Evaluation Act.

We look forward to meeting with you during the Second Regular Session and responding to any questions you may have regarding the Commission.

Sincerely,

A handwritten signature in black ink that reads "Amy M. Sneirson".

Amy Sneirson
Executive Director

cc: Commissioners
Enc.

INDEX

A. ENABLING OR AUTHORIZING LAW	4
B. PROGRAM DESCRIPTION	66
C. ORGANIZATIONAL STRUCTURE	70
D. [Deleted]	
E. FINANCIAL SUMMARY	72
F. [Deleted]	
G. COORDINATION WITH FEDERAL & STATE AGENCIES TO ACHIEVE OBJECTIVES AND AVOID DUPLICATION OF EFFORT	76
H. IDENTIFICATION OF CONSTITUENCIES SERVED	78
I. USE OF ALTERNATIVE DELIVERY SYSTEMS	81
J. IDENTIFICATION OF EMERGING ISSUES	84
K. SPECIFIC INFORMATION REQUESTED BY THE JOINT STANDING COMMITTEE ON JUDICIARY	87
L. COMPARISON OF ENABLING OR AUTHORIZING LAW OR OTHER RELEVANT MANDATE, INCLUDING ANY FEDERAL MANDATES	89
M. AGENCY POLICIES REGARDING INFORMATION	93
N. REPORTS, APPLICATIONS AND OTHER PAPERWORK REQUIRED TO BE FILED WITH AGENCY	100
O. REPORTS LEGISLATURE REQUIRES AGENCY TO PREPARE/SUBMIT	102
P. LIST OF ORGANIZED UNITS/PROGRAMS WITHIN AGENCY	104
Q. PROVISIONS IN ENABLING/AUTHORIZING STATUTES THAT MAY REQUIRE LEGISLATIVE REVIEW TO DETERMINE THE NECESSITY OF AMENDMENT	N/A

EXHIBITS ATTACHED:

Exh. A: LD 1688,"An Act To Improve Consistency in Terminology and within the Maine Human Rights Act"	107
Exh. B: LD 1294, "An Act To Prevent Discrimination against Domestic Violence Victims"	120
Exh. C: 2020 Annual Report	126
Exh. D: REPORT: Governor's Panel to Review and Make Recommendations for Improvement of the Maine Human Rights Commission and Its Operations	136
Exh. E: U.S. Equal Employment Opportunity Commission Agreement 2021	166
Exh. F: U.S. Dept. of Housing and Urban Development Agreement 2021	196
Exh. G: U.S. Department of Justice Disability Section	229
Exh. H: U.S. Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices	231

MHRC Program Evaluation Report

PART A

Enabling Law

Enabling or Authorizing Law

The Maine Human Rights Act (“MHRA”) was amended during the First Special Session of the 130th Maine Legislature as a result of two separate bills, both of which passed into law and became effective on October 18, 2021. As the amended MHRA has not yet been released by the Revisor of Statutes, the bills’ language are provided here for reference.

- LD 1688, "An Act To Improve Consistency within the Maine Human Rights Act", is attached as Exhibit A.

- LD 1294, "An Act To Prevent Discrimination against Domestic Violence Victims", is attached as Exhibit B.

CHAPTER 337
HUMAN RIGHTS ACT
SUBCHAPTER 1
GENERAL PROVISIONS

§4551. Title

This Act may be known and cited as the Maine Human Rights Act. [PL 1971, c. 501, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW).

§4552. Policy

To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing or access to public accommodations on account of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin; and in employment, discrimination on account of age or because of the previous assertion of a claim or right under former Title 39 or Title 39-A and in housing because of familial status; and to prevent discrimination in the extension of credit on account of age, race, color, sex, sexual orientation, marital status, religion, ancestry or national origin; and to prevent discrimination in education on account of sex, sexual orientation or physical or mental disability. [PL 2005, c. 10, §1 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §1 (AMD). PL 1973, c. 705, §1 (AMD). PL 1975, c. 355, §1 (AMD). PL 1975, c. 358, §1 (AMD). PL 1975, c. 770, §28 (RPR). PL 1987, c. 478, §1 (AMD). PL 1989, c. 245, §1 (AMD). PL 1991, c. 99, §1 (AMD). PL 1993, c. 327, §1 (AMD). PL 2005, c. 10, §1 (AMD).

§4553. Definitions

As used in this Act, unless the context or subchapter otherwise indicates, the following words have the following meanings. [PL 1995, c. 393, §1 (AMD).]

1. Commission. "Commission" means the Maine Human Rights Commission established by this Act.
[PL 1971, c. 501, §1 (NEW).]

1-A. Commercial facilities. "Commercial facilities" means facilities that are intended for nonresidential use.
[PL 1995, c. 393, §2 (NEW).]

1-B. Covered entity. For purposes of subchapter 3, "covered entity" means an employer, employment agency, labor organization or joint labor-management committee. For purposes of subchapter 5, "covered entity" means any applicable private entity or public entity.
[PL 2019, c. 464, §1 (AMD).]

1-C. Direct threat. For purposes of subchapter 3, "direct threat" means a significant risk to the health or safety of others that can not be eliminated by reasonable accommodation.

[PL 2019, c. 464, §1 (AMD).]

1-D. Aggrieved person. "Aggrieved person" includes any person who claims to have been subject to unlawful discrimination on the basis of protected class status, including discrimination based on the person's known relationship or association with a member of a protected class and discrimination on the basis of perceived protected class status. "Aggrieved person" also includes any person who claims to have been injured by unlawful housing discrimination.

[PL 2019, c. 464, §1 (AMD).]

1-E. Complainant. "Complainant" means a person who files a complaint under section 4611.

[PL 2019, c. 464, §1 (AMD).]

1-F. Conciliation. "Conciliation" means the attempted resolution after a finding by the commission that unlawful discrimination has occurred of issues raised by a complaint filed under section 4611 or by an investigation of such a complaint through informal negotiations involving the complainant, the respondent and the commission.

[PL 2019, c. 464, §1 (AMD).]

1-G. Conciliation agreement. "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

[PL 2011, c. 613, §4 (NEW); PL 2011, c. 613, §29 (AFF).]

1-H. Assistance animal. "Assistance animal" means, for the purposes of subchapter 4:

A. An animal that has been determined necessary for an individual with a physical or mental disability to mitigate the effects of a physical or mental disability by a physician, psychologist, physician assistant, nurse practitioner, licensed social worker, licensed professional counselor or other licensed health professional with knowledge of the disability-related need for an assistance animal; or [PL 2019, c. 464, §1 (AMD).]

B. An animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or retrieving dropped items. [PL 2015, c. 457, §1 (NEW).]

[PL 2019, c. 464, §1 (AMD).]

2. Discriminate. "Discriminate" includes, without limitation, segregate, separate or subject to harassment.

For purposes of subchapter 3, "discriminate" also includes:

A. Limiting, segregating or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the protected class of the applicant or employee; [PL 2019, c. 464, §1 (AMD).]

B. Participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee to the discrimination prohibited by this Act. A relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity or an organization providing training and apprenticeship programs; [PL 2019, c. 464, §1 (AMD).]

C. Utilizing standards, criteria or methods of administration:

- (1) That have the effect of discrimination on the basis of protected class status; or
- (2) That perpetuate discrimination on the basis of protected class status by others who are subject to common administrative control; [PL 2019, c. 464, §1 (AMD).]

D. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known protected class status of an individual with whom the qualified individual is known to have a relationship or association; [PL 2019, c. 464, §1 (AMD).]

E. Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity; [PL 1995, c. 393, §3 (NEW).]

F. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant; [PL 1995, c. 393, §3 (NEW).]

G. Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual or a class of individuals based on their protected class status unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and [PL 2019, c. 464, §1 (AMD).]

H. Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or any other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant, except when the skills are the factors that the test purports to measure. [PL 1995, c. 393, §3 (NEW).]

[PL 2019, c. 464, §1 (AMD).]

2-A. Educational institution. "Educational institution" means any public school or educational program, any public post-secondary institution, any private school or educational program approved for tuition purposes if both male and female students are admitted and the governing body of each such school or program. For purposes related to disability-related discrimination, "educational institution" also means any private school or educational program approved for tuition purposes. [PL 1995, c. 393, §4 (AMD).]

3. Employee. "Employee" means an individual employed by an employer. "Employee" does not include any individual employed by that individual's parents, spouse or child, except for purposes of disability-related discrimination, in which case the individual is considered to be an employee. [PL 1995, c. 393, §5 (AMD).]

4. Employer. "Employer" includes any person in this State employing any number of employees, whatever the place of employment of the employees, and any person outside this State employing any number of employees whose usual place of employment is in this State; any person acting in the interest of any employer, directly or indirectly, such that the person's actions are considered the actions of the employer for purposes of liability; and labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees. "Employer" does not include a religious or fraternal corporation or association, not organized for private profit and in fact not conducted for private profit, with respect to employment of its members of the same religion, sect or fraternity, except for purposes of disability-related discrimination, in which case the corporation or association is considered to be an employer. [PL 2019, c. 464, §1 (AMD).]

5. Employment agency. "Employment agency" includes any person undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees; it includes, without limitation, placement services, training schools and centers, and labor organizations, to the extent that they act as employee referral sources; and it includes any agent of such person acting

in the interest of the person such that the agent's actions are considered the actions of the employment agency for purposes of liability.

[PL 2019, c. 464, §1 (AMD).]

5-A. Familial status. "Familial status" means that a family unit may contain one or more individuals who have not attained 18 years of age and are living with:

A. A parent or another person having legal custody of the individual or individuals; or [PL 1989, c. 245, §2 (NEW).]

B. The designee of the parent or other person having custody, with the written permission of the parent or other person. [PL 1989, c. 245, §2 (NEW).]

The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or who is in the process of securing legal custody of any individual who has not attained 18 years of age.

[PL 2019, c. 464, §1 (AMD).]

5-B. Family. "Family" includes, but is not limited to, a single individual.

[PL 2011, c. 613, §5 (NEW); PL 2011, c. 613, §29 (AFF).]

5-C. Gender identity. "Gender identity" means the gender-related identity, appearance, mannerisms or other gender-related characteristics of an individual, regardless of the individual's assigned sex at birth.

[PL 2019, c. 464, §1 (NEW).]

6. Housing accommodation. "Housing accommodation" includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, that is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes.

A. [PL 2011, c. 613, §6 (RP); PL 2011, c. 613, §29 (AFF).]

B. [PL 2011, c. 613, §6 (RP); PL 2011, c. 613, §29 (AFF).]

C. [PL 2011, c. 613, §6 (RP); PL 2011, c. 613, §29 (AFF).]

[PL 2011, c. 613, §6 (AMD); PL 2011, c. 613, §29 (AFF).]

6-A. Normal retirement age. "Normal retirement age" means the specified age, the years of service requirement or any age and years of service combination at which a member may become eligible for retirement benefits. This subsection may not be construed to require the mandatory retirement of a member or to deny employment to any person based solely on that person's normal retirement age.

[PL 2005, c. 10, §2 (AMD).]

7. Person. "Person" includes one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, labor organizations, mutual companies, joint-stock companies and unincorporated organizations and includes the State and all agencies thereof.

[PL 2011, c. 613, §7 (AMD); PL 2011, c. 613, §29 (AFF).]

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

[PL 2007, c. 385, §1 (RPR).]

7-B. Person with physical or mental disability.

[PL 2007, c. 385, §2 (RP).]

8. Place of public accommodation. "Place of public accommodation" means a facility, operated by a public entity or private entity, whose operations fall within at least one of the following categories:

- A. An inn, hotel, motel or other place of lodging, whether conducted for the entertainment or accommodation of transient guests or those seeking health, recreation or rest; [PL 1995, c. 393, §7 (NEW).]
- B. A restaurant, eating house, bar, tavern, buffet, saloon, soda fountain, ice cream parlor or other establishment serving or selling food or drink; [PL 1995, c. 393, §7 (NEW).]
- C. A motion picture house, theater, concert hall, stadium, roof garden, airdrome or other place of exhibition or entertainment; [PL 1995, c. 393, §7 (NEW).]
- D. An auditorium, convention center, lecture hall or other place of public gathering; [PL 1995, c. 393, §7 (NEW).]
- E. A bakery, grocery store, clothing store, hardware store, shopping center, garage, gasoline station or other sales or rental establishment; [PL 1995, c. 393, §7 (NEW).]
- F. A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, dispensary, clinic, bathhouse or other service establishment; [PL 1995, c. 393, §7 (NEW).]
- G. All public conveyances operated on land or water or in the air as well as a terminal, depot or other station used for specified public transportation; [PL 1995, c. 393, §7 (NEW).]
- H. A museum, library, gallery or other place of public display or collection; [PL 1995, c. 393, §7 (NEW).]
- I. A park, zoo, amusement park, race course, skating rink, fair, bowling alley, golf course, golf club, country club, gymnasium, health spa, shooting gallery, billiard or pool parlor, swimming pool, seashore accommodation or boardwalk or other place of recreation, exercise or health; [PL 1995, c. 393, §7 (NEW).]
- J. A nursery, elementary, secondary, undergraduate or postgraduate school or other place of education; [PL 1995, c. 393, §7 (NEW).]
- K. A day care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment; [PL 2019, c. 464, §1 (AMD).]
- L. Public elevators of buildings occupied by 2 or more tenants or by the owner and one or more tenants; [PL 1995, c. 393, §7 (NEW).]
- M. A municipal building, courthouse, town hall or other establishment of the State or a local government; and [PL 1995, c. 393, §7 (NEW).]
- N. Any establishment that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public. [PL 1995, c. 393, §7 (NEW).]

When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subchapter, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for the residential purposes is covered by this subchapter. The covered portion of the residence extends to those elements used to enter the place of public accommodation, and those exterior and interior portions of the residence available to or used by customers or clients, including rest rooms.

[PL 2019, c. 464, §1 (AMD).]

8-A. Private entity. "Private entity" means any entity other than a public entity.
[PL 1995, c. 393, §8 (NEW).]

8-B. Public accommodation. "Public accommodation" means a public entity or private entity that owns, leases, leases to or operates a place of public accommodation.

[PL 2019, c. 464, §1 (AMD).]

8-C. Public entity. "Public entity" means:

A. The State or any local government; [PL 1995, c. 393, §8 (NEW).]

B. Any department, agency, special purpose district or other instrumentality of the State, 2 or more states or a local government; and [PL 1995, c. 393, §8 (NEW).]

C. A state, local or private commuter authority as defined in the federal Rail Passenger Service Act. [PL 2019, c. 464, §1 (AMD).]

[PL 2019, c. 464, §1 (AMD).]

8-D. Qualified individual with a disability. "Qualified individual with a disability" applies to only:

A. Subchapter 3 (employment); and [PL 2019, c. 464, §1 (AMD).]

B. Subchapter 5 (public accommodations) with regard to public entities only. [PL 2019, c. 464, §1 (AMD).]

For purposes of subchapter 3, "qualified individual with a disability" means an individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires.

For purposes of subchapter 5, "qualified individual with a disability" means an individual with a disability who, with or without reasonable modification to rules, policies or practices, the removal of architectural, communication or transportation barriers or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

[PL 2019, c. 464, §1 (AMD).]

8-E. Pregnancy-related condition. "Pregnancy-related condition" means a known limitation of an employee's ability to perform the functions of a job due to pregnancy, childbirth or related medical conditions, including but not limited to lactation.

[PL 2019, c. 490, §1 (NEW).]

REVISOR'S NOTE: (Subsection 8-E as enacted by PL 2019, c. 464, §1 is REALLOCATED TO TITLE 5, SECTION 4553, SUBSECTION 8-F)

8-F. (REALLOCATED FROM T. 5, §4553, sub-§8-E) Protected class. "Protected class" means a class of individuals protected from unlawful discrimination under this Act.

[PL 2019, c. 464, §1 (NEW); RR 2019, c. 1, Pt. A, §5 (RAL).]

9. Real estate broker and sales agent. "Real estate broker" and "real estate sales agent" have the same meanings as in Title 32, sections 13198 and 13200 respectively; but include all persons meeting those definitions, whether they are licensed or required to be licensed.

[PL 2019, c. 464, §1 (AMD).]

9-A. Reasonable accommodation. For purposes of subchapter 3, "reasonable accommodation" may include, but is not limited to:

A. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and [PL 1995, c. 393, §8 (NEW).]

B. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, leaves of absence, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or

interpreters and other similar accommodations for individuals with disabilities. [PL 2019, c. 464, §1 (AMD).]

[PL 2019, c. 464, §1 (AMD).]

9-B. Undue hardship; undue burden. "Undue hardship" or "undue burden" means an action requiring undue financial or administrative hardship. In determining whether an action would result in an undue hardship, factors to be considered include:

A. The nature and cost of the accommodation needed under this Act; [PL 1995, c. 393, §8 (NEW).]

B. The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or the impact otherwise of the action upon the operation of the facility; [PL 1995, c. 393, §8 (NEW).]

C. The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees and the number, type and location of its facilities; [PL 1995, c. 393, §8 (NEW).]

D. The type of operation or operations of the covered entity, including the composition, structure and functions of the work force of the entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity; [PL 1995, c. 393, §8 (NEW).]

E. All the resources available to meet the costs of the accommodation, including any government funding or other grants available for making public accommodations and places of employment accessible; [PL 1995, c. 393, §8 (NEW).]

F. The extent to which current costs of accommodations have been minimized by past efforts to provide equal access to persons with disabilities; [PL 1995, c. 393, §8 (NEW).]

G. The extent to which resources spent on improving inaccessible equipment or service could have been spent on making an accommodation so that service or equipment is accessible to individuals with disabilities, as well as to individuals without disabilities; [PL 1995, c. 393, §8 (NEW).]

H. Documented good faith efforts to explore less restrictive or less expensive alternatives; [PL 1995, c. 393, §8 (NEW).]

I. The availability of equipment and technology for the accommodation; [PL 1995, c. 393, §8 (NEW).]

J. Whether an accommodation would result in a fundamental change in the nature of the public accommodation; [PL 1995, c. 393, §8 (NEW).]

K. Efforts to minimize costs by spreading costs over time; and [PL 1995, c. 393, §8 (NEW).]

L. The extent to which resources saved by failing to make an accommodation for persons who have disabilities could have been saved by cutting costs in equipment or services for the general public. [PL 1995, c. 393, §8 (NEW).]

"Undue hardship" or "undue burden" is a higher standard than "readily achievable" and requires a greater level of effort on the part of the public accommodation.

[PL 2019, c. 464, §1 (AMD).]

9-C. Sexual orientation. "Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.

[PL 2005, c. 10, §3 (NEW).]

9-D. Service animal.

[PL 2011, c. 369, §1 (RP).]

9-E. Service animal. "Service animal" means:

A. [PL 2015, c. 457, §2 (RP).]

B. For the purposes of subchapter 5, a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of such work or tasks include, but are not limited to, assisting an individual who is totally or partially blind with navigation and other tasks, alerting an individual who is deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting an individual to the presence of allergens, retrieving items such as medicine or a telephone, providing physical support and assistance with balance and stability to an individual with a mobility disability and helping a person with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort or companionship do not constitute work or tasks for the purposes of this definition. [PL 2011, c. 369, §2 (NEW).]

[PL 2015, c. 457, §2 (AMD).]

9-F. Rent. "Rent" includes to lease, to sublease, to let or otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

[PL 2011, c. 613, §8 (NEW); PL 2011, c. 613, §29 (AFF).]

9-G. Respondent. "Respondent" means a person accused of unlawful discrimination in a complaint filed under section 4611.

[PL 2019, c. 464, §1 (AMD).]

10. Unlawful discrimination. "Unlawful discrimination" includes:

A. Unlawful employment discrimination as defined and limited by subchapter 3; [PL 2019, c. 464, §1 (AMD).]

B. Unlawful housing discrimination as defined and limited by subchapter 4; [PL 2019, c. 464, §1 (AMD).]

C. Unlawful public accommodations discrimination as defined by subchapter 5; [PL 2019, c. 464, §1 (AMD).]

D. Aiding, abetting, inciting, compelling or coercing another to do any of such types of unlawful discrimination; obstructing or preventing any person from complying with this Act or any order issued in this subsection; attempting to do any act of unlawful discrimination; and punishing or penalizing, or attempting to punish or penalize, any person for seeking to exercise any of the civil rights declared by this Act or for complaining of a violation of this Act or for testifying in any proceeding brought in this subsection; [PL 1983, c. 578, §2 (AMD).]

E. In determining whether a person is acting as an agent or employee of another person so as to make such other person responsible for that person's acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling; [PL 2005, c. 10, §4 (AMD).]

F. Unlawful educational discrimination as defined and limited by subchapter 5-B; and [PL 2005, c. 10, §5 (AMD).]

G. Discrimination in employment, housing, public accommodation, credit and educational opportunity on the basis of sexual orientation or gender identity, except that a religious corporation,

association or organization that does not receive public funds is exempt from this provision with respect to:

- (1) Employment, as is more fully set forth in section 4553, subsection 4 and section 4573-A;
- (2) Housing; and
- (3) Educational opportunity, as is more fully set forth in section 4602, subsection 4.

Any for-profit organization owned, controlled or operated by a religious association or corporation and subject to the provisions of the Internal Revenue Code, 26 United States Code, Section 511(a) is not covered by the exemptions set forth in this paragraph. [PL 2019, c. 464, §1 (AMD).]

[PL 2019, c. 464, §1 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 415, §1 (AMD). PL 1975, c. 182, §1 (AMD). PL 1975, c. 358, §2 (AMD). PL 1979, c. 350, §1 (AMD). PL 1983, c. 437, §1 (AMD). PL 1983, c. 578, §§1,2 (AMD). PL 1987, c. 478, §2 (AMD). PL 1989, c. 245, §2 (AMD). PL 1991, c. 99, §2 (AMD). PL 1991, c. 109 (AMD). PL 1995, c. 393, §§1-8 (AMD). RR 1999, c. 2, §2 (COR). PL 2005, c. 10, §§2-6 (AMD). PL 2007, c. 385, §§1, 2 (AMD). PL 2007, c. 664, §1 (AMD). PL 2011, c. 369, §§1, 2 (AMD). PL 2011, c. 613, §§1-9 (AMD). PL 2011, c. 613, §29 (AFF). PL 2015, c. 457, §§1, 2 (AMD). PL 2019, c. 464, §1 (AMD). PL 2019, c. 490, §1 (AMD). RR 2019, c. 1, Pt. A, §5 (COR).

§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; [PL 2007, c. 385, §3 (NEW).]

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; intellectual disability; multiple sclerosis; muscular dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; and acquired brain injury; [PL 2011, c. 542, Pt. A, §3 (AMD).]

C. With respect to an individual, having a record of any of the conditions in paragraph A or B; or [PL 2007, c. 385, §3 (NEW).]

D. With respect to an individual, being regarded as having or likely to develop any of the conditions in paragraph A or B. [PL 2007, c. 385, §3 (NEW).]

[PL 2011, c. 542, Pt. A, §3 (AMD).]

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 [PL 2007, c. 385, §3 (NEW).]

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. [PL 2007, c. 385, §3 (NEW).]

[PL 2007, c. 385, §3 (NEW).]

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

A. Pedophilia, exhibitionism, voyeurism, sexual behavior disorders, compulsive gambling, kleptomania, pyromania or tobacco smoking; [PL 2007, c. 385, §3 (NEW).]

B. Any condition covered under section 4553, subsection 9-C; or [PL 2007, c. 385, §3 (NEW).]

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. [PL 2007, c. 385, §3 (NEW).]

[PL 2007, c. 385, §3 (NEW).]

SECTION HISTORY

PL 2007, c. 385, §3 (NEW). PL 2011, c. 542, Pt. A, §3 (AMD).

§4554. Construction

1. Relationship to other laws. Nothing in this Act may be construed to invalidate or limit the remedies, rights and procedures of any law of any state or political subdivision of any state or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act may be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter III or in transportation or places of public accommodation covered by subchapter V.

[PL 1995, c. 393, §9 (NEW).]

2. Insurance. Subchapters III and V of this Act may not be construed to prohibit or restrict, with regard to individuals with disabilities:

A. An insurer, hospital, medical service company, health maintenance organization or any agent or entity that administers benefit plans or similar organizations from underwriting risks, classifying risks or administering risks that are based on or not inconsistent with state law; [PL 1995, c. 393, §9 (NEW).]

B. A person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks or administering risks that are based on or not inconsistent with state law; or [PL 1995, c. 393, §9 (NEW).]

C. A person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide employee benefit plan that is not subject to state laws that regulate insurance. [PL 1995, c. 393, §9 (NEW).]

Paragraphs A, B and C may not be used as a subterfuge to evade the requirements of subchapters III and V.

[PL 1995, c. 393, §9 (NEW).]

3. Accommodations and services. Nothing in this Act may be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity or benefit that the individual chooses not to accept.

[PL 1995, c. 393, §9 (NEW).]

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.

[PL 2007, c. 385, §4 (NEW).]

SECTION HISTORY

PL 1995, c. 393, §9 (NEW). PL 2007, c. 385, §4 (AMD).

§4555. Application

(REPEALED)

SECTION HISTORY

PL 1995, c. 393, §10 (NEW). PL 2019, c. 464, §2 (RP).

SUBCHAPTER 2

COMMISSION

§4561. Members

The Maine Human Rights Commission, established by section 12004-G, subsection 15, shall be an independent commission of no more than 5 members. No more than 3 of the members may be of the same political party. The members shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to be the chair. [PL 1989, c. 503, Pt. B, §21 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1975, c. 771, §88 (AMD). PL 1983, c. 812, §32 (RPR). PL 1987, c. 709, §1 (AMD). PL 1989, c. 503, §B21 (AMD).

§4562. Terms of office

The members of the commission shall be appointed for terms of 5 years each, except that of those first appointed, the Governor shall designate one whose term shall be only one year, one whose term shall be only 2 years, one whose term shall be only 3 years and one whose term shall be only 4 years. [PL 1971, c. 501, §1 (NEW).]

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term shall be appointed only for the unexpired term of the member whom he shall succeed. [PL 1971, c. 501, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW).

§4563. Quorum

Three members of the commission shall constitute a quorum. A vacancy in the commission shall not impair the power of the remaining members to exercise all the powers of the commission. [PL 1971, c. 501, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW).

§4564. Compensation; reappointment

Each member of the commission shall be compensated as provided in chapter 379. All members of the commission shall be eligible for reappointment subject to section 4561. [PL 1987, c. 709, §2 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1983, c. 812, §33 (AMD). PL 1987, c. 709, §2 (AMD).

§4565. Removal from office

Any member of the commission may be removed by the Governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges. [PL 1975, c. 771, §89 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1975, c. 771, §89 (AMD).

§4566. Powers and duties of the commission

The commission has the duty of investigating all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity. Without limiting the generality of the foregoing, it has the duty of investigating all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons. Based on its investigations, it has the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State. [PL 1975, c. 182, §2 (AMD).]

To carry out these duties, the commission shall have the power: [PL 1971, c. 501, §1 (NEW).]

1. Office. To establish and maintain a principal office, and such other offices within the State as it may deem necessary;
[PL 1971, c. 501, §1 (NEW).]

2. Meetings. To meet and function at any place within the State;
[PL 1971, c. 501, §1 (NEW).]

3. Personnel. To appoint a full-time executive director and counsel to the commission, not subject to the Civil Service Law, and determine their remuneration; and to appoint, subject to the Civil Service Law, other personnel including, but not limited to, investigators, attorneys, compliance personnel and secretaries, as it shall deem necessary to effectuate the purposes of this Act;
[PL 2019, c. 465, §1 (AMD).]

4. Hearings. To hold hearings, to administer oaths and to take the testimony of any person under oath. There is no executive privilege in such investigations and hearings, but law enforcement officers, prosecution officers and judges of this State and of the United States are privileged from compulsory testimony or production of documents before the commission. Such hearings and testimony may relate to general investigations concerning the effectiveness of this Act and the existence of practices of discrimination not prohibited by it, as well as to investigations of other alleged infringements upon human rights and personal dignity. The commission may make rules as to the administration of oaths

and the holding of preliminary and general investigations by panels of commissioners and by the executive director;

[PL 2019, c. 465, §2 (AMD).]

4-A. Subpoena power. Pursuant to a complaint which has been filed in accordance with section 4611 by a person who has been subject to unlawful discrimination, the commission may issue subpoenas; as provided in subsection 4-B, to compel access to or production of premises, records, documents and other evidence or possible sources of evidence or the appearance of persons, provided that there is reasonable cause to believe that those materials or the testimony of the persons are material to the complaint. The commission may not issue subpoenas except as provided in this subsection.

[PL 1977, c. 648, §1 (NEW).]

4-B. Subpoenas; contest of validity. If a subpoena is issued, notice must be given to the person who is alleged to have engaged in the unlawful discrimination. The person upon whom the subpoena is served may contest its validity. A judicial review of the subpoenas is permissible in any Superior Court;

[PL 1993, c. 303, §1 (AMD).]

5. Services. To utilize voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

[PL 1971, c. 501, §1 (NEW).]

6. Advisory groups. To create local or statewide advisory agencies and conciliation councils to aid in effectuating the purposes of this Act. The commission may study or may empower these agencies and councils to study the problems of discrimination in all or specific fields of human relationships when based on protected class characteristics, membership or status, and foster good will among the groups and elements of the population of the State. Agencies and councils may make recommendations to the commission for the development of policies and procedures. Advisory agencies and conciliation councils created by the commission must be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

[PL 2019, c. 465, §3 (AMD).]

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 2. Rules adopted to implement section 4553-A are major substantive rules as defined in chapter 375, subchapter 2-A;

[PL 2007, c. 385, §5 (AMD).]

8. Appearance. To appear in court and before other administrative bodies by its own attorneys;

[PL 1971, c. 501, §1 (NEW).]

9. Notices and forms. To require the posting of notices or the adoption of forms by businesses subject to this Act, to effectuate the purposes of this Act;

[PL 1971, c. 501, §1 (NEW).]

10. Publications. To publish results of investigations and research to promote good will and minimize or eliminate discrimination based on protected class characteristics, membership or status;

[PL 2019, c. 465, §4 (AMD).]

11. Reports. To report to the Legislature and the Governor at least once a year describing the investigations, proceedings and hearings the commission has conducted and the outcome and other work performed by the commission, and to make recommendations for further legislation or executive action concerning abuses and discrimination based on protected class characteristics, membership or status, or other infringements on human rights or personal dignity; and

[PL 2019, c. 465, §5 (AMD).]

12. Other acts. To do such other things as are set out in the other subchapters, and everything reasonably necessary to perform its duties under this Act.

[PL 1971, c. 501, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §§2-4 (AMD). PL 1973, c. 705, §§2-4 (AMD). PL 1975, c. 182, §2 (AMD). PL 1975, c. 355, §§2-4 (AMD). PL 1975, c. 358, §§3-5 (AMD). PL 1975, c. 770, §§29-31 (AMD). PL 1977, c. 648, §1 (AMD). PL 1977, c. 674, §8 (AMD). PL 1977, c. 694, §29 (AMD). PL 1983, c. 550, §1 (AMD). PL 1985, c. 785, §B36 (AMD). PL 1991, c. 99, §§3-5 (AMD). PL 1993, c. 303, §1 (AMD). PL 2005, c. 10, §§7-9 (AMD). PL 2007, c. 385, §5 (AMD). PL 2019, c. 465, §§1-5 (AMD).

§4566-A. Certification and conformity with rules

1. Certification of state law. The commission shall take all steps required under 29 Code of Federal Regulations, Part 36, Subpart F to request federal certification that the State's laws concerning accessibility and usability of places of public accommodation meet or exceed the minimum requirements of the federal Americans with Disabilities Act of 1990. These steps include issuing public notice of an intent to file, conducting a public hearing on record and preparing and filing with the United States Department of Justice the request for certification. If the commission determines that no significant portion of the law is certifiable, the commission may cease its attempts to obtain certification and shall report its determinations to the joint standing committee of the Legislature having jurisdiction over judiciary matters. The report must include recommendations on changes to the law as necessary to achieve certification of a significant portion of the law.

[PL 1995, c. 393, §11 (NEW).]

2. Conformity of rules relating to special use areas. The commission shall amend its rules relating to accessibility of places of public accommodation to include standards contained in the regulations adopted pursuant to Titles I, II, and III of the Americans with Disabilities Act of 1990 and the federal Americans with Disabilities Act of 1990 Accessibility Guidelines, 29 Code of Federal Regulations, Part 36, Subpart F, relating to restaurants and cafeterias, medical care facilities, business and mercantile establishments, libraries, accessible transient lodging and other places of public accommodation, but only to the extent that those standards provide greater accessibility than any comparable standards contained in current state law or rules.

[PL 1995, c. 393, §11 (NEW).]

SECTION HISTORY

PL 1995, c. 393, §11 (NEW).

SUBCHAPTER 3

FAIR EMPLOYMENT

§4571. Right to freedom from discrimination in employment

The opportunity for an individual to secure employment without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin is recognized as and declared to be a civil right. [PL 2005, c. 10, §10 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §5 (AMD). PL 1973, c. 705, §5 (AMD). PL 1975, c. 355, §5 (AMD). PL 1975, c. 358, §6 (AMD). PL 1975, c. 770, §32 (RPR). PL 1991, c. 99, §6 (AMD). PL 2005, c. 10, §10 (AMD).

§4572. Unlawful employment discrimination

1. Unlawful employment. It is unlawful employment discrimination, in violation of this Act, except when based on a bona fide occupational qualification:

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter 5-B; or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment; or, in recruiting of individuals for employment or in hiring them, to utilize any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of their previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B;

(1) This paragraph does not apply to discrimination governed by Title 39-A, section 353; [PL 2005, c. 10, §11 (AMD).]

B. For any employment agency to fail or refuse to classify properly, refer for employment or otherwise discriminate against any individual because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the individual's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the individual that are protected under Title 26, chapter 7, subchapter 5-B; or to comply with an employer's request for the referral of job applicants if a request indicates either directly or indirectly that the employer will not afford full and equal employment opportunities to individuals regardless of their race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B; [PL 2005, c. 10, §11 (AMD).]

C. For any labor organization to exclude from apprenticeship or membership or to deny full and equal membership rights to any applicant for membership because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter 5-B; or, because of those reasons, to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of that labor organization or by a collective labor agreement or other contract; to fail or refuse to classify properly or refer for employment or otherwise discriminate against any member because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the member's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the member that are protected under Title 26, chapter 7, subchapter 5-B; or to cause or attempt to cause an employer to discriminate against an individual in violation of this section, except that it is lawful for labor organizations and employers to adopt a maximum age limitation in apprenticeship programs, if the employer or labor organization obtains prior approval from the Maine Human Rights Commission of any maximum age limitation employed in an apprenticeship program. The commission shall approve the age limitation if a reasonable

relationship exists between the maximum age limitation employed and a legitimate expectation of the employer in receiving a reasonable return upon the employer's investment in an apprenticeship program. The employer or labor organization bears the burden of demonstrating that such a relationship exists; [PL 2005, c. 10, §11 (AMD).]

D. For any employer, employment agency or labor organization, prior to employment or admission to membership of any individual, to:

(1) Elicit or attempt to elicit information directly or indirectly pertaining to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B;

(2) Make or keep a record of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B, except under physical or mental disability when an employer requires a physical or mental examination prior to employment, a privileged record of that examination is permissible if made and kept in compliance with this Act;

(3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B. This section does not prohibit any officially recognized government agency from keeping records permitted to be kept under this Act in order to provide free services to individuals requesting rehabilitation or employment assistance;

(4) Print, publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B; or

(5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, the previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B, of that group; or [PL 2005, c. 10, §12 (AMD).]

E. For an employer, employment agency or labor organization to discriminate in any manner against individuals because they have opposed a practice that would be a violation of this Act or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under this Act. [PL 1991, c. 99, §7 (AMD).]

[PL 2005, c. 10, §§11, 12 (AMD).]

2. Unlawful discrimination against qualified individual with a disability. A covered entity may not discriminate against a qualified individual with a disability because of the disability of the individual in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training and other terms, conditions and privileges of employment. A qualified individual with a disability, by reason of that disability, may not be excluded from participation in or be denied the benefits of the services, programs or activities of a public covered entity, or be subjected to discrimination by any such covered entity relating to job application

procedures, the hiring, advancement or discharge of employees, employee compensation, job training and other terms, conditions and privileges of employment.

A. The prohibition of this subsection against discrimination includes medical examinations and inquiries. [PL 1995, c. 393, §13 (NEW).]

B. Except as provided in paragraph C, a covered entity may not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability. A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions. [PL 1995, c. 393, §13 (NEW).]

C. A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination, if:

- (1) All entering employees are subjected to the same examination regardless of disability;
- (2) Any medical and disability information and history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:
 - (a) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
 - (b) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
 - (c) Government officials investigating compliance with this Act are provided relevant information on request; and
- (3) The results of the examination are used only in accordance with this Act. [PL 2019, c. 667, Pt. A, §7 (AMD).]

D. A covered entity may not require a medical examination and may not make inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity. [PL 1995, c. 393, §13 (NEW).]

E. A covered entity may conduct voluntary medical examinations, including voluntary medical and disability information and history, that are part of an employee health or wellness program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions. Information obtained under this paragraph regarding the medical and disability information and history of an employee is subject to the requirements of paragraph C, subparagraphs (2) and (3). [PL 2019, c. 667, Pt. A, §8 (AMD).]

F. For purposes of this subsection, a test to determine the illegal use of drugs may not be considered a medical examination.

- (1) A covered entity:
 - (a) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;
 - (b) May require that employees may not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;
 - (c) May require that employees behave in conformance with the requirements established under the federal Drug-free Workplace Act of 1988, 41 United States Code, Section 701 et seq.; and

(d) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which that entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee; provided that an employer shall make reasonable accommodation to an alcoholic or drug user who is seeking treatment or has successfully completed treatment. [PL 1995, c. 393, §13 (NEW).]

[PL 2019, c. 667, Pt. A, §§7, 8 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §6 (AMD). PL 1973, c. 705, §6 (AMD). PL 1975, c. 355, §6 (RPR). PL 1975, c. 358, §§7-10 (AMD). PL 1975, c. 770, §33 (RPR). PL 1977, c. 565 (AMD). PL 1987, c. 55, §1 (AMD). PL 1987, c. 559, §B2 (AMD). PL 1987, c. 782, §1 (AMD). PL 1989, c. 251, §1 (AMD). PL 1991, c. 99, §7 (AMD). PL 1991, c. 885, §E7 (AMD). PL 1991, c. 885, §E47 (AFF). PL 1995, c. 393, §§12,13 (AMD). PL 2005, c. 10, §§11,12 (AMD). PL 2019, c. 667, Pt. A, §§7, 8 (AMD).

§4572-A. Unlawful employment discrimination on the basis of sex

1. Sex defined. For the purpose of this Act, the word "sex" includes pregnancy and medical conditions that result from pregnancy.

[PL 2019, c. 490, §2 (AMD).]

2. Pregnant persons who are able to work. It is unlawful employment discrimination in violation of this Act, except where based on a bona fide occupational qualification, for an employer, employment agency or labor organization to treat a pregnant person who is able to work in a different manner from other persons who are able to work.

[PL 2019, c. 490, §2 (AMD).]

2-A. Accommodations for pregnancy-related conditions. Accommodations for pregnancy-related conditions are set forth in this subsection.

A. Nothing in this section may be construed to indicate or deem that a pregnancy-related condition necessarily constitutes a disability. [PL 2019, c. 490, §2 (NEW).]

B. It is unlawful employment discrimination in violation of this Act for an employer, employment agency or labor organization to fail upon request to provide a reasonable accommodation to any employee with a pregnancy-related condition, unless the employer, employment agency or labor organization can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer, employment agency or labor organization. [PL 2019, c. 490, §2 (NEW).]

C. Reasonable accommodations for a pregnancy-related condition may include, but are not limited to, providing more frequent or longer breaks; temporary modification in work schedules, seating or equipment; temporary relief from lifting requirements; temporary transfer to less strenuous or hazardous work; and provisions for lactation in compliance with Title 26, section 604. [RR 2019, c. 1, Pt. A, §6 (COR).]

[PL 2019, c. 490, §2 (NEW); RR 2019, c. 1, Pt. A, §6 (COR).]

3. Pregnant persons who are not able to work. It is unlawful employment discrimination in violation of this Act, except where based on a bona fide occupational qualification, for an employer, employment agency or labor organization to treat a pregnant person who is not able to work because of a disability or illness resulting from pregnancy, or from medical conditions that result from pregnancy, in a different manner from other employees who are not able to work because of other disabilities or illnesses.

[PL 2019, c. 490, §2 (AMD).]

4. Employer not responsible for additional benefits. Nothing in this section may be construed to mean that an employer, employment agency or labor organization is required to provide sick leave, a leave of absence, medical benefits or other benefits to a person because of pregnancy or other medical conditions that result from pregnancy, if the employer, employment agency or labor organization does not also provide sick leaves, leaves of absence, medical benefits or other benefits for the employer's other employees and is not otherwise required to provide those leaves or benefits under other state or federal laws. Reasonable accommodations for pregnancy-related conditions are not additional benefits. [PL 2019, c. 490, §2 (AMD).]

5. Small business exception.

[PL 1985, c. 119 (RP).]

SECTION HISTORY

PL 1979, c. 79 (NEW). PL 1985, c. 119 (AMD). PL 1995, c. 393, §14 (AMD). PL 2019, c. 490, §2 (AMD). RR 2019, c. 1, Pt. A, §6 (COR).

§4573. Not unlawful employment discrimination

It shall not be unlawful employment discrimination: [PL 1971, c. 501, §1 (NEW).]

1. Age.

[PL 1979, c. 350, §2 (RP).]

1-A. Age. To discriminate on account of age to:

A. Comply with the state or federal laws relating to the employment of minors; [PL 1979, c. 350, §3 (NEW).]

B. Observe the terms of any bona fide employee benefit plan such as a retirement, pension or insurance plan that does not evade or circumvent the purposes of this chapter and that complies with the Federal Age Discrimination in Employment Act, 29 United States Code, Section 621, as amended and the federal Americans with Disabilities Act, 42 United States Code, Section 12101, et seq., and federal administrative interpretations provided that:

(1) No employee benefit plan requires or permits any employer to refuse or fail to hire an applicant for employment, including those exempted from the Age Discrimination in Employment Act, 29 United States Code, Section 621, as amended, because of the age of the individual; and

(2) No employee benefit plan requires or permits the denial or termination of employment of any individual including those exempted from the Age Discrimination in Employment Act, 29 United States Code, Section 621, as amended, because of the age of the individual or after completion of a specified number of years of service. [PL 1995, c. 393, §15 (AMD).]

[PL 1995, c. 393, §15 (AMD).]

2. Records. After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying the individual, provided the record is intended and used in good faith solely for identification, and not for the purpose of discrimination in violation of this Act. Records regarding physical or mental disability that are collected must be collected and maintained on separate forms and in separate files and be treated as confidential records;

[PL 2019, c. 667, Pt. A, §9 (AMD).]

3. Required records. To record any data required by law, or by the rules and regulations of any state or federal agency, provided the records are recorded and kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this Act;

[PL 1995, c. 393, §17 (AMD).]

4. Discharge of or refusal to hire employee with physical or mental disability.

[PL 1995, c. 393, §18 (RP).]

5. Federal Indian policy. Nothing in this Act may be construed to prohibit any employment policy or action that is permitted under 42 United States Code, Section 2000e-2(i) (1982) of the federal Equal Employment Opportunity Act governing employment of Indians;

[PL 2013, c. 576, §1 (AMD).]

6. Infectious and communicable diseases. Assignment of individuals with an infectious or communicable disease is governed by the following.

A. In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the United States Secretary of Health and Human Services under the federal Americans with Disabilities Act, Title I, Section 103(d)(1), and which can not be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign the individual a job involving food handling. [PL 1995, c. 393, §20 (NEW).]

B. Nothing in this Act may be construed to preempt, modify or amend any state, county or local law, ordinance, rule or regulation applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which can not be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the United States Secretary of Health and Human Services; and [PL 2013, c. 576, §2 (AMD).]

[PL 2013, c. 576, §2 (AMD).]

7. Veteran preference. For a private employer to apply a voluntary veteran preference, pursuant to Title 26, chapter 7, subchapter 11, to employment decisions regarding hiring, promotion or retention during a reduction in workforce.

[PL 2013, c. 576, §3 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §7 (AMD). PL 1975, c. 355, §7 (AMD). PL 1975, c. 770, §34 (AMD). PL 1977, c. 580, §14 (AMD). PL 1979, c. 350, §§2,3 (AMD). PL 1991, c. 99, §§8-11 (AMD). PL 1991, c. 484, §§3,4 (AMD). PL 1995, c. 393, §§15-20 (AMD). PL 2013, c. 576, §§1-3 (AMD). PL 2019, c. 667, Pt. A, §9 (AMD).

§4573-A. Defenses

1. General provisions. It is a defense to a charge of discrimination under this subchapter that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual based on protected class status has been shown to be job-related and consistent with business necessity, and such performance can not be accomplished by reasonable accommodation, as required by this subchapter.

[PL 2019, c. 464, §3 (AMD).]

1-A. Qualification standards defined. For the purposes of this section, the term "qualification standards" may include a requirement that an individual does not pose a direct threat to the health or safety of other individuals in the workplace.

[PL 1995, c. 511, §1 (NEW); PL 1995, c. 511, §3 (AFF).]

1-B. Physical or mental disability.

[PL 2019, c. 464, §4 (RP).]

2. Religious entities. This subchapter does not prohibit a religious corporation, association, educational institution or society from giving preference in employment to individuals of its same religion to perform work connected with the carrying on by the corporation, association, educational

institution or society of its activities. Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of that organization.

[PL 1995, c. 393, §21 (NEW).]

SECTION HISTORY

PL 1995, c. 393, §21 (NEW). PL 1995, c. 511, §1 (AMD). PL 1995, c. 511, §3 (AFF). PL 2019, c. 464, §§3, 4 (AMD).

§4574. Mandatory retirement age prohibited

1. Definition. As used in this section and section 4573, unless the context otherwise indicates, the following terms shall have the following meanings.

A. "Employer" shall mean any individual or type of organization, including domestic and foreign corporations and partnerships, doing business in the State. [PL 1979, c. 350, §4 (NEW).]
[PL 1979, c. 541, Pt. B, §4 (AMD).]

2. Legislative findings and intent. The Legislature finds that many older Maine citizens are forced out of the work force solely because of their age. The Legislature further finds that many older Maine residents who have been forced out of the work force are fully capable of carrying out the duties and responsibilities required by their employment. Finally, the Legislature finds that many older Maine citizens, because of their years of experience, can make valuable contributions to the work force.

It is the intent of the Legislature that discrimination based on age against any person who seeks employment in the private sector or who is already employed by a private employer shall not be tolerated. It is further the intent of the Legislature to ensure that any older person who seeks employment or wishes to continue employment in the private sector and who is capable of fulfilling the duties and responsibilities of this employment shall be treated like any other person who seeks employment or wishes to continue this employment. Finally, it is the clear and unequivocal intent of the Legislature to prohibit employers in the private sector from requiring employees to retire at a specified age, or after completion of a specified number of years of service.

[PL 1979, c. 350, §4 (NEW).]

3. Unlawful employment discrimination. It shall be unlawful employment discrimination:

A. For any employer to fail or refuse to hire any applicant for employment because of the age of the individual; or [PL 1979, c. 350, §4 (NEW).]

B. For any employer to require or permit, as a condition of employment, any employee to retire at or before a specified age or after completion of a specified number of years of service. [PL 1979, c. 350, §4 (NEW).]

[PL 1979, c. 350, §4 (NEW).]

4. Normal retirement age. This section shall not be construed to prohibit the use of a "normal retirement age," as defined in section 4553, subsection 6-A, provided that normal retirement age and the accrual or awarding of pension or retirement benefits shall not be used in any way to require the retirement of an employee or to deny employment to a person.

[PL 1979, c. 350, §4 (NEW).]

5. Federal requirements. This subchapter shall not be construed to affect or limit any power or duty relating to pension or retirement plans which the United States Government reserves to itself.

[PL 1979, c. 350, §4 (NEW).]

6. Applicability. This section shall apply to all employers in the State.

[PL 1979, c. 350, §4 (NEW).]

SECTION HISTORY

PL 1977, c. 580, §15 (NEW). PL 1979, c. 350, §4 (RPR). PL 1979, c. 541, §B4 (AMD).

§4575. Mandatory retirement age prohibited

1. Legislative findings and intent. The Legislature finds that many older Maine citizens are pushed out of the work force solely because of their age. The Legislature further finds that many older Maine residents who have been pushed out of the work force are fully capable of carrying out the duties and responsibilities required by employment. Finally, the Legislature finds that many older Maine citizens, because of their years of experience, can make valuable contributions to the work force.

It is the intent of the Legislature that discrimination based on age against any person who seeks employment in the public sector or who is already employed by a public employer shall not be tolerated. It is further the intent of the Legislature to ensure that any older person who seeks or wishes to continue employment in the public sector and who is capable of fulfilling the duties and responsibilities of such employment, shall be treated like any other person who seeks or wishes to continue such employment. Finally, it is the clear and unequivocal intent of the Legislature to prohibit employers in the public sector from requiring employees to retire at a specified age or after completion of a specified number of years of service.

[PL 1985, c. 801, §§ 3,7 (NEW).]

2. Criteria and standards. A state department or public school may establish reasonable criteria and standards of job performance to be used for the purpose of determining when employment of its employees should be terminated. Where there is a certified bargaining agent, the establishment of these criteria and standards may be a subject of collective bargaining. These criteria and standards shall be consistent for all employees in the same or similar job classifications, shall be applied fairly to all employees regardless of age and shall be consistent with the provisions of this Act relating to the employment of physically and mentally handicapped persons.

[PL 1985, c. 801, §§ 3,7 (NEW).]

3. Federal requirements. This section shall not be construed to effect or limit any power or duty relating to pension or retirement plans which the United States Government reserves to itself.

[PL 1985, c. 801, §§ 3,7 (NEW).]

SECTION HISTORY

PL 1985, c. 801, §§3,7 (NEW).

§4576. Gender equity in school administrative positions

The commission shall promote gender equity in the hiring of public school administrators in cooperation with the Commissioner of Education and investigate all human rights complaints associated with the public school system. [PL 1989, c. 889, §1 (NEW).]

SECTION HISTORY

PL 1989, c. 889, §1 (NEW).

§4577. Compensation history inquiry as evidence of unlawful discrimination

1. Legislative findings and intent. The Legislature finds that despite requirements regarding equal pay having been a part of the laws of Maine since 1965, wage inequality is an ongoing issue in the State. Wage inequality causes substantial harm to the citizens and to the economy of the State. The Legislature finds that when employers base compensation decisions on compensation history of a prospective employee, it directly perpetuates this wage inequality. An employer's knowledge of a prospective employee's compensation history is directly related to the practice of basing compensation decisions on compensation history. It is the intent of the Legislature to promote the payment of equal compensation for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility and to prevent unlawful employment discrimination with respect to compensation.

[PL 2019, c. 35, §1 (NEW).]

2. Evidence of unlawful employment discrimination. Evidence of unlawful employment discrimination under section 4572 and Title 26, section 628 includes, but is not limited to, an employer's inquiring, either directly or indirectly, about the compensation history of a prospective employee from the prospective employee or a current or former employer of the prospective employee or otherwise seeking the compensation history of a prospective employee.

[PL 2019, c. 35, §1 (NEW).]

3. Exceptions. Notwithstanding subsection 2, an employer or employment agency may inquire about or seek compensation history of an employee or prospective employee after an offer of employment that includes all terms of compensation has been negotiated and made to the prospective employee. If an employee or prospective employee has voluntarily disclosed compensation history information, without prompting by the employer or employment agency, the employer or employment agency may seek to confirm or permit a prospective employee to confirm such information prior to an offer of employment. This section does not apply to an employer who inquires about compensation history pursuant to any federal or state law that specifically requires the disclosure or verification of compensation history for employment purposes.

[PL 2019, c. 35, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 35, §1 (NEW).

SUBCHAPTER 4

FAIR HOUSING

§4581. Right to freedom from discrimination in housing; exceptions

The opportunity for an individual to secure housing in accordance with the individual's ability to pay, and without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status is hereby recognized as and declared to be a civil right. [PL 2011, c. 613, §10 (AMD); PL 2011, c. 613, §29 (AFF).]

1. Number of occupants. Nothing in this subchapter limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

[PL 2007, c. 243, §1 (AMD).]

2. Definition. As used in this section, "housing for older persons" means housing:

A. Provided under any state or federal program that the United States Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons as defined in the state or federal program; [PL 2011, c. 613, §10 (AMD); PL 2011, c. 613, §29 (AFF).]

B. Intended for, and solely occupied by, persons 62 years of age or older; or [PL 1989, c. 245, §3 (NEW).]

C. Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this paragraph, the housing must meet at least the following factors:

(2) That at least 80% of the dwellings are occupied by at least one person 55 years of age or older per unit; and

(3) The publication of, and adherence to, policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. [PL 1997, c. 85, §1 (AMD).]
[PL 2011, c. 613, §10 (AMD); PL 2011, c. 613, §29 (AFF).]

3. Requirements. Housing does not fail to meet the requirements for "housing for older persons" by reason of:

A. Persons residing in the housing as of the date of enactment of this subsection who do not meet the requirements of subsection 2, paragraph B or C if new occupants of the housing meet the age requirements of subsection 2, paragraphs B and C; or [PL 2011, c. 613, §10 (AMD); PL 2011, c. 613, §29 (AFF).]

B. Unoccupied units if the units are reserved for occupancy by persons who meet the age requirements of subsection 2, paragraphs B and C. [PL 2011, c. 613, §10 (AMD); PL 2011, c. 613, §29 (AFF).]
[PL 2011, c. 613, §10 (AMD); PL 2011, c. 613, §29 (AFF).]

4. Housing accommodation exceptions. The following exceptions apply in this chapter:

A. This chapter does not prohibit the rental of any dwelling owned, controlled or operated for other than a commercial purpose by a religious corporation to its membership unless such membership is restricted on account of race, color or national origin; and [PL 2011, c. 613, §10 (NEW); PL 2011, c. 613, §29 (AFF).]

B. Except as provided in section 4581-A, subsection 1, paragraph C and section 4581-A, subsections 2 and 3, this chapter does not apply to:

(1) The rental of a one-family unit of a 2-family dwelling, one unit of which is occupied by the owner; or

(2) The rental of not more than 4 rooms of a one-family dwelling that is occupied by the owner.
[PL 2011, c. 613, §10 (NEW); PL 2011, c. 613, §29 (AFF).]

[PL 2011, c. 613, §10 (NEW); PL 2011, c. 613, §29 (AFF).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §8 (AMD). PL 1973, c. 705, §7 (AMD). PL 1975, c. 355, §8 (AMD). PL 1975, c. 358, §11 (AMD). PL 1975, c. 770, §35 (RPR). PL 1989, c. 245, §3 (AMD). PL 1991, c. 99, §12 (AMD). PL 1997, c. 85, §1 (AMD). PL 2005, c. 10, §13 (AMD). PL 2007, c. 243, §1 (AMD). PL 2011, c. 613, §10 (AMD). PL 2011, c. 613, §29 (AFF).

§4581-A. Unlawful housing discrimination

It is unlawful housing discrimination, in violation of this Act: [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

1. Sale or rental of housing and other prohibited practices. For any owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these, to:

A. Make or cause to be made any written or oral inquiry concerning the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of any prospective purchaser, occupant or tenant of the housing accommodation; [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

B. Refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any person the housing accommodation because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status; [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

C. Make, print or publish or cause to be made, printed or published any notice, statement or advertisement relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation or discrimination based upon race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status or an intention to make any such preference, limitation or discrimination; [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

D. Discriminate against any person because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status in the price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations or in the furnishing of facilities or services in connection with any housing accommodations; or [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

E. Evict or attempt to evict any tenant of any housing accommodation because of the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of the tenant; [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]
[PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

2. Selling, brokering or appraising of housing. For any real estate broker or real estate salesperson, or any agent of these, to:

A. Fail or refuse to show any person a housing accommodation listed for sale, lease or rent because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status; [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

B. Misrepresent, for the purpose of discriminating because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status, the availability or asking price of a housing accommodation listed for sale, lease or rent or for such reason to fail to communicate to the person having the right to sell, rent or lease the housing accommodation any offer for the same made by any applicant; [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

C. In any other manner to discriminate against any applicant for a housing accommodation because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status; [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

D. Make or cause to be made any written or oral inquiry or record concerning the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of any applicant for or intended occupant of a housing accommodation; or [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

E. Accept for listing any housing accommodation when the person having the right to sell, rent or lease the housing accommodation has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status, or when the broker or salesperson knows or has reason to know that the person having the right to sell, rent or lease the housing accommodation has made a practice of discrimination since July 1, 1972; [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]
[PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

3. Making of loans; other financial assistance. For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of the person, to:

A. Make or cause to be made any oral or written inquiry concerning the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of any

applicant for financial assistance or of existing or prospective occupants or tenants of housing accommodations; or [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

B. Discriminate in the granting of financial assistance, or in the terms, conditions or privileges relating to obtaining or the use of any financial assistance, against any applicant because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status; or [PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]
[PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

4. Receipt of public assistance. For any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual's status as recipient.
[PL 2011, c. 613, §11 (NEW); PL 2011, c. 613, §29 (AFF).]

SECTION HISTORY

PL 2011, c. 613, §11 (NEW). PL 2011, c. 613, §29 (AFF).

§4582. Unlawful housing discrimination

(REPEALED)

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1971, c. 622, §20 (AMD). PL 1973, c. 347, §9 (AMD). PL 1973, c. 705, §8 (AMD). PL 1975, c. 151, §1 (AMD). PL 1975, c. 355, §9 (RPR). PL 1975, c. 358, §12 (AMD). PL 1975, c. 770, §36 (RPR). PL 1983, c. 437, §§2,3 (AMD). PL 1985, c. 638, §1 (AMD). PL 1987, c. 730, §1 (AMD). PL 1989, c. 245, §4 (AMD). PL 1991, c. 99, §§13,14,16, 17 (AMD). PL 2005, c. 10, §14 (AMD). PL 2011, c. 613, §12 (RP). PL 2011, c. 613, §29 (AFF).

§4582-A. Unlawful housing discrimination on the basis of disability

It is unlawful housing discrimination, in violation of this Act: [PL 1989, c. 779 (NEW).]

1. Modifications. For any owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit, at the expense of a person with physical or mental disability, reasonable modifications of existing premises occupied or to be occupied by that person if the modifications may be necessary to give that person full enjoyment of the premises, except that, with a rental, the landlord, when it is reasonable to do so, may condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
[PL 2011, c. 613, §13 (AMD); PL 2011, c. 613, §29 (AFF).]

2. Accommodations. For any owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to make reasonable accommodations in rules, policies, practices or services when those accommodations are necessary to give a person with physical or mental disability equal opportunity to use and enjoy the housing; or
[PL 2011, c. 613, §13 (AMD); PL 2011, c. 613, §29 (AFF).]

3. Assistance animals. For any owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of an assistance animal or otherwise discriminate against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation unless it is shown by defense that the assistance animal poses a direct threat to the health or safety of others or the use of the assistance animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of an assistance animal may not be conditioned on the payment of a fee or security deposit, although

the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such an assistance animal.

[PL 2015, c. 457, §3 (AMD).]

SECTION HISTORY

PL 1989, c. 779 (NEW). PL 1991, c. 99, §18 (AMD). PL 2007, c. 243, §§2, 3 (AMD). PL 2007, c. 664, §§2-4 (AMD). PL 2011, c. 613, §13 (AMD). PL 2011, c. 613, §29 (AFF). PL 2015, c. 457, §3 (AMD).

§4582-B. Standards and certification

1. Definition. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Builder" means the applicant for a building permit in a municipality that requires these permits or the owner of the property in a municipality that does not require building permits. [PL 1989, c. 779 (NEW).]

B. "Design professional" means an architect or professional engineer registered to practice under Title 32. [PL 1989, c. 779 (NEW).]

C. "Standards of construction" means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A 117.1-1986. [PL 1989, c. 779 (NEW).]

D. "Multifamily housing accommodation" means "covered multifamily dwelling" as defined in 42 United States Code, Section 3604. [PL 1989, c. 779 (NEW).]

[PL 1989, c. 779 (NEW).]

2. Applicability. This section applies to multifamily housing accommodations constructed for first occupancy after March 13, 1991.

[PL 1989, c. 779 (NEW).]

3. Standards. Facilities subject to this section must meet the following standards.

A. Doors designed to allow passage into and within all premises within those accommodations must be sufficiently wide to allow passage by a person in a wheelchair. [PL 1989, c. 779 (NEW).]

B. A route accessible to a person in a wheelchair into and through the dwelling unit must exist. [PL 1989, c. 779 (NEW).]

C. Light switches, electrical outlets, thermostats and other environmental controls must be in locations accessible to a person in a wheelchair. [PL 1989, c. 779 (NEW).]

D. Bathroom walls must have reinforcements to accommodate the installation of grab bars. [PL 1989, c. 779 (NEW).]

E. Kitchens and bathrooms must be accessible to and usable by a person in a wheelchair. [PL 1989, c. 779 (NEW).]

[PL 1989, c. 779 (NEW).]

4. Compliance with standards. Compliance with the standards of construction satisfies the requirements of this section.

[PL 1989, c. 779 (NEW).]

5. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans of the facility meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the certification to:

A. The municipal authority that reviews plans in the municipality where the facility is to be constructed; or [PL 1989, c. 779 (NEW).]

B. If the municipality where the facility is to be constructed has no authority who reviews plans, the municipal officers of the municipality. [PL 1989, c. 779 (NEW).]

If municipal officials of the municipality where the facility is to be constructed inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the standards required by this section. The municipal officials shall require the facility inspected to meet the construction standards of this section before the municipal officials permit the facility to be occupied.

[PL 1989, c. 779 (NEW).]

SECTION HISTORY

PL 1989, c. 779 (NEW).

§4582-C. Standards for multifamily and public housing constructed on or after September 1, 2012

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alteration" means a change to a facility that affects or could affect the usability of the facility or any part of the facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration, changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions. "Alteration" does not include normal maintenance, decoration and upgrades, including, but not limited to, reroofing, re-siding, painting or wallpapering, replacement of doors or windows, asbestos removal and changes to mechanical and electrical systems unless they affect the usability of the facility. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

B. "Builder" means the applicant for a building permit in a municipality that requires these permits or the owner of the property in a municipality that does not require building permits. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

C. "Covered multifamily dwellings" means:

- (1) Buildings consisting of 4 or more units if such buildings have one or more elevators; and
 - (2) Ground floor units in other buildings consisting of 4 or more units that have no elevators.
- [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

D. "Design professional" means an architect or professional engineer registered to practice under Title 32. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

E. "New construction" includes, but is not limited to, the design and construction of facilities for first occupancy or an alteration if the cost of the alteration is 75% or more of the replacement cost of the completed facility. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

F. "Public housing" means any housing that is financed in whole or in part with public funds offering housing accommodations containing 20 or more units. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

G. "Standards of construction" means the most recent American National Standards Institute standards, published as ANSI A 117.1. Departures from particular technical and scoping requirements of ANSI A 117.1 by the use of other methods are permitted where substantially equivalent or greater access to and usability of the facility is provided. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

[PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

2. Facilities affected. This section applies to new construction of covered multifamily dwellings and new construction and alterations of public housing if the date when the last application for a building permit or permit extension is certified to be complete by a state, county or local government or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension received by the state, county or local government is on or after September 1, 2012 or, if no permit is required, if the start of physical construction or alterations occurs on or after September 1, 2012.

[PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

3. Unlawful housing discrimination. For purposes of this Act, unlawful housing discrimination, in addition to any violations of applicable accessible building requirements in subchapter 5, includes, but is not limited to:

A. The failure to design and construct covered multifamily dwellings subject to this section in such a manner that:

- (1) The public use and common use portions of the dwellings are readily accessible to and usable by people with physical or mental disabilities;
- (2) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons in wheelchairs; and
- (3) All premises within the dwellings contain the following features of adaptive design:
 - (a) An accessible route into and through the dwelling;
 - (b) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
 - (c) Reinforcements in bathroom walls to allow later installation of grab bars; and
 - (d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space; [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

B. For new construction of public housing subject to this section, to have less than 10% of the ground level units and less than 10% of the upper story units connected by an elevator be accessible to and usable by persons with physical disabilities, and less than 2% of the units, no fewer than one unit, with accessible communication features; and [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

C. For alterations to public housing units subject to this section, to fail to have the altered units meet the parts of the standards of construction concerning accessible routes, accessible doors and adaptable bathrooms until at least 10% of the total ground level units and a minimum of 10% of the total upper story units connected by an elevator meet the parts of the standards of construction concerning accessible routes, accessible doors and adaptable bathrooms. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

[PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

4. Compliance with standards. Compliance with the appropriate standards of construction satisfies the requirements of this section.

[PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

5. Statement; inspection. The builder of a facility to which this section applies shall obtain a statement from a design professional that, based on professional judgment, the plans of the facility at the time of the statement meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the statement to:

A. The municipal authority that reviews plans in the municipality where the facility is to be constructed; or [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

B. If the municipality where the facility is to be constructed has no authority that reviews plans, the municipal officers of the municipality. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

If municipal officials of the municipality where the facility is to be constructed inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the standards required by this section. The municipal officials shall require a facility that is inspected to meet the standards of this section before the municipal officials permit the facility to be occupied. [PL 2011, c. 613, §14 (NEW); PL 2011, c. 613, §29 (AFF).]

SECTION HISTORY

PL 2011, c. 613, §14 (NEW). PL 2011, c. 613, §29 (AFF).

§4583. Application

Nothing in this Act may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting or in the furnishings of facilities or services in connection with the facilities that are consistent with business necessity and are not based on the race, color, sex, sexual orientation, physical or mental disability, religion, country of ancestral origin or familial status of or the receipt of public assistance payments by any prospective or actual purchaser, lessee, tenant or occupant. Nothing in this Act may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations to set standards and preferences, terms, conditions, limitations or specifications for the granting of loans or financial assistance that are consistent with business necessity and are not based on the race, color, sex, sexual orientation, physical or mental disability, religion, country of ancestral origin or familial status of or the receipt of public assistance payments by the applicant for a loan or financial assistance or of any existing or prospective owner, lessee, tenant or occupant of housing accommodation. [PL 2007, c. 243, §4 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §10 (AMD). PL 1973, c. 705, §9 (AMD). PL 1975, c. 151, §2 (AMD). PL 1975, c. 358, §13 (AMD). PL 1975, c. 770, §37 (RPR). PL 1989, c. 245, §5 (AMD). PL 1991, c. 99, §19 (AMD). PL 2005, c. 10, §15 (AMD). PL 2007, c. 243, §4 (AMD).

SUBCHAPTER 5

PUBLIC ACCOMMODATIONS

§4591. Equal access to public accommodations

The opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin is recognized as and declared to be a civil right. [PL 2005, c. 10, §16 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §11 (AMD). PL 1975, c. 355, §10 (AMD). PL 1975, c. 358, §§13-A (AMD). PL 1975, c. 770, §38 (RPR). PL 1991, c. 99, §20 (AMD). PL 2005, c. 10, §16 (AMD).

§4592. Unlawful public accommodations

This section does not require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that entity when the individual poses a direct threat to the health or safety of others. For the purposes of this section, the term "direct threat" means a significant risk to the health or safety of others that can not be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids or services. [PL 1995, c. 511, §2 (NEW); PL 1995, c. 511, §3 (AFF).]

It is unlawful public accommodations discrimination, in violation of this Act: [PL 1991, c. 99, §21 (AMD).]

1. Denial of public accommodations. For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend.

For purposes of this subsection, unlawful discrimination also includes, but is not limited to:

A. The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered; [PL 1995, c. 393, §22 (NEW).]

B. A failure to make reasonable modifications in policies, practices or procedures, when modifications are necessary to afford the goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless, in the case of a private entity, the private entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations; [PL 1995, c. 393, §22 (NEW).]

C. A failure to take steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless, in the case of a private entity, the private entity can demonstrate that taking those steps would fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered or would result in an undue burden; [PL 1995, c. 393, §22 (NEW).]

D. A private entity's failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals, not including barriers that can be removed only through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift, where the removal is readily achievable;

When the entity can demonstrate that the removal of a barrier under this paragraph is not readily achievable, a failure to make the goods, services, facilities, privileges, advantages or accommodations available through alternative methods if alternative methods are readily achievable; and [PL 1995, c. 393, §22 (NEW).]

E. A qualified individual with a disability, by reason of that disability, being excluded from participation in or being denied the benefits of the services, programs or activities of a public entity, or being subjected to discrimination by any such entity; [PL 1995, c. 393, §22 (NEW).]

[PL 2005, c. 10, §17 (AMD).]

2. Communication, notice or advertisement. For any person to directly or indirectly publish, display or communicate any notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation are refused, withheld from or denied to any person on account of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, or that the patronage or custom of any person belonging to or purporting to be of any particular race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele is restricted to any particular race or color, sexual orientation, physical or mental disability, religion, ancestry or national origin. The production of any communication, notice or advertisement purporting to relate to any place of accommodation is presumptive evidence in any action that the action was authorized by its owner, manager or proprietor; [PL 2005, c. 10, §17 (AMD).]

3. Denial of lodging; children, exception. For any person who is the owner, lessee, proprietor, manager, superintendent, agent or employee of any public accommodation for lodging to directly or indirectly refuse or withhold from or deny to any person that lodging on the grounds that the person is accompanied by a child or children who will occupy the unit, unless the total number of persons seeking to occupy the unit exceeds the number permitted by local ordinances or reasonable standards relating to health, safety or sanitation.

This subsection does not apply to the owner of a lodging place:

A. That serves breakfast; [PL 1989, c. 301 (NEW).]

B. That contains no more than 5 rooms available to be let to lodgers; and [PL 1995, c. 393, §23 (AMD).]

C. In which the owner resides on the premises; [PL 1995, c. 393, §23 (AMD).]
[PL 1995, c. 393, §23 (AMD).]

4. Participation. For a covered entity:

A. To subject an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations of that entity; [PL 1995, c. 393, §24 (NEW).]

B. To afford an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage or accommodation in a manner that is not equal to that afforded to other individuals; and [PL 1995, c. 393, §24 (NEW).]

C. To provide an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, with a good, service, facility, privilege, advantage or accommodation that is different or separate from that provided to other individuals, unless this action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage or accommodation or other opportunity that is as effective as that provided to others. [PL 1995, c. 393, §24 (NEW).]

For purposes of this subsection, the term "individual" or "class of individuals" refers to the clients or customers of the covered public accommodation that enters into a contractual, licensing or other arrangement;

[PL 1995, c. 393, §24 (NEW).]

5. Integrated setting; programs or activities not separate or different. For a covered entity to not afford goods, services, facilities, privileges, advantages and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability may not be denied the opportunity to participate in programs or activities that are not separate or different;

[PL 1995, c. 393, §24 (NEW).]

6. Association. For a covered entity to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association;

[PL 2007, c. 664, §5 (AMD).]

7. Administrative methods. For an individual or an entity, directly or through contractual or other arrangements, to utilize standards or criteria or methods of administration:

A. That have the effect of discrimination on the basis of disability; or [PL 1995, c. 393, §24 (NEW).]

B. That perpetuate the discrimination of others who are subject to common administrative control; [PL 2019, c. 464, §5 (AMD).]

[PL 2019, c. 464, §5 (AMD).]

8. Service animals. For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to refuse to permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the public accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the public accommodation by others. The use of a service animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal. This subsection does not apply to an assistance animal as defined in section 4553, subsection 1-H unless the assistance animal also qualifies as a service animal; and

[PL 2019, c. 464, §6 (AMD).]

9. Unlawful public accommodations. For any public accommodation to designate a single-occupancy toilet facility as for use only by members of one sex. A single-occupancy toilet facility may be identified by a sign, as long as the sign does not indicate that the facility is for use by members of one specific sex. For the purposes of this subsection, a "single-occupancy toilet facility" is a restroom for use by one user at a time or for family or assisted use and that has an outer door that can be locked by the occupant.

[PL 2019, c. 464, §7 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §12 (AMD). PL 1973, c. 705, §10 (AMD). PL 1975, c. 355, §11 (RPR). PL 1975, c. 358, §14 (AMD). PL 1975, c. 770, §39 (RPR). PL 1985, c. 638, §§2,3 (AMD). PL 1989, c. 301 (RPR). PL 1991, c. 99, §§21,22 (AMD). PL 1995, c. 393, §§22-24 (AMD). PL 1995, c. 511, §2 (AMD). PL 1995, c. 511, §3 (AFF). PL 2005, c. 10, §17 (AMD). PL 2007, c. 664, §§5-7 (AMD). PL 2015, c. 457, §4 (AMD). PL 2019, c. 464, §§5-7 (AMD).

§4593. Standards for facilities constructed or altered between September 1, 1974 and January 1, 1982

1. Public accommodations. For any building or facility constructed specifically as a place of public accommodation on or after September 1, 1974 but before January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceed \$250,000 and the remodeling or enlarging is begun before January 1, 1982, the following standards of construction must be met.

A. There must be at least one public walk not less than 40 inches wide with a slope not greater than one foot rise in 12 feet leading directly to a primary entrance. However, after April 1, 1977, the public walk must be not less than 48 inches wide. [PL 1991, c. 99, §23 (AMD).]

B. There must be a door at the primary entrance with a clear opening of not less than 32 inches and operable by a single effort. If doors at a primary entrance are in a series, they must have a space between them of not less than 84 inches measured from their closed positions; and each must open in the same direction so that swings do not conflict. [PL 1991, c. 99, §23 (AMD).]

C. Rest room facilities must have at least one stall that is not less than 4 feet wide, 5 feet in depth, a 32-inch wide door that swings out or slides, handrails on each side mounted 33 inches from the floor, and a water closet with a seat 20 inches high. [PL 1991, c. 99, §23 (AMD).]

D. Doors that are not intended for normal use and that are dangerous if a blind person were to enter or exit by them must be made identifiable to touch by knurling the handle or knob. [PL 2011, c. 322, §1 (AMD).]

E. There must be parking spaces designated for persons with physical disability set aside in adequate number and clearly marked for use only by the disabled. Set aside in adequate number means that, for every 25 parking spaces made available to the public on a public or private parking lot, at least one of those spaces must be made available in an appropriate location for parking exclusively used by persons with physical disability. [PL 1991, c. 99, §23 (AMD).]

In any building designed and constructed specifically for public accommodations, the bathroom facilities and all accompanying fixtures must be arranged to permit access and use by a person in a wheelchair in at least 1% of the living units. The units must be constructed on ground level and must comply with paragraph C.

[PL 2011, c. 322, §1 (AMD).]

2. Places of employment. For any building or facility constructed specifically as a place of employment on or after September 1, 1974 but before January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceed \$100,000 and the remodeling or enlarging is begun before January 1, 1982, the public accommodation provisions relating to walks, entries, rest room facilities and doors apply.

[PL 2011, c. 322, §1 (AMD).]

SECTION HISTORY

PL 1973, c. 705, §12 (NEW). PL 1975, c. 355, §§12-14 (AMD). PL 1977, c. 80, §1 (AMD). PL 1981, c. 334, §§1,2 (AMD). PL 1983, c. 437, §4 (AMD). PL 1987, c. 390, §1 (AMD). PL 1991, c. 99, §23 (AMD). PL 1995, c. 393, §25 (AMD). PL 2011, c. 322, §1 (AMD).

§4594. Standards for facilities constructed or altered between January 1, 1982 and January 1, 1984

1. Facilities attested. This section applies for the following facilities:

A. Any building or facility constructed specifically as a place of public accommodation on or after January 1, 1982 but before January 1, 1984, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$250,000 and the remodeling or enlarging is begun after January 1, 1982 but before January 1, 1984; and [PL 2011, c. 322, §2 (AMD).]

B. Any building or facility constructed specifically as a place of employment on or after January 1, 1982 but before January 1, 1984, or when the estimated total costs for remodeling or enlarging

an existing building exceed \$100,000 and the remodeling or enlarging is begun after January 1, 1982 but before January 1, 1984. [PL 2011, c. 322, §2 (AMD).]
[PL 2011, c. 322, §2 (AMD).]

2. Application. Facilities subject to this section must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, former chapter 331, to implement the following 4 parts of the American National Standards Institute's "Specification for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," (ANSI A 117.1-1980):

A. 4.3 Accessible Route; [PL 1981, c. 334, §3 (NEW).]

B. 4.13 Doors; [PL 1981, c. 334, §3 (NEW).]

C. 4.17 Toilet Stalls; [PL 1987, c. 390, §2 (AMD).]

D. 4.29.3 Tactile Warnings on doors to Hazardous Areas; and [PL 1987, c. 390, §2 (AMD).]

E. Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E. [PL 1991, c. 99, §24 (AMD).]

[PL 2011, c. 613, §15 (AMD); PL 2011, c. 613, §29 (AFF).]

SECTION HISTORY

PL 1981, c. 334, §3 (NEW). PL 1987, c. 390, §§2.3 (AMD). PL 1991, c. 99, §24 (AMD). PL 2011, c. 322, §2 (AMD). PL 2011, c. 613, §15 (AMD). PL 2011, c. 613, §29 (AFF).

§4594-A. Standards for facilities constructed or altered between January 1, 1984 and January 1, 1988

1. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation on or after January 1, 1984 but before January 1, 1988, or when the estimated total costs for remodeling or enlarging an existing building exceed \$150,000 and the remodeling or enlarging is begun after January 1, 1984 but before January 1, 1988.
[PL 2011, c. 322, §3 (AMD).]

2. Application. Facilities subject to this section must meet the following standards.

A. Facilities subject to this section constructed on or after January 1, 1984 but before January 1, 1988 must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, former chapter 331. [PL 2011, c. 613, §16 (AMD); PL 2011, c. 613, §29 (AFF).]

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$150,000, are subject to this section when the proposed reconstruction, remodeling or enlargement will substantially affect that portion of the building normally accessible to the public.

Facilities subject to this section that are remodeled, enlarged or renovated on or after January 1, 1984 but before January 1, 1988 must meet the requirements of the following 4 parts of the 1981 standards of construction adopted pursuant to Title 25, former chapter 331:

(1) 4.3 accessible route;

(2) 4.13 doors;

(3) 4.17 toilet stalls;

(4) 4.29.3 tactile warnings on doors to hazardous areas; and

(5) Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E. [PL 2011, c. 613, §17 (AMD); PL 2011, c. 613, §29 (AFF).]

[PL 2011, c. 613, §§16, 17 (AMD); PL 2011, c. 613, §29 (AFF).]

SECTION HISTORY

PL 1983, c. 437, §5 (NEW). PL 1987, c. 390, §4 (AMD). PL 1991, c. 99, §25 (AMD). PL 2011, c. 322, §3 (AMD). PL 2011, c. 613, §§16, 17 (AMD). PL 2011, c. 613, §29 (AFF).

§4594-B. Standards for facilities constructed or altered between January 1, 1988 and September 1, 1988

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of the property in a municipality that does not require building permits. [PL 1987, c. 112 (NEW).]

B. "Design professional" means an architect or professional engineer registered to practice under Title 32. [PL 1987, c. 112 (NEW).]

C. "Standards of construction" means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A 117.1-1986. [PL 1987, c. 112 (NEW).]

[PL 1987, c. 112 (NEW).]

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation on or after January 1, 1988 but before September 1, 1988 or when the estimated total costs for remodeling or enlarging an existing building exceed \$150,000 and the remodeling or enlarging is begun after January 1, 1988 but before September 1, 1988.

[PL 2011, c. 322, §4 (AMD).]

3. Application. Facilities subject to this section must meet the following standards.

A. Facilities subject to this section constructed on or after January 1, 1988 but before September 1, 1988 must meet the standards of construction. [PL 2011, c. 322, §4 (AMD).]

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$150,000, are subject to this section when the proposed reconstruction, remodeling or enlargement will substantially affect that portion of the building normally accessible to the public.

Facilities subject to this section that are remodeled, enlarged or renovated on or after January 1, 1988 but before September 1, 1988 must meet the requirements of the following 4 parts of the standards of construction:

(1) 4.3 accessible routes;

(2) 4.13 doors;

(3) 4.17 toilet stalls; and

(4) 4.29.3 tactile warnings on doors to hazardous areas. [PL 2011, c. 322, §4 (AMD).]

[PL 2011, c. 322, §4 (AMD).]

4. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans of the facility meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the certification to:

A. The municipal authority who reviews plans in the municipality where the facility will be constructed; or [PL 1987, c. 112 (NEW).]

B. If the municipality where the facility will be constructed has no authority who reviews plans, the municipal officers of the municipality. [PL 1987, c. 112 (NEW).]

If municipal officials of the municipality where the facility will be constructed inspect buildings for compliance with construction standards, that inspection shall include an inspection for compliance with the standards required by this section. The municipal officials shall require the facility inspected to meet the construction standards of this section before the municipal officials permit the facility to be occupied.

[PL 1987, c. 112 (NEW).]

SECTION HISTORY

PL 1987, c. 112 (NEW). PL 1987, c. 402, Pt. B, §5 (AMD). PL 2011, c. 322, §4 (AMD).

§4594-C. Standards for facilities constructed or altered between September 1, 1988 and January 1, 1991

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of the property in a municipality that does not require building permits. [PL 1987, c. 686, §1 (NEW).]

B. "Design professional" means an architect or professional engineer registered to practice under Title 32. [PL 1987, c. 686, §1 (NEW).]

C. "Standards of construction" means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A 117.1-1986. [PL 1987, c. 686, §1 (NEW).]

[PL 1987, c. 686, §1 (NEW).]

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation on or after September 1, 1988 but before January 1, 1991 or when the estimated total costs for remodeling or enlarging an existing building exceed \$100,000 and the remodeling or enlarging is begun after September 1, 1988 but before January 1, 1991.

[PL 2011, c. 322, §5 (AMD).]

3. Application. Facilities subject to this section must meet the following standards.

A. Facilities subject to this section constructed on or after September 1, 1988 but before January 1, 1991 must meet the standards of construction, except that, in the case of toilet stalls, at least one toilet stall shall be the standard stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b). [PL 2011, c. 322, §5 (AMD).]

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$100,000, are subject to this section when the proposed reconstruction, remodeling or enlargement substantially affects that portion of the building normally accessible to the public.

Facilities subject to this section that are remodeled, enlarged or renovated on or after September 1, 1988 but before January 1, 1991 shall meet the requirements of the following 4 parts of the standards of construction:

- (1) 4.3 accessible routes;
- (2) 4.13 doors;

(3) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b); and

(4) 4.29.3 tactile warnings on doors to hazardous areas. [PL 2011, c. 322, §5 (AMD).]
[PL 2011, c. 322, §5 (AMD).]

4. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans of the facility meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the certification to:

A. The municipal authority who reviews plans in the municipality where the facility will be constructed; or [PL 1987, c. 686, §1 (NEW).]

B. If the municipality where the facility will be constructed has no authority who reviews plans, the municipal officers of the municipality. [PL 1987, c. 686, §1 (NEW).]

If municipal officials of the municipality where the facility will be constructed inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the standards required by this section. The municipal officials shall require the facility inspected to meet the construction standards of this section before the municipal officials permit the facility to be occupied.

[PL 2011, c. 322, §5 (AMD).]

SECTION HISTORY

PL 1987, c. 686, §1 (NEW). PL 2011, c. 322, §5 (AMD).

§4594-D. Standards for facilities constructed or altered between January 1, 1991 and January 1, 1996

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of the property in a municipality that does not require building permits. [PL 1989, c. 795 (NEW).]

B. "Design professional" means an architect or professional engineer registered to practice under Title 32. [PL 1989, c. 795 (NEW).]

C. "Standards of construction" means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A 117.1-1986. [PL 1989, c. 795 (NEW).]

[PL 1989, c. 795 (NEW).]

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation or place of employment on or after January 1, 1991 but before January 1, 1996 or when the estimated total costs for remodeling, enlarging or renovating an existing building exceed \$100,000 and the remodeling, enlarging or renovating is begun after January 1, 1991 but before January 1, 1996.

[PL 2011, c. 322, §6 (AMD).]

3. Application. Facilities subject to this section must meet the following standards.

A. Places of employment or public accommodation and additions to these places constructed on or after January 1, 1991 but before January 1, 1996 must meet the standards of construction. [PL 2011, c. 322, §6 (AMD).]

B. Except for repairs undertaken in accordance with the rules adopted pursuant to subsection 4, when the proposed remodeling or renovation substantially affects that portion of the building normally accessible to the public, places of employment or public accommodation remodeled or renovated on or after January 1, 1991 but before January 1, 1996 must meet the following 5 parts of the standards of construction:

- (1) 4.3 accessible routes;
- (2) 4.13 doors;
- (3) 4.29.3 tactile warnings on doors to hazardous areas;
- (4) Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E; and
- (5) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls within the same toilet room may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b). [PL 2011, c. 322, §6 (AMD).]

[PL 2011, c. 322, §6 (AMD).]

4. Rules. The commission may adopt, alter, amend and repeal rules designed to make buildings under this section accessible to, functional for and safe for use by persons with physical disability in accordance with subsection 3, and may adopt, alter, amend and repeal rules designed otherwise to enforce this section.

[PL 1993, c. 349, §10 (AMD).]

5. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans meet the standards of construction required by this section. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built.

[PL 1989, c. 795 (NEW).]

6. Training, education and assistance. The commission and the Office of the State Fire Marshal shall, as necessary, develop information packets, lectures, seminars and educational forums on barrier-free design for the purpose of increasing the awareness and knowledge of owners, architects, design professionals, code enforcers, building contractors and other interested parties.

[PL 1989, c. 795 (NEW).]

7. Mandatory plan review; certification; inspection. Builders of the following newly constructed facilities must submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsection 3:

- A. Restaurants; [PL 1989, c. 795 (NEW).]
- B. Motels, hotels and inns; [PL 1989, c. 795 (NEW).]
- C. State, municipal and county buildings; and [PL 1989, c. 795 (NEW).]
- D. Schools, elementary and secondary. [PL 1989, c. 795 (NEW).]

Fees for reviews are established by the Office of the State Fire Marshal.

No building permit may be issued by the municipal authority having jurisdiction to issue these permits unless the Office of the State Fire Marshal approves the plans and certifies that the facility covered by the mandatory plan review meets the standards of construction required by this section; if, however, no decision is rendered within 2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the building permit request directly to the municipality with an attestation that the plans meet the standards of construction.

If officials of the municipality in which the facility is constructed, renovated, remodeled or enlarged inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the certified plans. The municipal officials shall require that the facility be inspected for compliance with construction standards before the municipal officials permit the facility to be occupied.

[PL 1993, c. 410, Pt. X, §2 (AMD).]

8. Voluntary plan review. Builders of facilities not governed by subsection 7 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsection 3. Fees for this review may be assessed by the Office of the State Fire Marshal. [PL 1989, c. 795 (NEW).]

9. Waivers; variance. Builders of facilities governed by subsection 7 may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If the representative of the Office of the State Fire Marshal determines in cases covered by mandatory plan review that compliance with this section and its rules is not technologically feasible or would result in excessive and unreasonable costs without any substantial benefit to persons with physical disability, the State Fire Marshal may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting a variance or waiver to justify its allowance.

Requests for waivers or variances for buildings covered by mandatory plan review are heard by a designee of the Office of the State Fire Marshal. A decision must be provided in writing to the party requesting the waiver or variance.

[PL 1993, c. 450, §1 (AMD).]

10. Appeals. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review are subject to review in Superior Court upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for such further action as the court may direct.

[PL 1993, c. 410, Pt. X, §3 (AMD).]

11. Report.

[PL 2015, c. 102, §9 (RP).]

SECTION HISTORY

PL 1989, c. 795 (NEW). PL 1991, c. 99, §26 (AMD). PL 1993, c. 349, §10 (AMD). PL 1993, c. 410, §§2,3 (AMD). PL 1993, c. 450, §1 (AMD). PL 2011, c. 322, §6 (AMD). PL 2015, c. 102, §9 (AMD).

§4594-E. Waivers for existing buildings

(REPEALED)

SECTION HISTORY

RR 1993, c. 2, §4 (COR). PL 1993, c. 450, §2 (NEW). PL 1995, c. 393, §26 (RP).

§4594-F. Standards for facilities constructed or altered between January 1, 1996 and March 15, 2012

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alteration" means a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part of the building or facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration,

changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions. [PL 1995, c. 393, §27 (NEW).]

B. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of a property in a municipality that does not require building permits. [PL 1995, c. 393, §27 (NEW).]

C. [PL 1997, c. 630, §1 (RP).]

D. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots or other real or personal property, including the site where the building, property, structure or equipment is located. [PL 1995, c. 393, §27 (NEW).]

E. "Historic preservation programs" means programs conducted by a public or private entity that have preservation of historic properties as a primary purpose. [PL 1995, c. 393, §27 (NEW).]

F. "Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or the State of Maine Register of Historic Places. [PL 1995, c. 393, §27 (NEW).]

G. "Maximum extent feasible" applies to the occasional case when the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration must provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible must be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities would not be feasible, the facility must be made accessible to persons with other types of disabilities. [PL 1995, c. 393, §27 (NEW).]

H. "New construction" includes, but is not limited to, the design and construction of facilities for first occupancy after January 1, 1996 or an alteration affecting at least 80% of the space of the internal structure of facilities after January 1, 1996. [PL 1995, c. 393, §27 (NEW).]

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

- (1) The nature and cost of the action needed under this subchapter;
- (2) The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or other impacts of the action on the operation of the facility;
- (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees and the number, type and location of its facilities; and
- (4) The type of operation or operations of the covered entity, including the composition, structure and functions of the entity's work force, the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity. [PL 1995, c. 393, §27 (NEW).]

J. "Standards of construction" means the standards set forth in the federal Americans with Disabilities Act Accessibility Guidelines, "ADAAG," standards. The ADAAG standards of construction replace ANSI standards and provide the architectural standards of construction. [PL 1995, c. 393, §27 (NEW).]
[PL 1997, c. 630, §1 (AMD).]

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation or place of employment on or after January 1, 1996 but before March 15, 2012 or to any alterations of an existing place of public accommodation or place of employment when the alteration is begun after January 1, 1996 but before March 15, 2012, unless such construction or alteration is covered by section 4594-G, in which case section 4594-G and not this section applies. As an alternative to compliance with this section, any new construction or alterations covered by this section may comply with section 4594-G.

[PL 2011, c. 322, §7 (AMD).]

3. Application. Facilities subject to this section must meet the following standards.

A. Places of employment or public accommodation and additions to those places constructed on or after January 1, 1996 but before March 15, 2012 must meet the standards of construction, including, but not limited to, the 5 parts of the standards of construction in paragraph B, subparagraph (2). [RR 2011, c. 1, §5 (COR).]

B. Alterations are governed by the following.

(1) Any alteration to a place of public accommodation, commercial facility or place of employment on or after January 1, 1996 but before March 15, 2012 must be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If existing elements, spaces or common areas are altered, then each altered element, space or area must comply with the applicable provisions of the standards of construction.

(2) This subparagraph applies to only buildings remodeled or renovated or to any alterations if the estimated total costs for remodeling or renovating or for alterations to an existing building exceed \$100,000.

(a) Except for repairs undertaken in accordance with the rules adopted pursuant to subsection 4, when the proposed alteration substantially affects that portion of the building normally accessible to the public, a place of employment or public accommodation altered on or after January 1, 1996 but before March 15, 2012 must meet the following 5 parts of the standards of construction or as otherwise indicated:

(i) 4.3 accessible routes;

(ii) 4.13 doors;

(iii) Tactile warnings on doors to hazardous areas. Doors that lead to areas that might prove dangerous to a blind person, for example, doors to loading platforms, boiler rooms, stages and the like, must be made identifiable to the touch by a textured surface on the door handle, knob, pull or other operating hardware. This textured surface may be made by knurling or roughening or by a material applied to the contact surface. Textured surfaces may not be provided for emergency exit doors or any doors other than those to hazardous areas;

(iv) Parking spaces for use by persons with physical disabilities pursuant to 4.1.2 of the standards of construction; and

(v) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ADAAG figure 30(a). Any additional toilet stalls within the same toilet room may be either standard stall configuration, ADAAG figure 30(a) or alternate stall configuration ADAAG figure 30(b).

(b) In addition to the 5 parts of the standards of construction specified in division (a), each of which must be met regardless of the cost of the 5 parts of the standards, when the entity

is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area to the extent that the costs to provide an accessible path of travel do not exceed 20% of the cost of the alteration to the primary function area.

If the cost to provide an accessible path of travel to the altered area exceeds 20% of the costs of the alteration to the primary function area, the path of travel must be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

In determining whether the 20% cost figure has been met, the following analysis must be used. The analysis must include an evaluation of whether the following elements of access have been provided, using the following order of priority, before costing 20%, regardless of other elements of access that may have been provided which may affect the path of travel:

- (i) An accessible entrance;
- (ii) An accessible route to the altered area;
- (iii) At least one accessible restroom for each sex or a single unisex restroom;
- (iv) Accessible telephones;
- (v) Accessible drinking fountains; and
- (vi) When possible, additional accessible elements such as parking, storage and alarms.

The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(3) This subparagraph applies to only buildings remodeled or renovated or to any alterations if the estimated total costs for remodeling or renovating or for alterations to an existing building do not exceed \$100,000. When the entity is undertaking an alteration that affects or could affect usability or access to an area of the facility containing a primary function, the entity shall make the alterations in a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, where the alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope. [PL 2011, c. 322, §7 (AMD).]

C. This subsection may not be construed to require the installation of an elevator for a facility that is less than 3 stories in height or has less than 3,000 square feet per story unless the facility is a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot or other station used for specified public transportation or an airport passenger terminal or a facility covered by Title II of the Americans with Disabilities Act or unless the United States Attorney General determines that a particular category of facility requires the installation of elevators based on the usage of the facility. [PL 1995, c. 393, §27 (NEW).]

[RR 2011, c. 1, §5 (COR).]

4. Curb ramps. Curb ramps or other slopes are required in the following situations.

A. Newly constructed or altered streets, roads and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway. [PL 1995, c. 393, §27 (NEW).]

B. Newly constructed or altered street-level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads or highways. [PL 1995, c. 393, §27 (NEW).]
[PL 1995, c. 393, §27 (NEW).]

5. Rules. The commission shall adopt, alter and amend rules designed to make facilities under this section accessible to, functional for and safe for use by persons with physical or mental disabilities in accordance with subsections 3 and 4 and shall adopt, alter and amend rules designed to enforce this section. The commission may repeal only those rules contrary to this chapter. The commission shall also adopt rules concerning procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards, maintaining, at a minimum, the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.
[PL 1995, c. 393, §27 (NEW).]

6. Barrier-free certification; inspection. If the costs of construction or alterations are at least \$50,000, the builder of a facility to which this section applies must obtain a certification from an architect, professional engineer, certified interior designer or landscape architect who is licensed, certified or registered to practice under Title 32 and is practicing within the scope of that individual's profession that the plans meet the standards of construction required by this section. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built. Nothing in this section may be construed to change the scope of practice of any individual licensed, certified or registered to practice under Title 32.
[PL 1997, c. 630, §2 (AMD).]

7. Training, education and assistance. The commission and the Office of the State Fire Marshal, with input from organizations representing individuals with disabilities, shall develop, as necessary, information packets, lectures, seminars and educational forums on barrier-free design for the purpose of increasing the awareness and knowledge of owners, architects, professional engineers, certified interior designers, landscape architects, code enforcers, building contractors, individuals with disabilities and other interested parties.
[PL 1997, c. 630, §2 (AMD).]

8. Mandatory plan review; certification; inspection. Builders of newly constructed public buildings shall submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsections 3 and 4.

A. For purposes of this subsection, "public building" means any building or structure constructed, operated or maintained for use by the general public, including, but not limited to, all buildings or portions of buildings used for:

- (1) State, municipal or county purposes;
- (2) Education;
- (3) Health care;
- (4) Public assembly;
- (5) A hotel, motel or inn;
- (6) A restaurant;
- (7) Business occupancy; or

(8) Mercantile establishments occupying more than 3000 square feet. [PL 1995, c. 393, §27 (NEW).]

B. The municipal authority having jurisdiction to issue building permits may not issue a building permit unless the Office of the State Fire Marshal approves the plans and certifies that the public building covered by this subsection meets the standards of construction required by this section. If no decision is rendered within 2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the building permit request directly to the municipality with an attestation from an architect or professional engineer licensed or registered to practice under Title 32 that the plans meet the standards of construction. [PL 1997, c. 630, §3 (AMD).]

C. If officials of the municipality in which a restaurant; motel; hotel; inn; state; municipal or county building; or an elementary or secondary school covered by this subsection is constructed, renovated, remodeled or enlarged inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the certified plans. The municipal officials shall require that a facility covered by this paragraph be inspected for compliance with construction standards before the municipal officials permit a facility covered by this paragraph to be occupied. [PL 1995, c. 393, §27 (NEW).]

[PL 1997, c. 630, §3 (AMD).]

9. Voluntary plan review. Builders of facilities not governed by subsection 8 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsections 3 and 4. Certification for a voluntary plan review may be provided by an architect, professional engineer, certified interior designer or landscape architect licensed, certified or registered to practice under Title 32 and practicing within the scope of that individual's profession. [PL 1997, c. 630, §4 (AMD).]

10. Waivers; variance. Builders of facilities governed by subsection 8 that are private entities, when the facilities are not to be owned or operated by, or leased to or by, a public entity, may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If a representative of the Office of the State Fire Marshal determines, in cases covered by mandatory plan review pursuant to subsection 8, that compliance with this section and its rules is structurally impracticable, the State Fire Marshal may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting the variance or waiver to justify its allowance. [PL 1995, c. 393, §27 (NEW).]

11. Appeals relating to mandatory plan reviews. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review under subsection 8 are subject to review in Superior Court upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action as the court may direct. [PL 1995, c. 393, §27 (NEW).]

12. Fees. The Office of the State Fire Marshal shall establish fees for reviews, waivers or variances under this section. The Office of the State Fire Marshal shall pay all fees to the Treasurer of State to be used to carry out this chapter. Any balance of these fees does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following fiscal years. [PL 1995, c. 393, §27 (NEW).]

SECTION HISTORY

PL 1995, c. 393, §27 (NEW). PL 1997, c. 630, §§1-4 (AMD). RR 2011, c. 1, §5 (COR). PL 2011, c. 322, §7 (AMD).

§4594-G. Standards for facilities constructed or altered after March 15, 2012

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alteration" means a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part of the building or facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration, changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility. [PL 2011, c. 322, §8 (NEW).]

B. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of a property in a municipality that does not require building permits. [PL 2011, c. 322, §8 (NEW).]

C. "Commuter rail transportation" means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation. [PL 2011, c. 322, §8 (NEW).]

D. "Demand responsive system" means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including but not limited to specified public transportation service, that is not a fixed-route system. [PL 2011, c. 322, §8 (NEW).]

E. "Designated public transportation" means transportation provided by a public entity other than public school transportation by bus, rail or other conveyance other than transportation by aircraft or intercity or commuter rail transportation that provides the general public with general or special service, including charter service, on a regular and continuing basis. [PL 2011, c. 322, §8 (NEW).]

F. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots or other real or personal property, including the site where the building, property, structure or equipment is located. [PL 2011, c. 322, §8 (NEW).]

G. "Fixed-route system" means a system of transporting individuals other than by aircraft, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule. [PL 2011, c. 322, §8 (NEW).]

H. "Intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation, doing business as Amtrak. [PL 2011, c. 322, §8 (NEW).]

I. "New construction" includes, but is not limited to, the design and construction of a facility for first occupancy or an alteration if the cost of the alteration is 75% or more of the replacement cost of the completed facility. [PL 2011, c. 322, §8 (NEW).]

J. "Specified public transportation" means transportation by bus, rail or any other conveyance other than aircraft provided by a private entity to the general public, with general or special service, including charter service, on a regular and continuing basis. [PL 2011, c. 322, §8 (NEW).]

K. "Standards of construction" means:

(1) For a transportation facility, the accessibility standards adopted by the federal Department of Transportation, 49 Code of Federal Regulations, Sections 37.9, 37.41, 37.43 and 37.45 (2010);

(2) For a facility constructed or altered by, on behalf of or for the use of a public entity, other than a transportation facility, the 2010 ADA Standards for Accessible Design, 28 Code of Federal Regulations, Sections 35.104 and 35.151; and

(3) For a place of public accommodation or a commercial facility, other than a facility covered by subparagraph (1) or (2), the 2010 ADA Standards for Accessible Design, 28 Code of Federal Regulations, Section 36.104 and Sections 36.401 to 36.406. [RR 2011, c. 2, §3 (COR).]

L. "Transportation facility" means a facility constructed or altered by, on behalf of or for the use of:

(1) Any public entity that provides designated public transportation or intercity or commuter rail transportation;

(2) Any private entity that provides specified public transportation; or

(3) Any private entity that is not primarily engaged in the business of transporting people but operates a demand responsive system or fixed-route system. [PL 2011, c. 322, §8 (NEW).]

[RR 2011, c. 2, §3 (COR).]

2. Facilities attested. This section applies to new construction and alterations of transportation facilities, places of public accommodation and commercial facilities and facilities constructed or altered by, on behalf of or for the use of a public entity, if:

A. The last application for a building permit or permit extension is certified to be complete by the appropriate state, county or local government entity on or after March 15, 2012; [PL 2011, c. 322, §8 (NEW).]

B. In a jurisdiction where the government does not certify completion of applications, the last application for a building permit or permit extension is received by the appropriate state, county or local government entity on or after March 15, 2012; or [PL 2011, c. 322, §8 (NEW).]

C. If no permit is required, the start of physical construction or alterations occurs on or after March 15, 2012. [PL 2011, c. 322, §8 (NEW).]

[PL 2011, c. 322, §8 (NEW).]

3. Unlawful discrimination. In addition to failure to meet applicable accessible building requirements in subchapter 4, for purposes of this Act, unlawful discrimination includes, but is not limited to, the failure to meet the standards of construction for new construction or alterations subject to this section.

[PL 2011, c. 322, §8 (NEW).]

4. Barrier-free certification. If the costs of construction or alterations are at least \$75,000, the builder of a facility to which this section applies must obtain a certification from an architect, professional engineer, certified interior designer or landscape architect who is licensed, certified or registered to practice under Title 32 and is practicing within the scope of that individual's profession that the plans meet the requirements of subsection 3. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built. Nothing in this section may be construed to change the scope of practice of any individual licensed, certified or registered to practice under Title 32.

[PL 2011, c. 322, §8 (NEW).]

5. Training, education and assistance. The commission and the Office of the State Fire Marshal, with input from organizations representing persons with disabilities, shall develop, as necessary,

information packets, lectures, seminars and educational forums on barrier-free design for the purpose of increasing the awareness and knowledge of owners, architects, professional engineers, certified interior designers, landscape architects, code enforcers, building contractors, persons with disabilities and other interested parties.

[PL 2011, c. 322, §8 (NEW).]

6. Mandatory plan review; certification. A builder of a proposed public building shall submit plans to the Office of the State Fire Marshal prior to construction to ensure that the plans meet the standards of construction.

A. For purposes of this subsection, "public building" means any building or structure constructed, operated or maintained for use by the general public, including, but not limited to, all buildings or portions of buildings used for:

- (1) State, municipal or county purposes;
- (2) Education;
- (3) Health care, residential care nursing homes or any facility licensed by the Department of Health and Human Services;
- (4) Public assembly;
- (5) A hotel, motel, inn or rooming or lodging house;
- (6) A restaurant;
- (7) Business occupancy of more than 3,000 square feet or more than one story; or
- (8) Mercantile occupancy of more than 3,000 square feet or more than one story. [PL 2011, c. 322, §8 (NEW).]

B. The municipal authority having jurisdiction to issue building permits may not issue a building permit unless the Office of the State Fire Marshal approves the plans and certifies that the plans for the public building covered by this subsection meet the standards of construction. If the builder of a facility is required to obtain barrier-free certification, a permit for construction from the Office of the State Fire Marshal is also required. If no decision is rendered within 2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the permit request directly to the municipality with an attestation from an architect or professional engineer licensed or registered to practice under Title 32 that the plans meet the standards of construction. [PL 2011, c. 322, §8 (NEW).]

[PL 2011, c. 322, §8 (NEW).]

7. Inspection. If officials of the municipality in which a restaurant, motel, hotel or inn; state, municipal or county building; or an elementary or secondary school covered by this subsection is constructed, renovated, remodeled or enlarged inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with plans certified by the Office of the State Fire Marshal or by a professional pursuant to subsection 4. The municipal officials shall require that a facility covered by this paragraph be inspected for compliance with the standards of construction required by subsection 3 before the municipal officials permit a facility covered by this paragraph to be occupied.

[PL 2011, c. 322, §8 (NEW).]

8. Voluntary plan review. Builders of facilities not governed by subsection 6 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsection 3. Certification for a voluntary plan review may be provided by an architect, professional engineer, certified interior designer or landscape architect licensed, certified or registered to practice under Title 32 and practicing within the scope of that individual's profession.

[PL 2011, c. 322, §8 (NEW).]

9. Waivers; variance. Builders of facilities governed by subsection 6 may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If a representative of the Office of the State Fire Marshal determines, in cases covered by mandatory plan review pursuant to subsection 6, that compliance with this section and its rules is structurally impracticable, the State Fire Marshal may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting the variance or waiver to justify allowing the variance or waiver.

[PL 2011, c. 322, §8 (NEW).]

10. Appeals relating to mandatory plan reviews. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review under subsection 6 are subject to review in Superior Court upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action as the court may direct.

[PL 2011, c. 322, §8 (NEW).]

11. Fees. The Office of the State Fire Marshal shall establish fees for reviews, waivers or variances under this section. The Office of the State Fire Marshal shall pay all fees to the Treasurer of State to be used to carry out this subchapter. Any balance of these fees does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

[PL 2011, c. 322, §8 (NEW).]

12. Single-occupancy toilet facilities; qualifying new construction. Beginning January 1, 2020, new construction of a public building, as defined in subsection 6, must include single-occupancy toilet facilities that meet the standards of construction required by this section. This subsection applies to new construction for which the maximum occupant capacity exceeds 100 individuals.

[PL 2019, c. 516, §1 (NEW).]

SECTION HISTORY

RR 2011, c. 2, §3 (COR). PL 2011, c. 322, §8 (NEW). PL 2019, c. 516, §1 (AMD).

§4594-H. Marking of parking space access aisles

Notwithstanding any provision of this subchapter to the contrary, a state department, state agency or quasi-independent state entity shall ensure that parking areas serving state-owned or state-leased buildings housing that state department, state agency or quasi-independent state entity meet the federal standards related to the marking of parking space access aisles under the 2010 ADA Standards for Accessible Design, 28 Code of Federal Regulations, Sections 35.104 and 35.151. For the purposes of this section, "quasi-independent state entity" has the same meaning as in section 12021, subsection 5.

[PL 2019, c. 573, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 573, §1 (NEW).

SUBCHAPTER 5-A

A FAIR CREDIT EXTENSION

§4595. Right to freedom from discrimination solely on basis of age, race, color, sex, sexual orientation, marital status, ancestry, religion or national origin in any credit transaction

The opportunity for every individual to be extended credit without discrimination solely because of any one or more of the following factors: age; race; color; sex; sexual orientation; marital status;

ancestry; religion or national origin is recognized as and declared to be a civil right. [PL 2005, c. 10, §18 (AMD).]

SECTION HISTORY

PL 1973, c. 668 (NEW). PL 1975, c. 355, §15 (AMD). PL 1975, c. 370, §1 (AMD). PL 1975, c. 770, §40 (RPR). PL 2005, c. 10, §18 (AMD).

§4596. Unlawful credit extension discrimination

It is unlawful credit discrimination for any creditor to refuse the extension of credit to any person solely on the basis of any one or more of the following factors: age; race; color; sex; sexual orientation; marital status; ancestry; religion or national origin in any credit transaction. It is not unlawful credit discrimination to comply with the terms and conditions of any bona fide group credit life, accident and health insurance plan, for a financial institution extending credit to a married person to require both the husband and the wife to sign a note and a mortgage and to deny credit to persons under the age of 18 or to consider a person's age in determining the terms upon which credit will be extended. [PL 2005, c. 10, §19 (AMD).]

SECTION HISTORY

PL 1973, c. 668 (NEW). PL 1973, c. 788, §26 (AMD). PL 1975, c. 355, §16 (AMD). PL 1975, c. 370, §2 (AMD). PL 1975, c. 770, §41 (AMD). PL 2005, c. 10, §19 (AMD).

§4597. Definitions

As used in this subchapter, unless the context otherwise requires, the following words shall have the following meanings: [PL 1973, c. 668 (NEW).]

1. Application for credit. "Application for credit" means any communication, oral or written, by a person to a creditor requesting an extension of credit to that person or to any other person, and includes any procedure involving the renewal or alteration of credit privileges or the changing of the name of the person to whom credit is extended; [PL 1973, c. 668 (NEW).]

2. Credit. "Credit" means the right granted by a creditor to a person to defer payment of debt or to incur debt and defer its payment, or purchase property or services and defer payment therefor; [PL 1973, c. 668 (NEW).]

3. Credit sale. "Credit sale" means any transaction with respect to which credit is granted or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become the owner of the property upon full compliance with his obligations under the contract; [PL 1973, c. 668 (NEW).]

4. Credit transaction. "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit or credit sale. [PL 1973, c. 668 (NEW).]

5. Creditor. "Creditor" means any person who regularly extends or arranges for the extension of credit for which the payment of finance charge or interest is required whether in connection with loans, sale of property or services or otherwise. [PL 1973, c. 668 (NEW).]

6. Extension of credit. "Extension of credit" means any acts incident to the evaluation of an application for credit and the granting of credit. [PL 1973, c. 668 (NEW).]

7. Invitation to apply for credit. "Invitation to apply for credit" means any communication, oral or written, by a creditor which encourages or prompts an application for credit.

[PL 1973, c. 668 (NEW).]

SECTION HISTORY

PL 1973, c. 668 (NEW).

§4598. Enforcement

The Superintendent of Financial Institutions and the Superintendent of Consumer Credit Protection shall cooperate with the Maine Human Rights Commission in its enforcement of this subchapter. [PL 1995, c. 17, §1 (AMD); PL 2001, c. 44, §11 (AMD); PL 2001, c. 44, §14 (AFF).]

SECTION HISTORY

PL 1973, c. 668 (NEW). PL 1975, c. 355, §17 (AMD). PL 1979, c. 541, §A39 (AMD). PL 1995, c. 17, §1 (AMD). PL 2001, c. 44, §11 (AMD). PL 2001, c. 44, §14 (AFF).

SUBCHAPTER 5-B

EDUCATIONAL OPPORTUNITY

§4601. Right to freedom from discrimination in education

The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of sex, sexual orientation, a physical or mental disability, national origin or race is recognized and declared to be a civil right. [PL 2005, c. 10, §20 (AMD).]

SECTION HISTORY

PL 1983, c. 578, §3 (NEW). PL 1987, c. 478, §3 (AMD). PL 1989, c. 725, §1 (AMD). PL 1991, c. 99, §27 (AMD). PL 1991, c. 100, §1 (AMD). PL 1991, c. 824, §A4 (RPR). PL 2005, c. 10, §20 (AMD).

§4602. Unlawful educational discrimination

1. Unlawful educational discrimination on the basis of sex. It is unlawful educational discrimination in violation of this Act, on the basis of sex, to:

A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity; [PL 1985, c. 797, §1 (AMD).]

B. Deny a person equal opportunity in athletic programs; [PL 1983, c. 578, §3 (NEW).]

C. Apply any rule concerning the actual or potential family or marital status of a person or to exclude any person from any program or activity because of pregnancy or related conditions; [PL 1983, c. 578, §3 (NEW).]

D. Deny admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or [PL 1983, c. 578, §3 (NEW).]

E. Deny financial assistance availability and opportunity. [PL 1983, c. 578, §3 (NEW).]
[PL 1985, c. 797, §1 (AMD).]

2. Unlawful educational discrimination on the basis of physical or mental disability. It is unlawful educational discrimination in violation of this Act solely on the basis of physical or mental disability to:

- A. Exclude from participation in, deny the benefits of or subject to discrimination under any educational program or activity any otherwise qualified individual with physical or mental disability; [PL 1991, c. 99, §28 (AMD).]
- B. Deny any person equal opportunity in athletic programs, provided that no educational institution may be required under this subsection to provide separate athletic programs to serve persons with physical or mental disability; [PL 1991, c. 99, §28 (AMD).]
- C. Deny admission to any institution or program or fail to provide equal access to and information about an institution or program through recruitment; or [PL 1987, c. 478, §4 (NEW).]
- D. Deny financial assistance availability and opportunity. [PL 1987, c. 478, §4 (NEW).]

Nothing in this subsection may be construed to cover the rights of children with disabilities to special education programs under state or federal law.
[PL 2005, c. 662, Pt. A, §1 (AMD).]

3. Unlawful educational discrimination on the basis of national origin or race. It is unlawful educational discrimination in violation of this Act, on the basis of national origin or race, to:

- A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity; [PL 1989, c. 725, §2 (NEW).]
- B. Deny admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or [PL 1989, c. 725, §2 (NEW).]
- C. Deny financial assistance availability and opportunity. [PL 1989, c. 725, §2 (NEW).]
[PL 1991, c. 100, §2 (AMD).]

4. Unlawful education discrimination on the basis of sexual orientation. It is unlawful education discrimination in violation of this Act, on the basis of sexual orientation, to:

- A. Exclude a person from participation in, deny a person the benefits of or subject a person to discrimination in any academic, extracurricular, research, occupational training or other program or activity; [PL 2005, c. 10, §21 (NEW).]
- B. Deny a person equal opportunity in athletic programs; [PL 2005, c. 10, §21 (NEW).]
- C. Apply any rule concerning the actual or potential family or marital status of a person or to exclude any person from any program or activity because of their sexual orientation; [PL 2005, c. 10, §21 (NEW).]
- D. Deny admission to the institution or program or to fail to provide equal access to any information about an institution or program through recruitment; or [PL 2005, c. 10, §21 (NEW).]
- E. Deny financial assistance availability and opportunity. [PL 2005, c. 10, §21 (NEW).]

The provisions in this subsection relating to sexual orientation do not apply to any education facility owned, controlled or operated by a bona fide religious corporation, association or society.
[PL 2005, c. 10, §21 (NEW).]

SECTION HISTORY

PL 1983, c. 578, §3 (NEW). PL 1985, c. 797, §1 (AMD). PL 1987, c. 478, §4 (AMD). PL 1989, c. 725, §2 (AMD). PL 1991, c. 99, §28 (AMD). PL 1991, c. 100, §2 (AMD). PL 2005, c. 10, §21 (AMD). PL 2005, c. 662, §A1 (AMD).

§4603. Rulemaking

The Commissioner of Education shall have joint rule-making authority with the commission to effectuate this subchapter. [PL 1989, c. 700, Pt. A, §18 (AMD).]

SECTION HISTORY

PL 1983, c. 578, §3 (NEW). PL 1989, c. 700, §A18 (AMD).

§4604. Enforcement

The Commissioner of Education, or a designee, may participate in predetermination resolution and conciliation efforts of the commission as follows: [PL 1989, c. 700, Pt. A, §18 (AMD).]

1. Notification of results of preliminary investigations. The Commissioner of Education shall be informed of the results of preliminary investigations into complaints of unlawful educational discrimination concerning public schools and programs and private schools approved for tuition purposes.

[PL 1989, c. 700, Pt. A, §18 (AMD).]

2. Notification of findings of unlawful educational discrimination; informal conciliation efforts. The Commissioner of Education shall be informed of any finding that unlawful educational discrimination has occurred in a public school or program or a private school or program approved for tuition purposes. The commissioner may participate in informal conciliation efforts made pursuant to section 4612, subsection 3 and shall, upon request, have access to all information concerning these conciliation efforts.

[PL 1989, c. 700, Pt. A, §18 (AMD).]

SECTION HISTORY

PL 1983, c. 578, §3 (NEW). PL 1989, c. 700, §A18 (AMD).

SUBCHAPTER 6**COMMISSION ACTION****§4611. Complaint**

Any aggrieved person, or any employee of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination, except that a complaint must be filed with the commission not more than 300 days after the alleged act of unlawful discrimination. In addition, any person may file a complaint pursuant to section 4632. [PL 2011, c. 613, §18 (AMD); PL 2011, c. 613, §29 (AFF).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1975, c. 355, §18 (AMD). PL 1975, c. 357, §1 (AMD). PL 1975, c. 770, §42 (RPR). PL 1977, c. 259, §2 (AMD). PL 1995, c. 393, §28 (AMD). PL 2009, c. 235, §1 (AMD). PL 2011, c. 613, §18 (AMD). PL 2011, c. 613, §29 (AFF).

§4612. Procedure on complaints

1. Predetermination resolution; investigation. Upon receipt of such a complaint, the commission or its delegated single commissioner or investigator shall take the following actions.

A. The commission or its delegated single commissioner or investigator shall provide an opportunity for the complainant and respondent to resolve the matter by settlement agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. Evidence of conduct or statements made in compromise settlement negotiations,

offers of settlement and any final agreement are confidential and may not be disclosed without the written consent of the parties to the proceeding nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this paragraph, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement. The commission may adopt rules providing for a 3rd-party neutral mediation program. The rules may permit one or more parties to a proceeding to agree to pay the costs of mediation. The commission may receive funds from any source for the purposes of implementing a 3rd-party neutral mediation program, and such funds are not subject to any statewide cost allocation plan. [PL 2019, c. 465, §6 (AMD).]

B. The commission or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the commission, or its designated representative, must have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The commission may issue subpoenas to compel access to or production of those materials or the appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and may serve interrogatories on a respondent to the same extent as interrogatories served in aid of a civil action in the Superior Court. The commission may administer oaths. The complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint and other information designated as confidential in subsection 1-A, is a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission. An investigation is concluded upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs. Prior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. Notwithstanding any other provision of this section, the complaint and evidence collected during the investigation of the complaint may be used as evidence in any subsequent proceeding, civil or criminal. The commission must conclude an investigation under this paragraph within 2 years after the complaint is filed with the commission. [PL 1991, c. 99, §30 (AMD).]

[PL 2019, c. 465, §6 (AMD).]

1-A. Confidential documents. The following information collected during the investigation of a complaint pursuant to this section is confidential and may not be disclosed except to the parties to a complaint, the commission and its federal partner agencies or in a subsequent civil or criminal legal action:

- A. Medical, counseling, psychiatric and other confidential health records; [PL 2019, c. 465, §6 (NEW).]
- B. Social security numbers; [PL 2019, c. 465, §6 (NEW).]
- C. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and final agreements made prior to the conclusion of the investigative process; [PL 2019, c. 465, §6 (NEW).]
- D. Names of minor children; [PL 2019, c. 465, §6 (NEW).]
- E. Any information the commission is required to keep confidential pursuant to work-sharing agreements with the United States Equal Employment Opportunity Commission, the United States

Department of Housing and Urban Development or any other federal partner agencies; [PL 2019, c. 465, §6 (NEW).]

F. Criminal history record information that is not otherwise made public by law; [PL 2019, c. 465, §6 (NEW).]

G. Personnel records and personal information that has been made confidential by law; [PL 2019, c. 465, §6 (NEW).]

H. Notes made by the investigator for the investigator's private use in assessing evidence gathered during an investigation; and [PL 2019, c. 465, §6 (NEW).]

I. Any other records that are not public records in accordance with Title 1, section 402. [PL 2019, c. 465, §6 (NEW).]

Documents containing information set forth in this subsection are not "public records," as defined in Title 1, section 402, subsection 3, and do not become a matter of public record under this section. [PL 2019, c. 465, §6 (NEW).]

2. Order of dismissal. If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding. [PL 1971, c. 501, §1 (NEW).]

2-A. Administrative dismissal. The executive director of the commission may administratively dismiss a complaint for reasons including, but not limited to:

A. Lack of jurisdiction; [PL 2019, c. 465, §6 (NEW).]

B. Failure to substantiate the complaint of discrimination; [PL 2019, c. 465, §6 (NEW).]

C. Failure to file a complaint of discrimination within 300 days of the date of alleged discrimination; [PL 2019, c. 465, §6 (NEW).]

D. Failure by complainant to proceed or cooperate with the investigation, including but not limited to a complainant's repeated or egregious failure to abide by the commission's confidentiality requirements; [PL 2019, c. 465, §6 (NEW).]

E. Bankruptcy filing by respondent; or [PL 2019, c. 465, §6 (NEW).]

F. Death of a complainant, if no person with legal authority to continue the case appears on that person's own behalf or on behalf of the complainant's estate within a reasonable time. [PL 2019, c. 465, §6 (NEW).]

An administrative dismissal operates as an order of dismissal and has the same effect as a finding by the commission that no reasonable grounds exist to believe that unlawful discrimination has occurred. [PL 2019, c. 465, §6 (NEW).]

3. Informal methods, conciliation. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, but finds no emergency of the sort contemplated in subsection 4, paragraph B, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. Everything said or done as part of such endeavors is confidential and may not be disclosed without the written consent of the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Any post-finding conciliation agreement that includes the commission as a signatory is a public record. Notwithstanding this subsection, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. If the case is disposed of by such informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding. [PL 2019, c. 465, §6 (AMD).]

4. Civil action by commission. The commission may file a civil action in accordance with this subsection.

A. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination or to members of a protected class group if relief is not immediately granted, or if conciliation efforts under subsection 3 have not succeeded, the commission may file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders. In a complaint investigated pursuant to a memorandum of understanding between the commission and the United States Department of Housing and Urban Development that results in a reasonable grounds determination, the commission shall file a civil action for the use of complainant if conciliation efforts under subsection 3 are unsuccessful. [PL 2019, c. 465, §6 (AMD).]

B. Grounds for the filing of such an action before attempting conciliation include, but are not limited to:

(1) In unlawful housing discrimination, that the housing accommodation sought is likely to be sold or rented to another during the pendency of proceedings, or that an unlawful eviction is about to occur;

(2) In unlawful employment discrimination, that the victim of the discrimination has lost or is threatened with the loss of job and income as a result of such discrimination;

(3) In unlawful public accommodations discrimination, that such discrimination is causing inconvenience to many persons;

(4) In any unlawful discrimination, that the victim of the discrimination is suffering or is in danger of suffering severe financial loss in relation to circumstances, severe hardship or personal danger as a result of such discrimination. [PL 1991, c. 99, §30 (AMD).]

[PL 2019, c. 465, §6 (AMD).]

5. Confidentiality of 3rd-party records. The Legislature finds that persons who are not parties to a complaint under this chapter as a complainant or a respondent have a right to privacy. Any records of the commission that are open to the public under Title 1, chapter 13, must be kept in such a manner as to ensure that data identifying these 3rd parties is not reflected in the record.

[PL 2019, c. 465, §6 (AMD).]

6. Right to sue. If, within 180 days of a complaint being filed with the commission, the commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the complainant may request a right-to-sue letter, and, if a letter is given, the commission shall end its investigation.

[PL 1995, c. 462, Pt. A, §7 (AMD).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §13 (AMD). PL 1973, c. 415, §2 (AMD). PL 1973, c. 625, §37 (AMD). PL 1973, c. 705, §11 (AMD). PL 1973, c. 788, §28 (AMD). PL 1975, c. 358, §15 (AMD). PL 1977, c. 648, §2 (AMD). PL 1981, c. 6 (AMD). PL 1983, c. 281, §§1,2 (AMD). PL 1985, c. 585, §§1,2 (AMD). PL 1991, c. 99, §§29,30 (AMD). PL 1993, c. 303, §2 (AMD). PL 1993, c. 327, §2 (AMD). PL 1993, c. 578, §1 (AMD). PL 1995, c. 462, §A7 (AMD). PL 2005, c. 10, §22 (AMD). PL 2007, c. 243, §§5-7 (AMD). PL 2009, c. 235, §2 (AMD). PL 2011, c. 613, §§19, 20 (AMD). PL 2011, c. 613, §29 (AFF). PL 2019, c. 465, §6 (AMD).

§4613. Procedure in Superior Court

1. Actions filed by commission. Any such action filed by the commission shall be heard by the Superior Court and may be advanced on the docket and receive priority over other civil cases where

the court shall determine that the interests of justice so require. Except as otherwise provided in this chapter, the court shall hear the case and grant relief as in other civil actions for injunctions. Any such action shall be brought in the name of the commission for the use of the victim of the alleged discrimination or of a described class, and the commission shall furnish counsel for the prosecution thereof. Any person aggrieved by the alleged discrimination may intervene in such an action. In no such action brought by the commission shall any injunction bond be required, nor shall damages be assessed for the wrongful issuance of an injunction.

[PL 1979, c. 541, Pt. A, §40 (AMD).]

2. All actions under this Act. In any action filed under this Act by the commission or by any other person:

A. Where any person who has been the subject of alleged unlawful housing discrimination has not acquired substitute housing, temporary injunctions against the sale or rental to others of the housing accommodation as to which the violation allegedly occurred, and against the sale or rental of other housing accommodations controlled by the alleged violator shall be liberally granted in the interests of furthering the purposes of this Act, when it appears probable that the plaintiff will succeed upon final disposition of the case. [PL 1971, c. 501, §1 (NEW).]

B. If the court finds that unlawful discrimination occurred, its judgment must specify an appropriate remedy or remedies for that discrimination. The remedies may include, but are not limited to:

- (1) An order to cease and desist from the unlawful practices specified in the order;
- (2) An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
- (3) An order to accept or reinstate such a person in a union;
- (4) An order to rent or sell a specified housing accommodation, or one substantially identical to that accommodation if controlled by the respondent, to a victim of unlawful housing discrimination;
- (5) An order requiring the disclosure of the locations and descriptions of all housing accommodations that the violator has the right to sell, rent, lease or manage and forbidding the sale, rental or lease of those housing accommodations until the violator has given security to ensure compliance with any order entered against the violator and with all provisions of this Act. An order may continue the court's jurisdiction until the violator has demonstrated compliance and may defer decision on some or all relief until after a probationary period and a further hearing on the violator's conduct during that period;
- (6) An order to pay the victim, in cases of unlawful price discrimination, 3 times the amount of any excessive price demanded and paid by reason of that unlawful discrimination;
- (7) An order to pay to the victim of unlawful discrimination, other than employment discrimination in the case of a respondent who has more than 14 employees, or, if the commission brings action on behalf of the victim, an order to pay to the victim, the commission or both, civil penal damages not in excess of \$20,000 in the case of the first order under this Act against the respondent, not in excess of \$50,000 in the case of a 2nd order against the respondent arising under the same subchapter of this Act and not in excess of \$100,000 in the case of a 3rd or subsequent order against the respondent arising under the same subchapter of this Act, except that the total amount of civil penal damages awarded in any action filed under this Act may not exceed the limits contained in this subparagraph;
- (8) In cases of intentional employment discrimination with respondents who have more than 14 employees, compensatory and punitive damages as provided in this subparagraph.

- (a) In an action brought by a complaining party under section 4612 and this section against a respondent who engaged in unlawful intentional discrimination prohibited under sections 4571 to 4575, if the complaining party can not recover under 42 United States Code, Section 1981 (1994), the complaining party may recover compensatory and punitive damages as allowed in this subparagraph in addition to any relief authorized elsewhere in this subsection from the respondent.
- (b) When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded under this subparagraph when the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.
- (c) A complaining party may recover punitive damages under this subparagraph against a respondent if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the rights of an aggrieved individual protected by this Act.
- (d) Compensatory damages awarded under this subparagraph do not include back pay, interest on back pay or any other type of relief authorized elsewhere under this subsection.
- (e) The sum of compensatory damages awarded under this subparagraph for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed for each complaining party:
- (i) In the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;
 - (ii) In the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000;
 - (iii) In the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000; and
 - (iv) In the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$500,000.
- (f) Nothing in this subparagraph may be construed to limit the scope of, or the relief available under, 42 United States Code, Section 1981 (1994).
- (g) If a complaining party seeks compensatory or punitive damages under this subparagraph, any party may demand a trial by jury, and the court may not inform the jury of the limitations described in division (e).
- (h) This subparagraph does not apply to recoveries for a practice that is unlawful only because of its disparate impact.
- (i) Punitive damages may not be included in a judgment or award against a governmental entity, as defined in Title 14, section 8102, subsection 2, or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of that employee's employment; and
- (9) In addition to other remedies in subparagraphs (1) to (8), an order to pay actual and punitive damages in the case of discriminatory housing practices. This subparagraph is not intended to limit actual damages available to a plaintiff alleging other discrimination if the remedy of actual

damages is otherwise available under this Act. Punitive damages under this subparagraph may not be included in a judgment or award against a governmental entity, as defined in Title 14, section 8102, subsection 2, or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of that employee's employment; [PL 2011, c. 613, §21 (AMD); PL 2011, c. 613, §29 (AFF).]

C. The action must be commenced not more than either 2 years after the act of unlawful discrimination complained of or 90 days after any of the occurrences listed under section 4622, subsection 1, paragraphs A to D, whichever is later. [PL 2009, c. 235, §3 (AMD).]

D. The obtaining of an approval of a plan certified by the Office of the State Fire Marshal under section 4594-F, subsection 8 or 9 is rebuttable evidence that the plan does meet or exceed the minimum requirements of section 4594-F, subsection 8 or 9. [PL 1995, c. 393, §29 (NEW).]
[PL 2011, c. 613, §21 (AMD); PL 2011, c. 613, §29 (AFF).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1975, c. 357, §2 (AMD). PL 1979, c. 541, §A40 (AMD). PL 1981, c. 255, §§1,2 (AMD). PL 1981, c. 470, §A7 (AMD). PL 1987, c. 38 (AMD). PL 1989, c. 99 (AMD). PL 1991, c. 474, §1 (AMD). PL 1991, c. 474, §3 (AFF). PL 1995, c. 393, §29 (AMD). PL 1997, c. 400, §1 (AMD). PL 2007, c. 243, §8 (AMD). PL 2007, c. 457, §1 (AMD). PL 2007, c. 695, Pt. A, §7 (AMD). PL 2009, c. 235, §3 (AMD). PL 2011, c. 613, §21 (AMD). PL 2011, c. 613, §29 (AFF).

§4614. Attorney's fees and costs

In any civil action under this Act, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs, except that the commission may not be awarded attorney's fees and costs and is not liable to pay any party's attorney's fees and costs. [PL 2019, c. 465, §7 (AMD).]

SECTION HISTORY

PL 1981, c. 255, §3 (NEW). PL 2019, c. 465, §7 (AMD).

SUBCHAPTER 7

CIVIL ACTIONS BY AGGRIEVED PERSONS

§4621. Civil action

Within the time limited, an aggrieved person may file a civil action in the Superior Court against the person or persons who committed the unlawful discrimination. [PL 2011, c. 613, §22 (AMD); PL 2011, c. 613, §29 (AFF).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1979, c. 541, §A41 (AMD). PL 2011, c. 613, §22 (AMD). PL 2011, c. 613, §29 (AFF).

§4622. Limitations on attorneys' fees and damages; procedures

1. Limitation. Attorney's fees under section 4614 and civil penal damages or compensatory and punitive damages under section 4613 may not be awarded to a plaintiff in a civil action under this Act unless the plaintiff alleges and establishes that, prior to the filing of the civil action, the plaintiff first filed a complaint with the commission and the commission either:

A. Dismissed the case under section 4612, subsection 2 or 2-A; [PL 2019, c. 465, §8 (AMD).]

- B. Failed, within 90 days after finding reasonable grounds to believe that unlawful discrimination occurred, to enter into a conciliation agreement to which the plaintiff was a party; [PL 2003, c. 279, §1 (AMD).]
- C. Issued a right-to-sue letter under section 4612, subsection 6; or [PL 2009, c. 235, §4 (AMD).]
- D. Dismissed the case in error. [PL 2003, c. 279, §3 (NEW).]

This subsection does not apply to or limit any remedies for civil actions filed under subchapter 5 if one or more additional causes of action are alleged in the same civil action that do not require exhaustion of administrative remedies or subchapter 4 if the allegations are covered by the federal Fair Housing Act, 42 United States Code, Chapter 45.

[PL 2019, c. 465, §8 (AMD).]

2. Advancement on docket; priority. If the plaintiff alleges and establishes that the conditions of subsection 1 have been met, the action may also be advanced on the docket and given priority over other civil actions.

[PL 1981, c. 255, §4 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW). PL 1973, c. 347, §14 (AMD). PL 1981, c. 255, §4 (RPR). PL 1993, c. 327, §§3,4 (AMD). PL 1995, c. 393, §30 (AMD). PL 1997, c. 400, §2 (AMD). PL 2003, c. 279, §§1-3 (AMD). PL 2009, c. 235, §4 (AMD). PL 2011, c. 613, §23 (AMD). PL 2011, c. 613, §29 (AFF). PL 2019, c. 465, §8 (AMD).

§4623. Consolidation of cases

If it appears during the pendency of such private action that the commission has commenced an action against the same defendant, based on the same facts, the court shall, except for good cause shown, order consolidation of the cases, on such terms as justice may require. [PL 1971, c. 501, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW).

SUBCHAPTER 8

MISCELLANEOUS

§4631. Burden of proof

In any civil action under this Act, the burden shall be on the person seeking relief to prove, by a fair preponderance of the evidence, that the alleged unlawful discrimination occurred. [PL 1971, c. 501, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 501, §1 (NEW).

§4632. Offensive names

1. Complaint. Any person, including any employee of the commission, may file a complaint with the commission which states the belief that a name of a place is offensive, as defined in Title 1, section 1101.

[PL 1977, c. 259, §3 (NEW).]

2. Preliminary investigation. Upon receipt of such a complaint, the commission or its delegated single commissioner or investigator shall conduct a brief preliminary investigation as it deems necessary to determine whether the name of the place is offensive.

[PL 1977, c. 259, §3 (NEW).]

3. Order of dismissal. If the commission finds that the place does not have an offensive name, it shall enter an order so finding, and shall dismiss the proceeding.

[PL 1977, c. 259, §3 (NEW).]

4. Agreement. If the commission finds that the place does have an offensive name, it shall endeavor to accomplish a change in the name by an agreement with the municipal officers or county commissioners to initiate and implement the actions required to change the name, as provided in Title 1, section 1104.

[PL 1977, c. 259, §3 (NEW).]

5. Civil action by commission. If the commission is unable to obtain an agreement under subsection 4 or if the agreement is not carried out, the commission shall file in the Superior Court a civil action seeking such relief as is appropriate.

[PL 1977, c. 259, §3 (NEW).]

6. Procedure in Superior Court. Any action filed by the commission pursuant to subsection 5 shall be heard by the Superior Court and shall be subject to the following provisions:

A. The court shall hear the case and grant relief as in other civil actions for injunctions. [PL 1977, c. 259, §3 (NEW).]

B. Any such action shall be brought in the name of the commission. [PL 1977, c. 259, §3 (NEW).]

C. Any person aggrieved by the alleged offensive name may intervene in such an action. [PL 1977, c. 259, §3 (NEW).]

D. In no such action brought by the commission shall any injunction bond be required; nor shall damages be assessed for the wrongful issuance of an injunction. [PL 1977, c. 259, §3 (NEW).]

E. If the court finds that a place has an offensive name, its judgment shall specify an appropriate remedy. Such remedy shall include an order requiring the municipal officers or county commissioners:

(1) To initiate procedures, which may be described in the order, for changing the name of the place, and

(2) To have completed the change of name and the notification as required in Title 1, section 1104, within 90 days of the issuance of the order. [PL 1977, c. 259, §3 (NEW).]

[PL 1977, c. 259, §3 (NEW).]

SECTION HISTORY

PL 1977, c. 259, §3 (NEW).

§4633. Prohibition against retaliation and coercion

1. Retaliation. A person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act.

[PL 1993, c. 303, §3 (NEW).]

2. Interference, coercion or intimidation. It is unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act or because that individual has exercised or enjoyed, or has aided or encouraged another individual in the exercise or enjoyment of, those rights.

[PL 1993, c. 303, §3 (NEW).]

3. Remedies and procedures. The remedies and procedures available under sections 4611 to 4614, 4621, 4622 and 4623 are available to aggrieved persons for violations of subsections 1 and 2. [PL 1993, c. 303, §3 (NEW).]

SECTION HISTORY

PL 1993, c. 303, §3 (NEW).

§4634. Right to breast-feed

Notwithstanding any other provision of law, a mother may breast-feed her baby in any location, public or private, where the mother is otherwise authorized to be. [PL 2001, c. 206, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 206, §1 (NEW).

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MHRC Program Evaluation Report

PART B

Program Description

MAINE HUMAN RIGHTS COMMISSION PROGRAM DESCRIPTION

The Maine Human Rights Commission (“Commission”) has one single program: to protect the health and welfare of all persons in Maine by enforcing laws prohibiting discrimination, and promoting equality of opportunity, in employment, housing, education, public accommodations, and credit.

Established Priorities:

→ To provide an administrative forum for determining if unlawful discrimination or retaliation occurred by investigating charges of unlawful discrimination.

- ◆ Our goal is to provide a neutral, independent preliminary investigation into whether unlawful discrimination or retaliation occurred in a given instance that falls under the MHRA; the MHRA also charges the Commission with enforcing the Maine Whistleblowers’ Protection Act (“MWPA”) in employment. To meet this goal, our objectives are to obtain sufficient information to allow us to assess if unlawful discrimination or retaliation occurred given applicable legal frameworks, to provide the parties an opportunity to participate in the investigation, and to complete the process within the timelines allowed by the MHRA. We assess achievement of these goals and objectives by determining if the Commission has complied with all procedural and substantive due process requirements of the MHRA.

→ To provide parties an opportunity to resolve disputes about discrimination and retaliation.

- ◆ Our goal is to offer parties involved in disputes opportunities to resolve their disputes. To meet this goal, our objective is to offer various informal resolution opportunities and also to offer formal mediation when suitable. We offer mediation early in our agency process (after initial pleadings), and repeatedly during investigators’ information-gathering processes. We assess achievement of these goals and objectives by determining the frequency with which parties voluntarily resolve their disputes.

→ To provide redress (including commencement of litigation) after a finding that there are “reasonable grounds” to believe unlawful discrimination or retaliation occurred;

- ◆ One goal is to provide the parties an opportunity to resolve the dispute by conciliation. To meet this goal, our objective after every Commission reasonable-grounds finding is to offer parties a mediated opportunity to conciliate the claims that could be brought in an enforcement action by the complainant and the Commission. We assess achievement of this goal and objective by ensuring that we have attempted to engage in conciliation of each reasonable-grounds case.
- ◆ Another goal is to enforce the MHRA and MWPA by litigation when necessary. To meet this goal, our objective is to initiate litigation as resources allow. We assess achievement of this goal and objective by making recommendations to our

Commissioners about whether to initiate litigation in each reasonable-grounds case that does not resolve.

→ **To provide information to people in Maine about the right to equal opportunity in employment, housing, education, public accommodations and credit under the MHRA, and the MWPA non-retaliation mandate.**

- ◆ Our goal is to provide stakeholders and constituents with information about their rights and responsibilities related to the MHRA and MWPA, so as to prevent unlawful discrimination and retaliation. To meet this goal, our objective is to provide information in various media (pamphlets, videos, websites, presentations, Legislative testimony) to the public on a variety of discrimination topics. We assess achievement of this goal and objective by determining that we have offered information to stakeholders and constituents as richly as resources allow.

Agency Assessment of Extent to Which We are Meeting Priorities

The Commission is meeting its priorities, though its ability to do so is impacted by factors outside its control, including the number and complexity of complaints it receives, its funding, and unexpected events like the COVID-19 pandemic.

PERFORMANCE MEASURES/YEAR	FY '20	FY '19	FY '18
# of complaints received	775	715	709
# of complaints resolved	701	748	755
% of complaints resolved voluntarily	47	46	49
% reduction of the pending inventory of cases	-10	9.2	6.1
# of litigation matters initiated	8	2	5
# of educational or outreach activities	58	53	54

See Exhibit C.

- With respect to its priority of **providing an administrative forum for investigating complaints of unlawful discrimination and retaliation**, the Commission regularly processes and investigates over 700 complaints each year. In each, the Commission assesses the existence of jurisdiction, seeks and reviews information and documents, provides procedural and substantive opportunities for party participation, applies suitable legal analysis, and complies with statutory deadlines. Investigators carry an open caseload of 30-60 cases at any one time, meaning that there are always numerous cases pending assignment. Commissioners have noted over the last several years that the resources available to investigate and resolve complaints fail to meet the timeliness expectations of many parties to complaints filed with the Commission. This also was the 2016 conclusion of a Review Panel appointed by the Office of the Governor to review and make recommendations about the Commission’s operation. See Exhibit D. In recent years, the agency has sought to reduce backlogged cases and wait times by improving categorization of cases after early pleading; the goal has been to focus investigative resources on stronger cases, and to resolve complaints unlikely to succeed early by administrative dismissal.

This approach began to bear fruit in 2018 (with backlog reduced by 6.1%) and improved further after the Commission successfully sought amendment of the MHRA to pursue this categorization approach in 2019 (with backlog reduced by 9.2%). Unfortunately, with the COVID-19 pandemic came reduced staffing availability, slower processing of cases due to parties' and lawyers' pandemic limitations, and increased case filings; our pending case inventory has gone up instead of down. The Commission plans to continue its categorization approach and believes it will again help reduce pending cases and backlog. *The Commission is meeting this priority.*

- With respect to its priority of **providing opportunities for dispute resolution**, the Commission offers parties an opportunity to engage in informal dispute resolution in every case. Additionally, the Commission has a robust formal Third Party Neutral Mediation Program it offers for a fee to parties in hundreds of cases each year. Given that 45-49% of complaints resolve voluntarily each year, *the Commission is meeting this priority.*

- With respect to its priority of **providing redress after a Commission reasonable-grounds finding**, the Commission invites parties to each reasonable-grounds case to participate in mediated conciliation that includes the Commission as a party representing the public interest. The vast majority of parties participate in conciliation, and a significant percentage of reasonable-grounds cases resolve via conciliated agreement. In those instances where conciliation was refused, or no agreement was reached, the Commission votes in each case as to whether to initiate litigation. For each such case, Commission Counsel reviews the case and provides a recommendation as to whether to litigate the case. When litigation remains necessary, the Commission has been extremely successful. In all but two litigated matters, the cases resolved with significant public interest benefits. In two litigation matters that did not resolve in 2017 and 2018, the Commission prevailed at trial. *The Commission is meeting these priorities.*

- With respect to its priority of **providing information to people in Maine about their MHRA and MWPA rights and responsibilities**, the Commission every day provides outreach and education in a variety of formats to the public and stakeholders. Commission staff create written and visual materials (pamphlets, guidance, videos) in a variety of languages, update website information for current topics and meetings, participate in professional and constituent gatherings, and provide information to Legislators, and answer phone calls about MHRA topics. *The Commission is meeting this priority.*

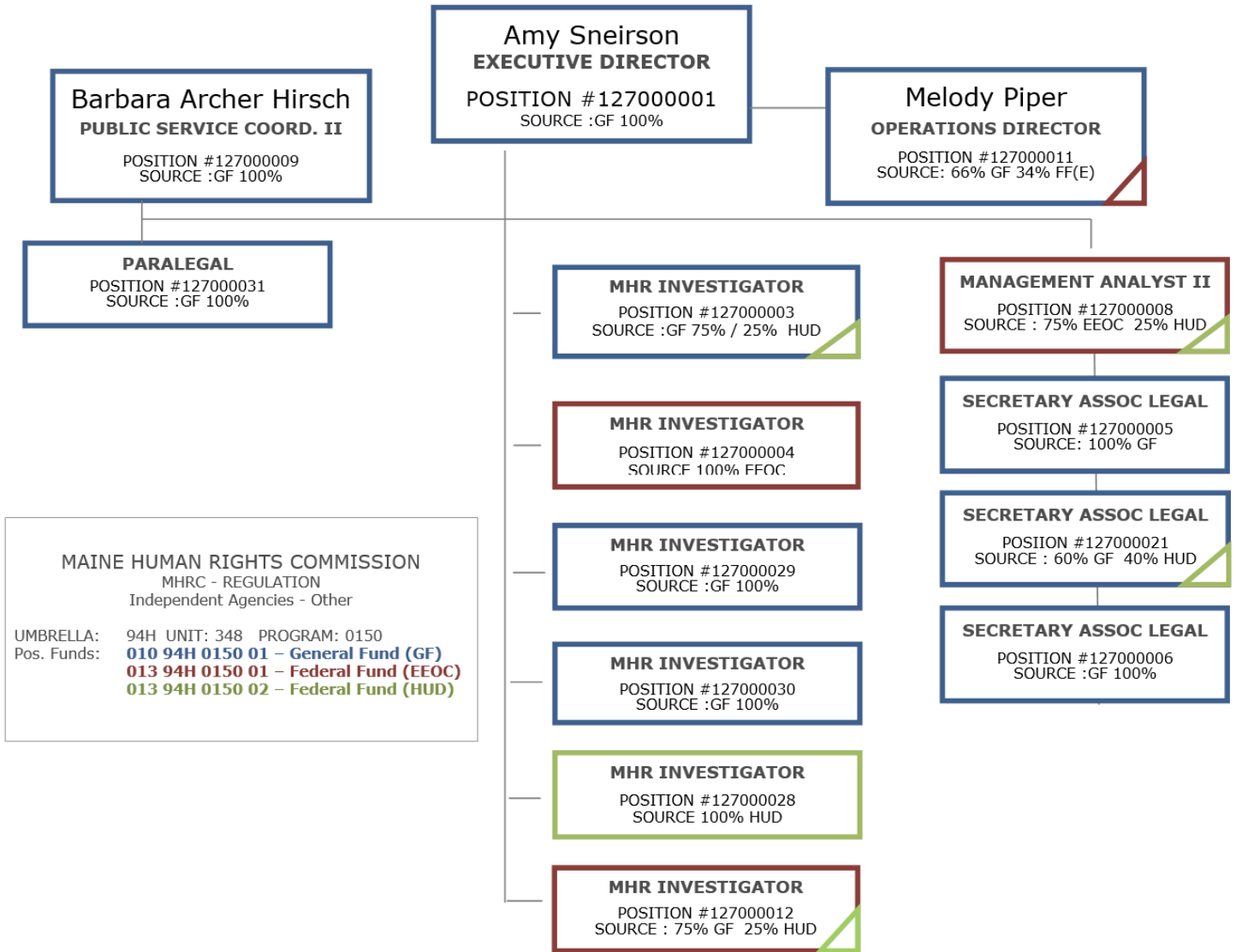
MHRC Program Evaluation Report

PART C

Organizational Structure

MAINE HUMAN RIGHTS COMMISSION

2021 ORGANIZATIONAL CHART



PART E

Financial Summary

MHRC Expenditures 10 Year History

Expenditures by Fund Source	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012
General Fund	923,842	955,600	821,288	798,853	716,909	663,270	505,982	496,425	486,445	499,722
Fed Funds	487,799	428,713	381,146	409,219	389,590	360,214	434,862	424,574	362,950	355,483
Other Special Revenue	30,025	32,347	31,057	32,741	21,628	16,330	8,910	1,837	-	2,918
Total Expenditures All Funds	1,441,666	1,416,660	1,233,491	1,240,813	1,128,127	1,039,814	949,754	922,836	849,395	858,123
Expenditures by Account Summary	2021	2020	2019	2018	2017	2016	2015	2014	2013	2013
General Fund	923,842	955,600	821,288	798,853	716,909	663,270	505,982	496,425	486,445	486,445
Fed Funds: US EEOC	272,574	220,586	192,196	234,232	194,384	196,725	267,778	244,393	172,210	144,431
Fed Funds: HUD	215,225	208,127	188,950	174,987	195,206	163,489	167,084	180,181	190,740	211,052
Total Federal Expenditures	487,799	428,713	381,146	409,219	389,590	360,214	434,862	424,574	362,950	355,483
Other Special Rev: Seminar	-	3,614	-	-	-	-	-	-	-	2,721
Other Special Rev: Printing	-	-	-	270	482	447	1,802	1,837	-	197
Other Special Rev: Mediation	30,025	28,733	31,057	32,471	21,146	15,883	7,108	-	-	-
Total Other Special Revenue	30,025	32,347	31,057	32,741	21,628	16,330	8,910	1,837	-	2,918

MHRC Program Evaluation Report

PART G

***Coordination with
Federal & State Agencies***

MAINE HUMAN RIGHTS COMMISSION COORDINATION WITH FEDERAL PARTNERS

The Commission has entered into agreements and partnerships with various federal agencies to coordinate efforts at achieving objectives.

→ **U.S. Equal Employment Opportunity Commission (“EEOC”)**

The Commission has since 1975 had a partnership agreement with the EEOC, the federal agency which enforces primary federal statutes prohibiting employment discrimination. This relationship is governed both by EEOC’s continuing determination to designate the Commission as a certified “Fair Employment Practices Agency” pursuant to federal law and by an annually-updated Worksharing Agreement, the current version of which is attached as Exhibit E. The Worksharing Agreement delineates how charges that are jurisdictional under both state and federal laws will be administered by each agency, “dual-filed” with one another, processed, reviewed, and resolved. Generally, the Agreement avoids duplication of effort in enforcing civil rights statutes, and the findings of each agency are given substantial weight by the other. The EEOC pays the Maine Human Rights Commission per closure of each dual-filed case.

→ **U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity (“HUD”)**

The Commission has since 2005 had a partnership agreement with HUD, the federal agency which enforces the primary federal statute prohibiting housing discrimination; prior to that time, the Commission had a capacity-building agreement with HUD. This relationship is governed both by HUD’s continuing determination to designate the Commission as a “Fair Housing Assistance Partner” pursuant to federal law and by an annually-updated Contributions Agreement, the current version of which is attached as Exhibit F. The Contributions Agreement delineates how charges that are jurisdictional under both state and federal laws will be administered by each agency, “dual-filed” with one another, processed, reviewed, and resolved. Generally, the Agreement avoids duplication of effort in enforcing fair housing statutes, and the findings of each agency are given substantial weight by the other. HUD pays the Commission per closure of each dual-filed case, and also occasionally makes supplemental partnership funds available for projects.

→ **U.S. Department of Justice/Civil Rights Division (“DOJ”)**

- ◆ **Disability Section**: DOJ’s Disability Section enforces the accessibility portions of the Americans with Disabilities Act (“ADA”) in places of public accommodation. In 1997, the DOJ certified that the MHRA and Commission Accessibility Regulations were compatible with ADA Title II new-construction and alteration requirements for public accommodations. *See* Exhibit G. This allows builders of covered buildings in Maine a rebuttable presumption of meeting ADA accessibility standards if they met the MHRA’s standards.
- ◆ **Office of Special Counsel for Immigration-Related Unfair Employment Practice (“OSC”)**: OSC enforces of the provisions of the Immigration Reform and Control Act

of 1986 which prohibit employment discrimination on the basis of national origin or citizenship status, or in the form of “document abuse.” The Commission and OSC entered into a Worksharing Agreement in 1994 to minimize duplication of effort and refer jurisdictional matters to one another expeditiously. *See* attached Exhibit H.

MAINE HUMAN RIGHTS COMMISSION COORDINATION WITH STATE PARTNERS

The Commission also has established cooperative working relationships with state agencies to effect enforcement of the specific MHRA provisions.

→ **Maine Department of Education (“MDOE”)**

Under the MHRA, the MDOE has joint rulemaking authority with the Commission to effectuate provisions of the MHRA related to equal educational opportunity. *See* 5 M.R.S. §4603. The MHRA also provides that the Commission will inform the MDOE’s Commissioner of the results of preliminary investigations into complaints of unlawful educational discrimination concerning public schools and programs and private schools approved for tuition purposes, and, whenever a reasonable-grounds finding is made, the MDOE’s Commissioner may participate in conciliation efforts. *See* 5 M.R.S. §4604. Additionally, the Commission has a statutory requirement to cooperate with the Commissioner of Education to promote gender equity in the hiring of public school administrators. *See* 5 M.R.S. §4576.

→ **Maine Department of Public Safety/Office of State Fire Marshal (“OFM”)**

The MHRA has since 1993 required builders of newly constructed facilities to submit plans to the OFM to ensure that the plans meet the MHRA standards of construction. *See* 5 M.R.S. §§4594-D(7) and -F(8).

→ **Superintendent of Financial Institutions and the Superintendent of Consumer Credit Protection**

The MHRA requires the Superintendent of Financial Institutions and the Superintendent of Consumer Credit Protection to cooperate with the Commission in MHRA enforcement in issues related to fair credit extension. *See* 5 M.R.S. §4598.

→ **Maine Department of Labor, Wage and Hour Division (“MDOL”)**

The Commission has informal partnerships with the MDOL to cross-refer matters between agencies. A key point of contact relates to a requirement enforced by MDOL that employers post and distribute to employees written information about unlawful sexual harassment, and that employers of a certain size conduct mandatory training about unlawful sexual harassment. *See* 26 M.R.S. Chapter 7 Subchapter 4-B.

MHRC Program Evaluation Report

PART H

Constituencies

MAINE HUMAN RIGHTS COMMISSION CONSTITUENCIES SERVED BY THE AGENCY

Following is a list of constituencies served by the Commission, along with a summary of bases covered by the MHRA from the passage of the Act in 1972 to the present (October 2021), denoting years when amendments were made which changed the constituent base. Several constituencies have been added recently, due to MHRA amendments that became effective in October 2021.

1. Individuals who are in MHRA protected classes (e.g., who have characteristics that are “protected” by the MHRA), and organizations advocating for them.
2. Individuals who are not in a MHRA protected class but otherwise are “aggrieved persons” under the MHRA because they are regarded as having protected class membership, or are associated with persons in protected classes.
3. Attorneys.
4. Employers, and organizations for them.
5. Labor organizations.
6. Workers/employees/applicants for employment who have (or are regarded as having) protected-class membership, and organizations for them.
7. Housing owners and managers, and organizations for them.
8. Realtors, and associations for them.
9. Tenants and applicants for rental housing who have protected-class membership, and organizations for them.
10. Banks, lending institutions, credit unions, and mortgage organizations, and customers who have protected-class membership.
11. Health care providers and patients, and associations for them.
12. Service providers open to the public and patrons who have protected-class membership.
13. Retail and commercial establishments, and associations for them.
14. Transportation providers and patrons who have protected-class membership.
15. Hospitality and entertainment providers and patrons who have protected-class membership.
16. Municipalities.
17. Services and places of the State of Maine offered or open to the public.
18. Internet services open to people in Maine.
19. Colleges and universities, and their students/patrons who have protected-class membership.
20. Public school units (including charter schools), private schools approved for tuition purposes, and students/patrons who have protected-class membership.
21. Preschools, and students/patrons who have protected-class membership.
22. Educators.
23. Organizations for persons in communities traditionally targeted due to ethnicity, sex, disability, race, national origin, ancestry, LGBTQQIA+, and religion.
24. Social service agencies.
25. Athletic associations.
26. Victims of domestic violence who have obtained permanent orders of protection, and advocacy organizations that assist them.
27. Persons who have engaged in activity protected by the Maine Whistleblowers’ Protection Act.

BASES COVERED BY THE MAINE HUMAN RIGHTS ACT

JURISDICTIONAL BASIS	EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION	YEAR ENACTED
AGE	X			X		1972
ANCESTRY	X	X	X	X		1972
COLOR	X	X	X	X		1972
NATIONAL ORIGIN	X	X	X	X	X	1972
RACE	X	X	X	X	X	1972
RELIGION	X	X	X	X		1972
MARITAL STATUS				X		1973
SEX	X	X	X	X	X	1973
PHYSICAL DISABILITY	X	X	X		X	1974
MENTAL DISABILITY	X	X	X		X	1975
RECEIPT OF PUBLIC ASSISTANCE		X				1975
PREGNANCY	X					1979
FAMILIAL STATUS (MINOR CHILD)		X				1981
RETALIATION FOR WORKERS' COMP. CLAIM V. PRIOR EMPLOYER	X					1987
WHISTLEBLOWER RETALIATION	X					1988
CHILDREN (LODGING ONLY)			X			1989
MHRA RETALIATION/INTERFERENCE	X	X	X	X	X	1993
GENETIC INFORMATION	X					1998
SEXUAL ORIENTATION (INCLUDES GENDER IDENTITY/EXPRESSION)	X	X	X	X	X	2005
FAMILIAL STATUS (MINOR CHILD AND DEPENDENT ADULT)	X	X				2021
AGE			X			2021
DOMESTIC VIOLENCE VICTIM WITH PERMANENT PROTECTION ORDER	X	X				2021
ANCESTRY, RELIGION, COLOR					X	2021

MHRC Program Evaluation Report

PART I

Alternative Delivery Systems

MAINE HUMAN RIGHTS COMMISSION

ALTERNATIVE DELIVERY SYSTEMS

Since 2009, the Commission has made numerous efforts to deliver its services, or benefits of its program, via alternative systems that include (among other approaches) privatization. Some examples are provided here.

Mediation services

Given that one of the Commission's priorities is providing opportunities to resolve disputes, over the years the agency has made extensive efforts to offer mediation to parties to a Commission case. Since 1994, the agency has undergone seven major initiatives to provide mediation to parties:

1994: Volunteer Project 1 (attorneys)

1995-1996: Volunteer Project Phase II (attorneys)

1996, 1998, 1999: (volunteer) Dispute Resolution Project

2001-2006: Community Mediation Services

2009: individual volunteer mediator

2012: Established Third Party Neutral Mediation Program using professional mediators, paid for using EEOC partnership funds.

2013: With EEOC funds no longer available, the agency switched to a fee-for-service program, with each party paying a nominal fee for mediation. The fees flowed through the Commission to contracted mediators at a flat per-case rate; a slight addition on top of the flat fee allowed the Commission to cover fees for indigent parties and statewide cost allocation plan fees (until 2019, when the Mediation Program was exempted from STA-CAP).

The fee-for-service model of the Mediation Program in place since 2013 has become extremely popular due to the low cost for high-quality mediations; as the program has flourished, the Commission has twice added mediators to the roster.

HUD Partnership Grants

Approximately 10 times since 2012, the Commission has applied for and received grants HUD made available to its state partners for fair housing projects. This funding has allowed the Commission to: produce and do outreach with informational pamphlets (in English and five other languages) on topics such as service animals, access to shelters, and hostile housing environments; contract with a vendor to create and publicize easy-to-access videos with information on service animals and fair housing issues related to COVID-19; partner with housing provider and tenant stakeholders to revise a free sample residential lease to include fair housing issues; conduct outreach to targeted populations including people who are LGBTQQIA+, or who have limited English proficiency; contract with a former Commission compliance officer to survey accessibility of multi-family housing and related policies; and contract with an American Sign Language ("ASL") interpreter to create a podcast about the MHRA and Commission in ASL for people who are Deaf. Under a specific CARES Act grant delivered through HUD during the COVID-19 pandemic, the Commission also was able to obtain technology assets to facilitate remote fair housing investigations.

Electronic Data Management/Portal System

One constant at the Commission is that people involved in intakes or cases express frustration with how long the agency process takes and/or getting information during it. Our traditional approach had been to have a receptionist or assigned investigator answer phone calls with questions, which was disruptive to our workflow and resource-intensive. Several years ago, the Commission tried implementing a new phone answering system to automate transferring calls to particular staffers; this proved fairly unpopular, as people got angry at not having a “live person” to talk to, and/or forgot who was handling their matter, and/or called back repeatedly seeking immediate assistance. After years of researching options, in 2018 the Commission sought State of Maine funding to create a low-cost open-source electronic data management system (“Civi”) that would speed up internal processing and support an external-facing public portal. The portal is intended to allow people to confidentially and directly file and obtain documents, find out the status of their cases/intakes, and update information in Commission matters, thereby improving communication and reducing frustration. When the portal initiative was funded in 2019 (\$10,000/year), we began building Civi for internal use in Fall 2019. At the onset of the COVID-19 pandemic in early 2000, the Commission was still operating totally on paper (like most other state agencies), so our agency had to create systems for remote operation on the fly; doing this in a pinch required us to pause our Civi designing but ended up being instructive for how Civi developed when we could pick it up back up. At this time, we have created from scratch - and are using 100% of the time - an electronic data system that handles cases from intake through litigation; our internal processing has sped up substantially and we estimate that approximately 90% of our cases are handled electronically at this point in time. With this securely in place, we are developing the public portal.

MHRC Program Evaluation Report

PART J

Emerging Issues

MAINE HUMAN RIGHTS COMMISSION EMERGING ISSUES

The following are noted as emerging issues for the Commission in the coming years.

→ ***Exemptions from/objections to public health mandates.***

In the past, the Commission occasionally received complaints from people who were unable to meet school or employer vaccination requirements for disability or religion reasons, and we expected that such complaints would increase when a 2019 change to Maine’s school vaccination law removing non-medical exemptions became effective in September 2021. Even before that happened, COVID-19 and its related public health measures arrived. For the past 1.5 years of the pandemic, the Commission has received hundreds of queries, intakes, and complaints objecting to public health mandates by public and private actors on the grounds that those mandates violate certain individuals’ rights under the MHRA. Whether the issue is shutdowns/stay-at-home orders, mask mandates, or vaccination requirements, individuals are alleging and litigating claims in employment, housing, places of public accommodation, and education, and asserting claims on the basis of age, disability, color, race, national origin, ancestry, and religion. With municipal, state, and federal mandates in play, the Commission is already dealing with a substantial increase in claims by persons who sought reasonable accommodations to mandates in employment, education, and public accommodation for disability and religious reasons. As a federal moratorium on evictions ends, we expect that the growing number of housing discrimination complaints we are receiving will skyrocket; since housing cases must be investigated within 100 days, this will create substantial stress on our thinly-resourced agency. We foresee COVID-19 issues continuing to present a substantial portion of the Commission's caseload in the upcoming years. In particular, we anticipate that the legal issues around religious accommodations will evolve quickly, including issues such as what constitutes a religion or religious belief/practice, and the amount of risk an employer, school, or public accommodation is required to accept in determining whether an accommodation is not reasonable because it risks the health and safety of others.

→ ***What is a place of public accommodation?***

The MHRA defines a place of public accommodation as “a facility, operated by a public entity or private entity, whose operations fall within at least one of the following categories ... “[a]ny establishment that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public”. 5 M.R.S. §4553(8)(N). When the MHRA first covered places of public accommodation in 1972, services generally were only delivered at physical facilities, but in the years since, more and more services have been delivered remotely (first by phone and now by internet or applications). Like the federal government and most other states, the Commission has held that services delivered over the internet to consumers in Maine are places of public accommodation subject to the MHRA. The Commission is currently involved in litigation against UBER, which has taken the position that it is not a place of public accommodation because it does not offer its services from a physical location but rather facilitates individuals connecting for contracted rides via a web-based application; this argument is also cropping up in cases against state agencies. As more and more of our daily lives are happening online, the Commission anticipates this issue to continue to develop over the next several years

→ ***Gender identity discrimination.***

The MHRA was amended in 2005 to include “sexual orientation” as a protected class that explicitly included in its definition actual or perceived “gender identity or expression”. The Commission has adopted a regulatory definition of the term “gender identity” to mean “an individual’s gender-related identity, whether or not that identity is different from that traditionally associated with that individual’s assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.” CITE. An area that has attracted attention in the recent past, and will likely continue to do, is access to facilities and programs by people who are transgender. In 2007, the Commission found reasonable grounds to believe unlawful discrimination occurred related to transgender students being able to use school facilities consistent with their gender identity, those cases were litigated until the Maine Supreme Judicial Court ruled in 2014 that Maine public schools were required to allow transgender students to access facilities consistent with their gender identity. The Commission sought to promulgate agency education rules reflecting this in 2015, but were unable to do so, so in 2016 issued an interpretative guidance document for schools instead. Unfortunately, the passage of time has not eliminated disputes based on gender identity, and the issue remains particularly prevalent in schools, where bathrooms, locker rooms, and sports teams are segregated by sex and gender. The Commission plans to start the rulemaking process on this and other topics shortly.

→ ***Applicability of Maine Whistleblowers’ Protection Act in workplaces with unions.***

The MWPA applies broadly and says that “[n]o employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because” the employee engaged in activity protected by the MWPA. *See* 26 M.R.S. § 833. The MWPA definition of “employer” is similarly broad, and “means a person who has one or more employees, [and] includes an agent of an employer and the State, or a political subdivision of the State [and] also means all schools and local education agencies.” 26 M.R.S. § 832(2). In recent years, employers have argued that the Commission may not investigate a MWPA complaint if the investigation required the Commission to examine matters subject to an existing collective bargaining agreement, under the theory that the federal law governing collective bargaining (the Labor Management Relations Act, or “LMRA”) preempted the state MWPA. Earlier this year, the Maine Supreme Judicial Court issued a broad ruling in *Nadeau v. Twin Rivers Paper Co., LLC*, 2021 ME 16, that bars nearly all MWPA claims made by unionized employees. The *Nadeau* decision relied on a section of the MWPA that provides that MWPA claims cannot conflict with collective bargaining agreements to go further than was required under existing LMRA-preemption cases, and places unionized employees' rights at risk. The Commission has submitted a bill seeking to amend the MWPA to bring Maine law back in line with federal law addressing this issue.

MHRC Program Evaluation Report

PART K

***Specific Info
Requested by Committee***

**MAINE HUMAN RIGHTS COMMISSION
SPECIFIC INFORMATION REQUESTED BY COMMITTEE**

None requested.

MHRC Program Evaluation Report

PART L

***Comparison of Related Federal
Laws & Regulations***

MAINE HUMAN RIGHTS COMMISSION COMPARISON OF RELATED FEDERAL LAWS AND REGULATIONS

The areas of jurisdiction within the MHRA and Commission regulations generally are consistent with the following federal statutes and regulations, as follows:

I. Procedural Provisions

→ Maine

- ◆ **Statute:** MHRA, 5 M.R.S. Chapter 337, Subchapters 2 & 6.
- ◆ **Regulations:** Maine Human Rights Commission Regulations, 94-348 Code of Maine Regulations, Chapters 2 (Procedural Rule), 4A (Education Procedural Rule), 9 (Housing Procedural Rule).

→ Corresponding Federal Analogues

- ◆ **Statutes:**
 - Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-4 – 2000e-8.
 - Fair Housing Act, 42 U.S.C. §§ 3610 to 3616.
 - Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (programs receiving federal financial assistance – race, color, national origin).
- ◆ **Regulations:**
 - EEOC Procedural Regulations, 29 Code of Federal Regulations (“C.F.R.”) Part 1601.
 - HUD Complaint Processing Regulations, 24 C.F.R. §§ 103.1 – 103.515.
 - Title VI Procedures, 28 C.F.R. §§ 42.105 – 42.111 (DOJ); 34 C.F.R. §§ 101.1 – 101.131 (DOE).

II. Employment

→ Maine

- ◆ **Statutes:** MHRA, 5 M.R.S. Chapter 337, Subchapter 3 (race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry, national origin, Whistleblowers’ Protection Act activity, Workers’ Compensation claims against prior employer; familial status; victim of domestic violence with permanent order of protection), 26 M.R.S. Subchapter 5-B (Whistleblowers Protection Act), and 5 M.R.S. Chapter 503 (genetic information and testing).
- ◆ **Regulation:** Maine Human Rights Commission Employment Regulations, 94-348 Code of Maine Regulations Chapter 3.

→ Corresponding Federal Analogues

- ◆ **Statutes:**
 - Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et. seq. (race, color, religion, sex, or national origin).
 - The Americans with Disabilities Act, 42 U.S.C. Chapter 126, Subchapter I (physical or mental disability).
 - The Age Discrimination in Employment Act, 29 U.S.C. Chapter 14 (age).
 - The Rehabilitation Act of 1973, 29 U.S.C. § 794 (recipients of federal financial assistance – physical or mental disability).

- Genetic Information Nondiscrimination Act of 2008 (effective November 2009), 42 U.S.C. §§ 2000ff, et. seq. (genetic information and testing).
- ◆ Regulations:
 - EEOC Employment Regulations, Parts 1600 to 1691.
 - DOJ Rehabilitation Act Regulations, 28 C.F.R. Chapter I, Part 42.

III. Housing

→ Maine

- ◆ Statute: MHRA, 5 M.R.S. Chapter 337, Subchapter 4 (race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin, familial status, receipt of public assistance, victim of domestic violence with permanent order of protection).
- ◆ Regulation: Maine Human Rights Commission Regulations, 94-348 Code of Maine Regulations Chapter 8.

→ Corresponding Federal Analogues

- ◆ Statutes:
 - Fair Housing Act, 42 U.S.C. Chapter 45, Subchapter I (race, color, religion, sex, familial status, national origin, or handicap).
 - The Rehabilitation Act of 1973, 29 U.S.C. § 794 (recipients of federal financial assistance – physical or mental disability)
- ◆ Regulations:
 - HUD Housing Regulations, 24 C.F.R. §§ 100.1 – 100.400.

IV. Places of Public Accommodation

→ Maine

- ◆ Statute: MHRA, 5 M.R.S. Chapter 337, Subchapter 5 (race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, age, or national origin).
- ◆ Regulation: Maine Human Rights Commission Regulations, 94-348 Code of Maine Regulations Chapter 7 (disability).

→ Corresponding Federal Analogues

- ◆ Statutes:
 - The Americans with Disabilities Act, 42 U.S.C. Chapter 126, Subchapters II & III (physical or mental disability).
 - Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a – 2000a-6(b) (race, color, religion, or national origin).
 - The Rehabilitation Act of 1973, 29 U.S.C. § 794 (recipients of federal financial assistance – physical or mental disability).
- ◆ Regulations:
 - DOJ Title III ADA Regulations, 28 C.F.R. Part 35
 - DOJ Title II ADA Regulations, 28 C.F.R. Part 36.

V. Educational Opportunity

→ Maine

- ◆ Statutes: MHRA, 5 M.R.S. Chapter 337, Subchapter 5-B (sex, sexual orientation or gender identity, physical or mental disability, national origin, religion, color, ancestry, or race).
- ◆ Regulation: Maine Human Rights Commission Regulations, 94-348 Code of Maine Regulations Chapter 4.

→ **Corresponding Federal Analogues**

- ◆ Statutes
 - The Americans with Disabilities Act, 42 U.S.C. Chapter 126, Subchapter II (physical or mental disability).
 - Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (programs receiving federal financial assistance – race, color, national origin).
 - The Rehabilitation Act of 1973, 29 U.S.C. § 794 (recipients of federal financial assistance – physical or mental disability).
- ◆ Regulations
 - DOJ Title II ADA Regulations, 28 C.F.R. Part 36.

PART M

***Agency Policies for Collecting,
Managing & Using Personal
Information***

MAINE HUMAN RIGHTS COMMISSION INFORMATION POLICIES

→ Agency policies for collecting, managing and using personal information over the Internet and nonelectronically.

The Commission's policies on the collection and dissemination of personal information is governed by the MHRA, and also by the Maine Freedom of Access Act, 1 M.R.S. § 400, *et seq.* Because so many MHRA complaints relate to highly sensitive personal information about individuals, the Commission takes confidentiality extremely seriously.

Pursuant to the MHRA, “[p]rior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation.” 5 M.R.S. § 4612(1)(B). The Commission construes this to bar the Commission from sharing even the existence of the complaint with anyone other than the parties or their counsel, and understands that this confidentiality mandate is intended to allow the parties the fullest extent possible to share information with the Commission during its investigation. The Commission requires all parties to share in this confidentiality expectation by signing nondisclosure agreements, pursuant to which they agree not to share anything they learn through our process while their case remains open. When notifying a respondent about a complaint involving disability, the Commission redacts the disability-specific information from the complaint itself, to ensure that non-management personnel who receive the complaint for the respondent do not receive confidential disability information before the respondent has signed a nondisclosure agreement; once the respondent does sign a nondisclosure agreement, they can obtain an unredacted copy of the complaint. During the course of the investigation, the Commission staff share all information submitted by one party with the other parties to the same complaint.

After the conclusion of an investigation, “[t]he complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint, is a matter of public record. . . .” 5 M.R.S. § 4612(1)(B). Accordingly, after its investigations are concluded, and unless there is a court order stating otherwise, the Commission releases the entire contents of its investigative files to the public upon request, with the exception of third-party identifying information and settlement/conciliation materials, which under the MHRA remain confidential even once the case investigation is complete. 5 M.R.S. §§ 4612(1)(A) and (3).

Parties to complaints are notified of this disclosure obligation in a number of ways, including the following. The Commission publishes a list of “Frequently Asked Questions” in written format and on its website that includes the types of information that is and is not kept confidential. The releases signed by complainants when it is necessary to obtain limited medical records state that they become a matter of public record at the conclusion of the investigation. The form letter sent by the Commission to respondents informing them of a complaint and requesting information notifies them that information becomes a matter of public record at the conclusion of the investigation. This letter is copied to complainants.

Even after a case file becomes open to the public pursuant to FOAA, the MHRA was amended in 2019 to clarify that certain personal information is confidential and not subject to FOAA:

- A. Medical, counseling, psychiatric and other confidential health records;
- B. Social security numbers;
- C. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and final agreements made prior to the conclusion of the investigative process;
- D. Names of minor children;
- E. Any information the commission is required to keep confidential pursuant to work-sharing agreements with the EEOC, HUD, or other federal partner agencies;
- F. Criminal history record information that is not otherwise made public by law;
- G. Personnel records and personal information that has been made confidential by law;
- H. Notes made by the investigator for the investigator's private use in assessing evidence gathered during an investigation; and
- I. Any other records that are not public records in accordance with FOAA.

5 M.R.S. § 4612(1-A).

To ensure that these confidential details are not given out to someone requesting a public record pursuant to FOAA, the Commission follows a rigorous, time-consuming review process while responding to a FOAA request to review every line of every page in a file for confidential information that must be redacted.

Particularly with respect to disclosure on the Internet of personal information, the Commission does post on our website agendas of upcoming meetings with disputed cases to be decided, and minutes of completed meetings indicating how disputed cases were disposed of, but does not post investigator's reports from individual cases. The investigator reports that the Commission produces do not identify third parties by name, and avoid as much as possible indicating specific disabilities except where required for the Commissioners to decide the case; in the event of a FOAA request for an investigator's report, the Commission follows its review process as noted above and redacts confidential information as needed before disclosure. except in highly redacted format (to remove personal identifying information). If the Commission believes that a reasonable-grounds finding is likely to educate the public about unlawful discrimination or retaliation, the agency may redact any confidential or personally identifying information from the investigator's report and post it on our website.

→ **Agency's implementation of information technologies.**

The Commission has been an early adopter of information technologies ("IT"), though our resources have limited our options. As a quasi-independent state entity which has the awkward task of investigating other state agencies, the Commission has sought as much as possible to be independent of state systems to ensure information privacy.

In 2012, the Commission worked with an ASL interpreting vendor to install free video relay system assets at our office to allow individuals whose primary language is ASL to access our office and systems; this was approved by the State's Office of Information Technology ("OIT")

first to ensure there were no security issues. In 2013, after working with the OIT and the State's Archives Retention to ensure compliance with state requirements, the Commission moved from state-provided email and data systems to provisioning and utilizing distinct data and email systems on platforms that offered security certified to meet the Federal Information Security Modernization Act of 2014 (Public Law 113-283; December 18, 2014)(the original FISMA was enacted in 2002 as part of the E-Government Act of 2002). From incorporating an interactive intake questionnaire into our website in 2014, to providing our Commissioners with meeting information digitally (via provisioned, secure tablets) rather than via mailing paper documents each month in 2015, through 2018, when the Commission sought funding to provision and create an open-source electronic data management system and public portal (discussed above), the Commission has adapted often to ensure that our IT is flexible but secure.

The COVID-19 pandemic required our agency to adapt nearly overnight from systems reliant on paper and physical presence in the office to systems that allowed information to be shared wholly electronically and operated via fully-remote investigations and public meetings. The technological demands of this rapid shift have been strenuous, pushing our meager staff and financial resources to the edge of capacity. We are still pivoting as needed to make our systems better and more secure. With our internal Civi database and systems fully functional, we are designing the portal that will allow the public and parties to engage with us directly and seamlessly. As approximately 90% of our agency's communication and investigative work now takes place electronically, the shift in our systems must go further, beyond that which the one staffer who had been managing information technology (and finance, human resources, operations, website, etc.) can manage and support. Accordingly, we have returned to the State Office of Information and Technology to provide technological support for our staff and operations, with agreements in place regarding data security.

→ **An evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement.**

The Commission has, and neutrally enforces, rigorous policies and practices regarding notice, choice, access and integrity. Long-established agency policies that govern each of these principles ensure that all parties have equitable access and opportunities to participate in agency services that are delivered by an agency that is neutral and independent. Most of these policies are outlined in the Commission's Procedural Rules, 94-348 Code of Maine Regulations Chapter 2, and/or on our website. All Commission policies are reviewed and updated to reflect best practices.

◆ Notice.

The Commission's Procedural Rule sets out how the Commission process operates, and includes extensive opportunities for providing notice to parties.

- A person who submits an intake receives either a draft complaint (with a letter instructing them how to complete and file it, and what the statutory deadline to do so is) or a screen-out letter explaining why we do not believe the MHRA has jurisdiction over the matter (with a blank complaint form that they can file if they disagree, and the statutory deadline for doing so).
- When the Commission receives a signed, notarized complaint, the respondent receives initial notice of the complaint in writing, with detailed instructions on how and when to

respond (and seek dismissal of a case), information on the process thereafter, and resources on finding further information; complainant gets a copy of this. If the case is dual-filed with HUD or the EEOC, the respondent receives information about that as well. The Commission also sends notice to a respondent's registered agent as a precaution, and to the Office of the Attorney General if a respondent is a state actor/agency. If a respondent does not answer the complaint, they receive an additional notification warning that a failure to respond could result in a summary determination in the complainant's favor.

- A complainant receives notice of the respondent's answer to the complaint, with detailed instructions on how and when to reply, information on the process thereafter, and resources on finding further information; respondent gets a copy of this. If a complainant does not provide a reply supporting their complaint they receive a notification warning that their complaint could be dismissed.
- With a complaint, response and reply in the file, all parties are notified that it could be some time before an investigator is assigned to their case and are encouraged to consider voluntary resolution of the dispute.
- Parties receive notice when an investigator is assigned to their case, when the investigator will conduct interviews or a conference, and when the evidentiary record will be closed. If an interview took place without all parties present, the investigator provides an interview summary or recording.
- If an investigator's report is issued, it includes the investigator's summary of the parties' positions, findings of fact, claims asserted, applicable legal principles and analysis of each claim, and a recommended determination of each claim. The parties receive a copy of it along with detailed instructions on how and when to reply, information on the hearing process, resources on finding further information, and what will occur if there is no timely response. A hearing agenda is posted online and sent to parties.
- If a party timely submits a disagreement with an investigator's report, the other party gets a copy of it and the parties are provided with notice of a public hearing. At the hearing, Commissioners hear arguments and vote on cases. After a hearing, minutes of the hearing are available online.
- When a case is completed, however that occurs, the parties receive notice of the case's resolution and (if applicable) information about relevant timelines for seeking review from HUD/EEOC or pursuing the action via litigation.
- If a hearing resulted in a reasonable-grounds finding, the parties receive notice that the Commission is inviting them to conciliate the dispute (with the Commission participating as a third party on behalf of the public). When conciliation does occur, the Commission provides the parties with the public interest relief the Commission is seeking ahead of time.
- If conciliation is not successful or does not occur, the Commission provides the parties with notice of failed conciliation, which includes information about the complainant's right to pursue the claim via litigation. If the Commission votes to initiate litigation in the public interest, that vote is reflected in minutes of a public meeting that are posted online.
- Information about all of these procedures is provided on our website.

◆ Choice.

Given the above-described series of notices provided to parties, parties to a Commission case have informed choice as to how to proceed at every juncture. If a person submits an intake but is not ready to file a signed, notarized complaint, or we screened out their intake but they

disagree with our assessment and want to proceed, they have been told the deadline to do so and can make those choices. If a respondent receives notice of a complaint and does not want to respond to it, or a complainant sees the respondent's reply and does not want to proceed, they can make those choices knowing what our process will be in those events. If the complainant wants to opt out of our process after 180 days, they can find information on how to do that on our website. One or both parties can seek to utilize mediation to resolve the dispute, but no one is forced to do so. If a party does not want to participate in an investigator's queries, or respond to an investigator's report, or appear or argue at a public Commission meeting, or participate in post-reasonable-grounds conciliation, they have no obligation to do so. The only mandatory process the Commission has is if it issues a subpoena for documents or testimony, which occurs perhaps once per year.

◆ Access

Detailed information about the Commission's processes, staff contact information, policies, offices, meetings, laws and rules is posted online on the agency's website, as is information about how persons who require assistance may request those.

- With respect to access for persons with limited English proficiency, the Commission's website contains a Language Assistance Plan related to translation and interpreting, and has translated information on a variety of topics in French, Spanish, Arabic, Somali and Haitian Creole; the agency also regularly accesses translation and interpreting services. Our website offers specific information on how a person can request a reasonable accommodation.
- With respect to persons with disabilities, the Commission's offices, website, phone systems, and services are all fully accessible; the agency also regularly accesses interpreting services and ensures participation in our process via other disability-related accommodations. Our website offers specific information on how a person can request a reasonable accommodation.
- With respect to access to public records and meetings, the Commission scrupulously complies with FOAA. Our agency timely posts on our website advance notices of public meetings and minutes after meetings, provides public access pursuant to FOAA at public meetings, and provides our public record policy and request form online. The Commission has already adopted a Remote Participation Policy for public hearings pursuant to P.L. 2021, Ch. 290, "An Act Regarding Remote Participation in Public Proceedings".

◆ Integrity.

- The Commission's mandate to investigate and assess claims as a quasi-independent, neutral body is primary to our functioning. Operating as transparently as possible is critical to maintaining public confidence in that neutrality, particularly as the Commission is an arm of the state that investigates other state operations and agencies.
- Unfortunately, there exists a common perception that the Commission is biased; every type of participant in a Commission believes that the agency is biased against them. Landlords and tenants each believe the Commission favors the other, and the same is true for employers and employees. This also was the 2016 conclusion of a Review Panel appointed by the Office of the Governor and to review and make recommendations about the Commission's operation (including assessing whether our agency was biased). *See Exhibit D.*

- Agency staff are all trained not to provide advice or opinions to any caller (or party to a pending case), and when providing public information all staff are careful not to give advice about any individual matter lest it end up in a contested Commission matter.
- The Commission makes public all of our laws, rules, policies, guidance, federal partnerships, annual reports, agendas, and minutes on our website for the public's information.
- Our Procedural Rule contains an explicit conflict of interest provision, and we screen investigators out of participating in any case in which they have - or could be perceived as having - a conflict of interest.
- Our website's Attorney Referral List on our website contains a specific disclaimer that our agency does not endorse any attorney on it.

MHRC Program Evaluation Report

PART N

***List of Reports, Applications &
Other Required Filings***

MAINE HUMAN RIGHTS COMMISSION
LIST OF REPORTS, APPLICATIONS AND OTHER REQUIRED FILINGS

During its complaint investigations, the Commission requires parties to submit responsive information to the Commission's requests for information relating to the complaints. The Commission is statutorily authorized to obtain this information pursuant to 5 M.R.S. §§ 4566(4) and 4612(1)(B). This authority has not changed since the last review.

The Commission received 715 complaints in fiscal year 2019 and 775 complaints in fiscal year 2020. During the past ten years, the annual number of complaints received has varied from 611 to 775. In almost every case, at a minimum, there is a written complaint, a response, and a complainant reply filed with the Commission. Further written submission are often received as the investigations progress. The Commission attempts to keep filings at a minimum by only requesting information that its staff determines is necessary to its investigations.

Our agency has been and continues to work to reduce filing requirements and paperwork duplication. Five years ago, we transitioned how we provide our five volunteer Commissioners information about agency activities and cases at monthly hearings; many trees have been saved because we stopped sending each stacks of paper each month and instead sent them tablets for electronic data use that we update prior to each meeting. Similarly, the Commission's creation and adoption of our Civi electronic data management system (described above) has revolutionized our internal operations, moving us to seamless use of e-mail and electronic systems rather than reliance on U.S. mail and paper files. We estimate that approximately 90% of our agency work - communication, investigations, hearings - now occur via electronic means.

MHRC Program Evaluation Report

PART O

***Reports Legislature Requires
Agency to Prepare or Submit***

MAINE HUMAN RIGHTS COMMISSION REPORTS REQUIRED BY THE LEGISLATURE

The statutes of the State of Maine require governmental entities to reports to the executive branch regularly regarding their entity finances and activities, so the Commission routinely prepares and submits reports such as an annual report to the Office of the Governor required by 5 M.R.S. § 43, a financial report to the Office of the State Controller required by 5 M.R.S. § 1547, and a work program to the Bureau of the Budget required by 5 M.R.S. § 1667.

However, assuming that 3 M.R.S. § 956(2)(O) seeks solely a listing of reports that the reporting agency must submit to the Legislature itself, the only qualifying report required of the Commission is an annual quasi-independent agency report on financial policies and procedures required by 5 M.R.S. § 12023 (procurements, contributions, policies).

MHRC Program Evaluation Report

PART P

***List of Organized Units or
Programs Within the Agency***

MAINE HUMAN RIGHTS COMMISSION AGENCY PROGRAMS

As noted in Part B of this report, the Commission has one single program: to protect the health and welfare of all persons in Maine by enforcing laws prohibiting discrimination, and promoting equality of opportunity, in employment, housing, education, public accommodations, and credit.

Within the one program designated as a matter of law, the Commission has organized its workflow to group work as follows:

- Intake
- Case processing
- Mediation
- Investigation (including public hearings)
- Legal (including ensuring legal sufficiency of agency operations, conciliation, legislative matters, rulemaking, litigation)
- Administrative (including managing finance, operations, human resources, FOAA, IT, document or data retention/archives, public information, accessibility, reporting, federal partnerships, state agency linkages)

PART Q

***Identification of Provisions in the
Independent Agency's Enabling or
Authorizing Statutes That may
Require Legislative Review***

None identified.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
S.P. 544 - L.D. 1688

**An Act To Improve Consistency in Terminology and within the Maine
Human Rights Act**

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

Sec. 1. 5 MRSA §4552, as amended by PL 2005, c. 10, §1, is further amended to read:

§4552. Policy

To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing, education, extension of credit or access to public accommodations on account of an individual's actual or perceived race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry or national origin and in employment, extension of credit and access to public accommodations on the basis of age; and in employment and housing on the basis of familial status; and in employment, discrimination on account of age or because of the previous assertion of a claim or right against a prior employer under former Title 39 or Title 39-A and in housing because of familial status; and to prevent discrimination in the extension of credit on account of age, race, color, sex, sexual orientation, marital status, religion, ancestry or national origin; and to prevent discrimination in education on account of sex, sexual orientation or physical or mental disability and because of protected activity under Title 26, chapter 7, subchapter 5-B; and to prevent discrimination or retaliation on the basis of an assertion of rights under this Act or interference with an individual's right to be free from discrimination prohibited under this Act.

Sec. 2. 5 MRSA §4553, sub-§5-A, as amended by PL 2019, c. 464, §1, is further amended to read:

5-A. Familial status. "Familial status" means ~~that a family unit may contain one or more individuals who have not attained 18 years of age and are living with~~ that contains:

A. A One or more individuals who have not attained 18 years of age and are living with a parent or another person having legal custody of the individual or individuals or the designee of the parent or other person having custody with the written permission of the parent or other person; or

~~B. The designee of the parent or other person having custody, with the written permission of the parent or other person.~~

B-1. One or more individuals 18 years of age or older who lack the ability to meet essential requirements for physical health, safety or self-care because the individual or individuals are unable to receive and evaluate information or make or communicate decisions.

The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or who is in the process of securing legal custody of any individual who has not attained 18 years of age.

Sec. 3. 5 MRSA §4553, sub-§10, ¶G, as amended by PL 2019, c. 464, §1, is further amended by amending subparagraph (3) to read:

(3) Educational opportunity, ~~as is more fully set forth in section 4602, subsection 4.~~

Sec. 4. 5 MRSA §4571, as amended by PL 2005, c. 10, §10, is further amended to read:

§4571. Right to freedom from discrimination in employment

The opportunity for an individual to secure employment without discrimination because of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin or familial status is recognized as and declared to be a civil right.

Sec. 5. 5 MRSA §4572, sub-§1, as amended by PL 2005, c. 10, §§11 and 12, is further amended to read:

1. Unlawful employment. It is unlawful employment discrimination, in violation of this Act, except when based on a bona fide occupational qualification:

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin or familial status, because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter 5-B; or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment; or, in recruiting of individuals for employment or in hiring them, to utilize any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry ~~or~~, national origin or familial status, because of their previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B;

(1) This paragraph does not apply to discrimination governed by Title 39-A, section 353;

B. For any employment agency to fail or refuse to classify properly, refer for employment or otherwise discriminate against any individual because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry $\text{\textcircled{R}}$, national origin or familial status, because of the individual's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the individual that are protected under Title 26, chapter 7, subchapter 5-B; or to comply with an employer's request for the referral of job applicants if a request indicates either directly or indirectly that the employer will not afford full and equal employment opportunities to individuals regardless of their race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry $\text{\textcircled{R}}$, national origin or familial status, because of previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B;

C. For any labor organization to exclude from apprenticeship or membership or to deny full and equal membership rights to any applicant for membership because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry $\text{\textcircled{R}}$, national origin or familial status, because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter 5-B; or, because of those reasons, to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of that labor organization or by a collective labor agreement or other contract; to fail or refuse to classify properly or refer for employment or otherwise discriminate against any member because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry $\text{\textcircled{R}}$, national origin or familial status, because of the member's previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions taken by the member that are protected under Title 26, chapter 7, subchapter 5-B; or to cause or attempt to cause an employer to discriminate against an individual in violation of this section, except that it is lawful for labor organizations and employers to adopt a maximum age limitation in apprenticeship programs, if the employer or labor organization obtains prior approval from the Maine Human Rights Commission of any maximum age limitation employed in an apprenticeship program. The commission shall approve the age limitation if a reasonable relationship exists between the maximum age limitation employed and a legitimate expectation of the employer in receiving a reasonable return upon the employer's investment in an apprenticeship program. The employer or labor organization bears the burden of demonstrating that such a relationship exists;

D. For any employer, employment agency or labor organization, prior to employment or admission to membership of any individual, to:

(1) Elicit or attempt to elicit information directly or indirectly pertaining to race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry or national origin or familial status, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B;

(2) Make or keep a record of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry or national origin or familial status, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B, except under physical or mental disability when an employer requires a physical or mental examination prior to employment, a privileged record of that examination is permissible if made and kept in compliance with this Act;

(3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry or national origin or familial status, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B. This section does not prohibit any officially recognized government agency from keeping records permitted to be kept under this Act in order to provide free services to individuals requesting rehabilitation or employment assistance;

(4) Print, publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry or national origin or familial status, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B; or

(5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, age, ancestry or national origin or familial status, the previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B, of that group; or

E. For an employer, employment agency or labor organization to discriminate in any manner against individuals because they have opposed a practice that would be a violation of this Act or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under this Act. This paragraph does not limit the liability of persons pursuant to section 4633.

Sec. 6. 5 MRSA §4573-A, sub-§3 is enacted to read:

3. Physical or mental disability. This subchapter does not prohibit an employer from discharging or refusing to hire an individual with a physical or mental disability or subject an employer to any legal liability resulting from the refusal to employ or the discharge of the individual with a physical or mental disability if the employer establishes that the

individual, because of the physical or mental disability, is unable to perform job duties or to perform job duties in a manner that would not endanger the health or safety of the individual or others.

Sec. 7. 5 MRSA §4581, first ¶, as amended by PL 2011, c. 613, §10 and affected by §29, is further amended to read:

The opportunity for an individual to secure housing in accordance with the individual's ability to pay, and without discrimination because of race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status is hereby recognized as and declared to be a civil right.

Sec. 8. 5 MRSA §4581-A, sub-§1, as enacted by PL 2011, c. 613, §11 and affected by §29, is amended to read:

1. Sale or rental of housing and other prohibited practices. For any owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these, to:

A. Make or cause to be made any written or oral inquiry concerning the race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status of any prospective purchaser, occupant or tenant of the housing accommodation;

B. Refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any person the housing accommodation because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status;

C. Make, print or publish or cause to be made, printed or published any notice, statement or advertisement relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation or discrimination based upon race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status or an intention to make any such preference, limitation or discrimination;

D. Discriminate against any person because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status in the price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations or in the furnishing of facilities or services in connection with any housing accommodations; or

E. Evict or attempt to evict any tenant of any housing accommodation because of the race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status of the tenant;

Sec. 9. 5 MRSA §4581-A, sub-§2, as enacted by PL 2011, c. 613, §11 and affected by §29, is amended to read:

2. Selling, brokering or appraising of housing. For any real estate broker or real estate salesperson, or any agent of these, to:

A. Fail or refuse to show any person a housing accommodation listed for sale, lease or rent because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status;

B. Misrepresent, for the purpose of discriminating because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status, the availability or asking price of a housing accommodation listed for sale, lease or rent or for such reason to fail to communicate to the person having the right to sell, rent or lease the housing accommodation any offer for the same made by any applicant;

C. In any other manner to discriminate against any applicant for a housing accommodation because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status;

D. Make or cause to be made any written or oral inquiry or record concerning the race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status of any applicant for or intended occupant of a housing accommodation; or

E. Accept for listing any housing accommodation when the person having the right to sell, rent or lease the housing accommodation has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status, or when the broker or salesperson knows or has reason to know that the person having the right to sell, rent or lease the housing accommodation has made a practice of discrimination since July 1, 1972;

Sec. 10. 5 MRSA §4581-A, sub-§3, as enacted by PL 2011, c. 613, §11 and affected by §29, is amended to read:

3. Making of loans; other financial assistance. For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of the person, to:

A. Make or cause to be made any oral or written inquiry concerning the race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status of any applicant for financial assistance or of existing or prospective occupants or tenants of housing accommodations; or

B. Discriminate in the granting of financial assistance, or in the terms, conditions or privileges relating to obtaining or the use of any financial assistance, against any applicant because of race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin or familial status; or

Sec. 11. 5 MRSA §4583, as amended by PL 2007, c. 243, §4, is further amended to read:

§4583. Application

Nothing in this Act may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting or in the furnishings of facilities or services in connection with the facilities that are consistent with business necessity and are not based on the race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, country of

ancestral origin or familial status of or the receipt of public assistance payments by any prospective or actual purchaser, lessee, tenant or occupant. Nothing in this Act may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations to set standards and preferences, terms, conditions, limitations or specifications for the granting of loans or financial assistance that are consistent with business necessity and are not based on the race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, country of ancestral origin or familial status of or the receipt of public assistance payments by the applicant for a loan or financial assistance or of any existing or prospective owner, lessee, tenant or occupant of a housing accommodation.

Sec. 12. 5 MRSA §4591, as amended by PL 2005, c. 10, §16, is further amended to read:

§4591. Equal access to public accommodations

The opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin is recognized as and declared to be a civil right.

Sec. 13. 5 MRSA §4592, sub-§1, as amended by PL 2005, c. 10, §17, is further amended to read:

1. Denial of public accommodations. For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin, any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to ~~accommodation~~ accommodations, advantages, facilities, goods, services and privileges may depend.

For purposes of this subsection, unlawful discrimination also includes, but is not limited to:

- A. The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered;
- B. A failure to make reasonable modifications in policies, practices or procedures, when modifications are necessary to afford the goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless, in the case of a private entity, the private entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations;

C. A failure to take steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless, in the case of a private entity, the private entity can demonstrate that taking those steps would fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered or would result in an undue burden;

D. A private entity's failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals, not including barriers that can be removed only through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift, where the removal is readily achievable;

When the entity can demonstrate that the removal of a barrier under this paragraph is not readily achievable, a failure to make the goods, services, facilities, privileges, advantages or accommodations available through alternative methods if alternative methods are readily achievable; and

E. A qualified individual with a disability, by reason of that disability, being excluded from participation in or being denied the benefits of the services, programs or activities of a public entity, or being subjected to discrimination by any such entity;

Sec. 14. 5 MRSA §4592, sub-§2, as amended by PL 2005, c. 10, §17, is further amended to read:

2. Communication, notice or advertisement. For any person to directly or indirectly publish, display or communicate any notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation are refused, withheld from or denied to any person on account of race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin, or that the patronage or custom of any person belonging to or purporting to be of any particular race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele is restricted to any particular race or color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin. The production of any communication, notice or advertisement purporting to relate to any place of accommodation is presumptive evidence in any action that the action was authorized by its owner, manager or proprietor;

Sec. 15. 5 MRSA §4592, sub-§6, as amended by PL 2007, c. 664, §5, is further amended to read:

6. Association. For a covered entity to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known ~~disability~~ protected class status of an individual with whom the individual or entity is known to have a relationship or association;

Sec. 16. 5 MRSA §4595, as amended by PL 2005, c. 10, §18, is further amended to read:

§4595. Right to freedom from discrimination solely on basis of age, race, color, sex, sexual orientation or gender identity, marital status, ancestry, religion or national origin in any credit transaction

The opportunity for every individual to be extended credit without discrimination solely because of any one or more of the following factors: age; race; color; sex; sexual orientation or gender identity; marital status; ancestry; religion or national origin is recognized as and declared to be a civil right.

Sec. 17. 5 MRSA §4596, as amended by PL 2005, c. 10, §19, is further amended to read:

§4596. Unlawful credit extension discrimination

It is unlawful credit discrimination for any creditor to refuse the extension of credit to any person solely on the basis of any one or more of the following factors: age; race; color; sex; sexual orientation or gender identity; marital status; ancestry; religion or national origin in any credit transaction. It is not unlawful credit discrimination to comply with the terms and conditions of any bona fide group credit life, accident and health insurance plan, for a financial institution extending credit to a married person to require both the husband and the wife to sign a note and a mortgage and to deny credit to persons under ~~the age of~~ 18 years of age or to consider a person's age in determining the terms upon which credit will be extended.

Sec. 18. 5 MRSA §4601, as amended by PL 2005, c. 10, §20, is further amended to read:

§4601. Right to freedom from discrimination in education

The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs ~~and~~, all apprenticeship and on-the-job training programs and all extracurricular activities without discrimination because of sex, sexual orientation or gender identity, a physical or mental disability, ancestry, national origin ~~or~~, race, color or religion is recognized and declared to be a civil right.

Sec. 19. 5 MRSA §4602, as amended by PL 2005, c. 662, Pt. A, §1, is further amended to read:

§4602. Unlawful educational discrimination

1. Unlawful educational discrimination ~~on the basis of sex.~~ It is unlawful educational discrimination in violation of this Act, on the basis of sex, sexual orientation or gender identity, physical or mental disability, ancestry, national origin, race, color or religion, to:

- A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity;
- B. Deny a person equal opportunity in athletic programs;
- C. Apply any rule concerning the actual or potential ~~family~~ familial status or marital status of a person or to exclude any person from any program or activity because of pregnancy or related conditions or because of sex or sexual orientation or gender identity;

D. Deny a person admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or

E. Deny a person financial assistance availability and opportunity.

~~2. Unlawful educational discrimination on the basis of physical or mental disability.~~ It is unlawful educational discrimination in violation of this Act solely on the basis of physical or mental disability to:

~~A. Exclude from participation in, deny the benefits of or subject to discrimination under any educational program or activity any otherwise qualified individual with physical or mental disability;~~

~~B. Deny any person equal opportunity in athletic programs, provided that no educational institution may be required under this subsection to provide separate athletic programs to serve persons with physical or mental disability;~~

~~C. Deny admission to any institution or program or fail to provide equal access to and information about an institution or program through recruitment; or~~

~~D. Deny financial assistance availability and opportunity.~~

~~Nothing in this subsection may be construed to cover the rights of children with disabilities to special education programs under state or federal law.~~

~~3. Unlawful educational discrimination on the basis of national origin or race.~~ It is unlawful educational discrimination in violation of this Act, on the basis of national origin or race, to:

~~A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity;~~

~~B. Deny admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or~~

~~C. Deny financial assistance availability and opportunity.~~

~~4. Unlawful education discrimination on the basis of sexual orientation.~~ It is unlawful education discrimination in violation of this Act, on the basis of sexual orientation, to:

~~A. Exclude a person from participation in, deny a person the benefits of or subject a person to discrimination in any academic, extracurricular, research, occupational training or other program or activity;~~

~~B. Deny a person equal opportunity in athletic programs;~~

~~C. Apply any rule concerning the actual or potential family or marital status of a person or to exclude any person from any program or activity because of their sexual orientation;~~

~~D. Deny admission to the institution or program or to fail to provide equal access to any information about an institution or program through recruitment; or~~

~~E. Deny financial assistance availability and opportunity.~~

~~The provisions in this subsection relating to sexual orientation do not apply to any education facility owned, controlled or operated by a bona fide religious corporation, association or society.~~

5. Application. Nothing in this section:

A. Requires an educational institution to provide separate athletic or other extracurricular programs to serve a person with a physical or mental disability;

B. May be construed to affect the rights of a person with a physical or mental disability to special education programs under state or federal law;

C. Requires a religious corporation, association or society that does not receive public funding to comply with this section as it relates to sexual orientation or gender identity;
or

D. Requires an educational institution to participate in or endorse any religious beliefs or practices; to the extent that an educational institution permits religious expression, it cannot discriminate between religions in so doing.

Sec. 20. 5 MRSA §4612, sub-§2-A, as enacted by PL 2019, c. 465, §6, is amended by amending the first blocked paragraph to read:

An administrative dismissal operates as an order of dismissal and has the same effect as a finding by the commission that no reasonable grounds exist to believe that unlawful discrimination has occurred, except that an administrative dismissal pursuant to paragraph C does not entitle the complainant to an award of attorney's fees, civil penal damages or compensatory and punitive damages.

Sec. 21. 5 MRSA §4622, sub-§1, ¶A, as amended by PL 2019, c. 465, §8, is further amended to read:

A. Dismissed the case under section 4612, subsection 2 or subsection 2-A, paragraphs A and B and D to F;

Sec. 22. 5 MRSA §4634, as enacted by PL 2001, c. 206, §1, is amended to read:

§4634. Right to breast-feed

Notwithstanding any other provision of law to the contrary, a mother person may breast-feed her that person's baby in any location, public or private, where the mother person is otherwise authorized to be.

Sec. 23. 5 MRSA §4684-A, as enacted by PL 1993, c. 379, §1, is amended to read:

§4684-A. Civil rights

For purposes of this chapter and Title 17, section 2931, a person has the right to engage in lawful activities without being subject to physical force or violence, damage or destruction of property, trespass on property or the threat of physical force or violence, damage or destruction of property or trespass on property motivated by reason of race, color, religion, sex, ancestry, national origin, physical or mental disability or sexual orientation or gender identity.

Sec. 24. 5 MRSA §17057, sub-§5, ¶B, as enacted by PL 2011, c. 449, §2, is amended by amending subparagraph (5) to read:

(5) Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status ~~and~~, sexual orientation and gender identity; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance; and

Sec. 25. 14 MRSA §1202-A, as corrected by RR 2017, c. 1, §6, is amended to read:

§1202-A. Prohibition of discrimination

A citizen may not be excluded from jury service in this State on account of race, color, religion, sex, sexual orientation ~~as defined in Title 5, section 4553, subsection 9-C~~, gender identity, national origin, ancestry, economic status, marital status, age or physical handicap, except as provided in this chapter.

Sec. 26. 17-A MRSA §1501, sub-§8, ¶B, as enacted by PL 2019, c. 113, Pt. A, §2, is amended to read:

B. The selection by the person of the victim or of the property that was damaged or otherwise affected by the crime because of the race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation, gender identity or homelessness of the victim or of the owner or occupant of that property; and

Sec. 27. 20-A MRSA §2404, sub-§3, as enacted by PL 2011, c. 414, §5, is amended to read:

3. Discrimination prohibited. A public charter school may not discriminate on the basis of race, ethnicity, national origin, religion, gender, sexual orientation, gender identity, income level, disabling condition, proficiency in the English language or academic or athletic ability, except that nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk pupils, students with disabilities and students who pose such severe disciplinary problems that they warrant a specific education program.

Sec. 28. 20-A MRSA §2412, sub-§4, ¶A, as enacted by PL 2011, c. 414, §5, is amended to read:

A. A public charter school may not discriminate against any person on the basis of race, color, sex, sexual orientation, gender identity, physical or mental disability, religion, age, ancestry or national origin or on any other basis that would be unlawful if done by a noncharter public school.

Sec. 29. 24-A MRSA §6910, sub-§3, ¶B, as corrected by RR 2003, c. 1, §22, is amended by amending subparagraph (2) to read:

(2) Providers contracting with a carrier contracted to provide coverage to plan enrollees do not refuse to provide services to a plan enrollee on the basis of health status, medical condition, previous insurance status, race, color, creed, age, national origin, citizenship status, gender, sexual orientation, gender identity, disability or marital status. This subparagraph may not be construed to require a provider to furnish medical services that are not within the scope of that provider's license; and

Sec. 30. 25 MRSA §1544, 2nd ¶, as amended by PL 2001, c. 399, §6, is further amended to read:

The bureau shall establish a category for abuse by adults of family or household members, a category for cruelty to animals and a category for crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, gender identity or ethnicity that are supplementary to its other reported information. The bureau shall prescribe the information to be submitted in the same manner as for all other categories of the uniform crime reports.

Sec. 31. 30-A MRSA §4706, sub-§5, ¶B, as enacted by PL 2017, c. 234, §8, is amended by amending subparagraph (6), division (h) to read:

(h) Sex ~~or~~, sexual orientation as defined in Title 5, section 4553, subsection 9-C or gender identity; or

Sec. 32. 34-B MRSA §3611, sub-§9, ¶B, as enacted by PL 2007, c. 592, §2, is amended to read:

B. A person may not be excluded from the council system or discriminated against within the council system by reason of race, creed, color, gender, sexual orientation, gender identity, age, marital status, homelessness, national origin, disability or status as a consumer of mental health services.

Sec. 33. 34-B MRSA §15002, sub-§6, as enacted by PL 1997, c. 790, Pt. A, §1 and affected by §3, is amended to read:

6. Rights protections; cultural sensitivity. The program must protect the rights of children to receive care without regard to race, religion, ancestry or national origin, gender, physical or mental disability ~~or~~, sexual orientation or gender identity.

Sec. 34. 36 MRSA §5122, sub-§2, ¶O, as amended by PL 2001, c. 679, §3 and affected by §6, is further amended by amending subparagraph (1) to read:

(1) "Holocaust victim" means an individual who died, lost property or was a victim of persecution as a result of discriminatory laws, policies or actions targeted against discrete groups of individuals based on race, religion, ethnicity, sexual orientation, gender identity or national origin, whether or not the individual was actually a member of any of those groups, or because the individual assisted or allegedly assisted any of those groups, between January 1, 1929 and December 31, 1945, in Nazi Germany or in any European country allied with or occupied by Nazi Germany. "Holocaust victim" includes the spouse or descendant of such an individual.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
S.P. 422 - L.D. 1294

An Act To Prevent Discrimination against Domestic Violence Victims

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

Sec. 1. 5 MRSA §4572, sub-§1, as amended by PL 2005, c. 10, §§11 and 12, is further amended to read:

1. Unlawful employment discrimination. It is unlawful employment discrimination, in violation of this Act, except when based on a bona fide occupational qualification:

A. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A or , because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter 5-B or because the applicant sought and received an order of protection under Title 19-A, section 4007; or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment; or, in recruiting of individuals for employment or in hiring them, to utilize any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of their previous assertion of a claim or right under former Title 39 or Title 39-A or , because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B; or because the applicant sought and received an order of protection under Title 19-A, section 4007.

(1) This paragraph does not apply to discrimination governed by Title 39-A, section 353;

B. For any employment agency to fail or refuse to classify properly, refer for employment or otherwise discriminate against any individual because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the individual's previous assertion of a claim or right under former Title 39 or Title 39-A or , because of previous actions taken by the individual that are

protected under Title 26, chapter 7, subchapter 5-B or because the individual sought and received an order of protection under Title 19-A, section 4007; or to comply with an employer's request for the referral of job applicants if a request indicates either directly or indirectly that the employer will not afford full and equal employment opportunities to individuals regardless of their race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of previous assertion of a claim or right under former Title 39 or Title 39-A $\text{\textcircled{e}}$, because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B or because the individual sought and received an order of protection under Title 19-A, section 4007;

C. For any labor organization to exclude from apprenticeship or membership or to deny full and equal membership rights to any applicant for membership because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the applicant's previous assertion of a claim or right under former Title 39 or Title 39-A $\text{\textcircled{e}}$, because of previous actions taken by the applicant that are protected under Title 26, chapter 7, subchapter 5-B or because the applicant sought and received an order of protection under Title 19-A, section 4007; or, because of those reasons, to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of that labor organization or by a collective labor agreement or other contract; to fail or refuse to classify properly or refer for employment or otherwise discriminate against any member because of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the member's previous assertion of a claim or right under former Title 39 or Title 39-A $\text{\textcircled{e}}$, because of previous actions taken by the member that are protected under Title 26, chapter 7, subchapter 5-B or because the applicant sought and received an order of protection under Title 19-A, section 4007; or to cause or attempt to cause an employer to discriminate against an individual in violation of this section, except that it is lawful for labor organizations and employers to adopt a maximum age limitation in apprenticeship programs, if the employer or labor organization obtains prior approval from the Maine Human Rights Commission of any maximum age limitation employed in an apprenticeship program. The commission shall approve the age limitation if a reasonable relationship exists between the maximum age limitation employed and a legitimate expectation of the employer in receiving a reasonable return upon the employer's investment in an apprenticeship program. The employer or labor organization bears the burden of demonstrating that such a relationship exists;

D. For any employer, employment agency or labor organization, prior to employment or admission to membership of any individual, to:

- (1) Elicit or attempt to elicit information directly or indirectly pertaining to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A $\text{\textcircled{e}}$, any previous actions that are protected under Title 26,

chapter 7, subchapter 5-B or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007;

(2) Make or keep a record of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A ~~or~~, any previous actions that are protected under Title 26, chapter 7, subchapter 5-B or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007, except under physical or mental disability when an employer requires a physical or mental examination prior to employment, a privileged record of that examination is permissible if made and kept in compliance with this Act;

(3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A ~~or~~, any previous actions that are protected under Title 26, chapter 7, subchapter 5-B or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007. This section does not prohibit any officially recognized government agency from keeping records permitted to be kept under this Act in order to provide free services to individuals requesting rehabilitation or employment assistance;

(4) Print, publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A ~~or~~, any previous actions that are protected under Title 26, chapter 7, subchapter 5-B or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007; or

(5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, because of the previous assertion of a claim or right under former Title 39 or Title 39-A ~~or~~, because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B or because of any previous actions seeking and receiving an order of protection under Title 19-A, section 4007, of that group; or

E. For an employer, employment agency or labor organization to discriminate in any manner against individuals because they have opposed a practice that would be a violation of this Act or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under this Act.

Sec. 2. 5 MRSA §4581, first ¶, as amended by PL 2011, c. 613, §10 and affected by §29, is further amended to read:

The opportunity for an individual to secure housing in accordance with the individual's ability to pay, and without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status or because

the individual has sought and received an order of protection under Title 19-A, section 4007, is hereby recognized as and declared to be a civil right.

Sec. 3. 5 MRSA §4581-A, as enacted by PL 2011, c. 613, §11 and affected by §29, is amended to read:

§4581-A. Unlawful housing discrimination

It is unlawful housing discrimination, in violation of this Act:

1. Sale or rental of housing and other prohibited practices. For any owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these, to:

A. Make or cause to be made any written or oral inquiry concerning the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin ~~or~~, familial status or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007 of any prospective purchaser, occupant or tenant of the housing accommodation;

B. Refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any person the housing accommodation because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status or because the person sought and received an order of protection under Title 19-A, section 4007;

C. Make, print or publish or cause to be made, printed or published any notice, statement or advertisement relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation or discrimination based upon race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin ~~or~~, familial status or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007 or an intention to make any such preference, limitation or discrimination;

D. Discriminate against any person because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status or because the person sought and received an order of protection under Title 19-A, section 4007 in the price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations or in the furnishing of facilities or services in connection with any housing accommodations; or

E. Evict or attempt to evict any tenant of any housing accommodation because of the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of the tenant or because the tenant sought and received an order of protection under Title 19-A, section 4007;

2. Selling, brokering or appraising of housing. For any real estate broker or real estate salesperson, or any agent of these, to:

A. Fail or refuse to show any person a housing accommodation listed for sale, lease or rent because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status or because the person sought and received an order of protection under Title 19-A, section 4007;

B. Misrepresent, for the purpose of discriminating because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or, familial status or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007, the availability or asking price of a housing accommodation listed for sale, lease or rent or for such reason to fail to communicate to the person having the right to sell, rent or lease the housing accommodation any offer for the same made by any applicant;

C. In any other manner to discriminate against any applicant for a housing accommodation because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status or because the applicant sought and received an order of protection under Title 19-A, section 4007;

D. Make or cause to be made any written or oral inquiry or record concerning the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or, familial status or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007 of any applicant for or intended occupant of a housing accommodation; or

E. Accept for listing any housing accommodation when the person having the right to sell, rent or lease the housing accommodation has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or, familial status or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007, or when the broker or salesperson knows or has reason to know that the person having the right to sell, rent or lease the housing accommodation has made a practice of discrimination since July 1, 1972;

3. Making of loans; other financial assistance. For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of the person, to:

A. Make or cause to be made any oral or written inquiry concerning the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or, familial status or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007 of any applicant for financial assistance or of existing or prospective occupants or tenants of housing accommodations; or

B. Discriminate in the granting of financial assistance, or in the terms, conditions or privileges relating to obtaining or the use of any financial assistance, against any applicant because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or, familial status or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007; or

4. Receipt of public assistance. For any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual's status as recipient.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

HUMAN RIGHTS COMMISSION, MAINE

Human Rights Commission - Regulation 0150

Initiative: Establishes one part-time Maine Human Rights Investigator position due to an anticipated increase in complaints and provides funding for related All Other costs.

GENERAL FUND	2021-22	2022-23
POSITIONS - LEGISLATIVE COUNT	0.500	0.500
Personal Services	\$53,609	\$56,303
All Other	\$6,162	\$2,512
GENERAL FUND TOTAL	\$59,771	\$58,815



Maine Human Rights Commission

2020 Annual Report

July 1, 2019 - June 30, 2020

Maine Human Rights Commission
51 State House Station, Augusta, Maine 04333

www.maine.gov/mhrc

TABLE OF CONTENTS

Letter of Transmittal.....	3
Origin, Jurisdiction and Members of the Commission.....	4
Process	5
Staffing	5
Investigators.....	5
Legal	5
Administration.....	5
Budget	5
Case Activity	5
Complaints Filed	5
Historical Case Filed Activity by Fiscal Year Chart	6
Historical Case Filed by Jurisdiction Chart	6
Before Commission Determination	8
Settlements	8
Right-to-Sue.....	8
Administrative Dismissals	8
Withdrawals	8
Public Hearings Determinations	8
Uncontested	8
Contested	9
Reasonable Grounds Rates.....	9
Post Reasonable Grounds Conciliations	9
Cases Closed	9
Litigation.....	10
Conclusion	10



Maine Human Rights Commission

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Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

February 25, 2021

The Honorable Janet Mills, Governor
The Honorable Troy Jackson, President of the Maine Senate
The Honorable Ryan Fecteau, Speaker of the Maine House of Representatives
State House, Augusta, Maine 04333

Dear Governor Mills, President Jackson and Speaker Fecteau:

On behalf of the Commissioners and staff of the Maine Human Rights Commission (“Commission”), we are pleased to present you with our agency’s Fiscal Year 2020 (“FY 2020”) Annual Report. As you will see, the Commission continued to uphold its statutory charge to enforce Maine’s anti-discrimination laws, which was particularly challenging when a worldwide COVID-19 pandemic forced nearly all Commission activity to occur – and almost all Commission staff to work – remotely for half of FY 2020. A few highlights are as follows:

- The Commission received 775 new complaints in FY 2020, an 8% increase from last year’s 715 filings.
- Of new complaints filed, 69% were based on employment, 15% were based on housing, 14% were based on public accommodations, and 2% were based on education.
- With respect to type of allegation, the top four most frequently alleged protected classes were *disability discrimination* (alleged in 48.5% of complaints filed), *Maine Human Rights Act (“MHRA”) retaliation* (alleged in 39.4% of complaints filed), *Maine Whistleblowers’ Protection Act (“WPA”) retaliation* (alleged in 31.2% of complaints filed), and *sex discrimination* (alleged in 19.1% of complaints filed, and with *sexual harassment* included in 44.6% of those).
- A significant portion of cases processed last year (65%, or 460 of 697 cases) resolved prior to public hearing.
- Investigators wrote reports after completed investigations in 34% of cases processed (238 of 697).
- Commissioners found “reasonable grounds” to believe unlawful discrimination occurred in 17.6% of cases with investigator’s reports (42 of 238), an slight increase from last year’s 16.8% rate. Commissioners considered argument in 117 of the cases with investigator’s reports; the investigator’s recommendations in the remaining 121 cases with investigator’s reports were uncontested by the parties.
- The reasonable grounds rate for all cases processed in FY 2020 was 6% (42 of 697) cases determined).
- At the end of FY 2020, 742 cases remained pending, a 10% increase in pending cases from the prior year.
- Commission staff delivered or participated in or delivered more than 58 training forums during FY 2020.

The Commission continues to promote diversity and tolerance, and to work to eliminate unlawful discrimination for all citizens of and visitors to Maine. We hope this report is of assistance, as our agency seeks to work closely with the Executive and Legislative branches as we jointly assure the citizens of Maine the protections afforded by the MHRA.

Sincerely,

Deborah L. Whitworth, Acting Commission Chair

THE COMMISSION

Established in 1971, the Commission is a quasi-independent state agency charged with responsibility of enforcing Maine’s anti-discrimination laws, which are encompassed in the MHRA at Title 5 of the Maine Revised Statutes (“M.R.S.”), Sections 4551-4636. Some of the Commission’s powers and duties are:

- to investigate all conditions and practices within the state which allegedly detract from the enjoyment, by each inhabitant of the state, of full human rights and personal dignity;
- to investigate all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons; and
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

The MHRA provides that the Commission “or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred” in employment, housing, education, access to public accommodations, extension of credit, genetic non-discrimination, and offensive names. 5 M.R.S. § 4612(1)(B). The Commission also investigates complaints of retaliation under the WPA, 26 M.R.S. §§ 831 - 834-A.

The Commission has jurisdiction over allegations of discrimination in the following areas:

			ACCESS TO PUBLIC	CREDIT		YEAR
Age	X	N/A	N/A	X	N/A	1972
Ancestry	X	X	X	X	N/A	1972
Color	X	X	X	X	N/A	1972
National Origin	X	X	X	X	X	1972
Race	X	X	X	X	X	1972
Religion	X	X	X	X	N/A	1972
Marital Status	N/A	N/A	N/A	X	N/A	1973
Sex	X	X	X	X	X	1973
Physical disability	X	X	X	N/A	X	1974
Mental disability	X	X	X	N/A	X	1975
Receipt of Public Assistance	N/A	X	N/A	N/A	N/A	1975
Pregnancy	X	N/A	N/A			1979
Familial Status	N/A	X	N/A	N/A	N/A	1981
Workers’ Comp Retaliation	X	N/A	N/A	N/A	N/A	1987
Whistleblower Retaliation	X	N/A	N/A	N/A	N/A	1988
Children (lodging only)	N/A	N/A	X	N/A	N/A	1989
MHRA Retaliation/Interference	X	X	X	X	X	1993
Genetic Information	X	N/A	N/A	N/A	N/A	1998
Sexual Orientation	X	X	X	X	X	2005

As required by the MHRA, the Commission provides an opportunity for parties to a complaint to try to resolve the dispute by agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. 5 M.R.S. § 4612(1)(A). The MHRA authorizes the Commission to pursue remedies for unlawful discrimination in court when necessary to enforce the MHRA. The Commission also has “the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State”, 5 M.R.S. § 4566, and occasionally is called upon to present information to the Maine Legislature about proposed statutes and rules under consideration that might affect human rights in the State.

Commission policy is formulated by five volunteer Commissioners appointed by a Governor for staggered five-year terms, and the Commissioners appoint a Commission Counsel and an Executive Director. The MHRA ensures that the Commission is not political in nature, with requirement that no more than three Commissioners may be from any political party. Commissioners make final determinations on all discrimination complaints investigated by Commission staff that are not otherwise resolved administratively or settled. A Governor designates the Chair of the Commission from among its members.

PROCESS

The Commission receives either an intake (which it drafts into a complaint to assist the complainant, if jurisdiction exists under the MHRA) or a complaint. Complaints must be received within 300 days of the alleged discrimination for a complaint to be timely. The Commission notifies the respondent of the complaint and receives its answer to the complaint, which the Commission then shares with the complainant in order to get his/her reply supporting the complaint. After that, a complaint may be administratively dismissed for certain reasons, withdrawn by the complainant, or resolved by the parties, or the complainant may elect to proceed directly to court. If none of these occur, the case is assigned to an investigator for a preliminary investigation and the investigator prepares a written report outlining the claims made, applicable laws, and recommended findings on each claim as to whether there are “reasonable grounds” to believe discrimination violating the MHRA occurred. The Commission staff provides reports with summaries of investigation, legal analysis, and recommendations to Commissioners for decision at public meetings. After a reasonable-grounds finding, the Commission attempts to resolve the dispute by agreement (“conciliation”); if conciliation is unsuccessful the complainant and Commission both may file lawsuits in court.

STAFFING

The Executive Director is ultimately responsible for all agency activity and has authority to hire and supervise Commission staff, which is as follows:

- **Investigators:** Our six Investigators, supervised by the Commission Counsel and Executive Director, conduct fact-finding as to whether allegations of discrimination are at least as likely as not to be substantiated, and to write Investigator’s Reports that analyze facts, apply legal principles, and to recommend specific findings to the Commission.
- **Legal:** The Commission Counsel is responsible for agency litigation in the public interest and providing legal advice to the Commission and its staff. Counsel reviews all investigator reports for legal sufficiency, provides legal frameworks to investigators and legal opinions to the Executive Director or Commission, drafts proposed regulations, and advises the Executive Director on legislative and contract matters. Our Commission Counsel has the assistance of one paralegal, who also: assists the Executive Director in negotiating, implementing and monitoring agreements to settle post-decision resolutions; monitors implementation of some pre-decision resolutions; and addresses public record requests.
- **Administration:** The Executive Director conducts most agency outreach activity and Legislative information-sharing. The agency’s Operations Director manages personnel, budget/fiscal, information technology, annual reporting, and office matters. Three secretary associate legal staffers handle all new complaint filings, early case processing, and Commission meeting matters; one of these positions was vacant for most of FY 2020. A second paralegal serves as the agency Intake Officer, and in that capacity reviewed 1226 Intake Questionnaires and either screened out non-jurisdictional matters or drafted complaints in each.

BUDGET

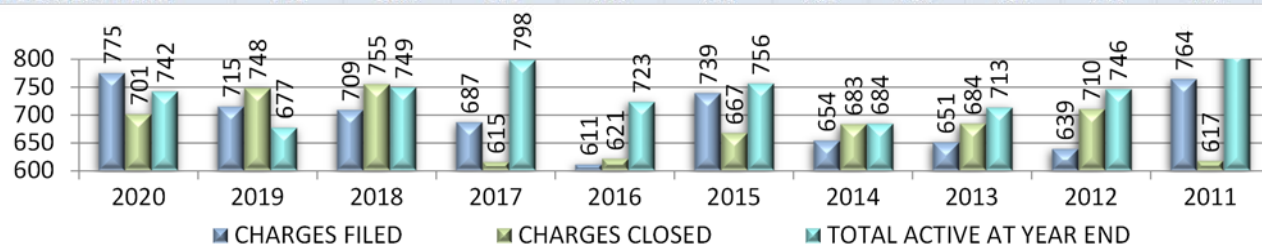
The Commission’s Fiscal Year 2020 revised budget appropriation was \$1,705,818. Approximately \$1,247,721, slightly over 73% of the agency’s total budgetⁱ, was allocated to fixed personal service costs such as salaries and benefits. This is due to the highly personnel-intensive nature of the Commission’s work in investigating, resolving, and litigating complaints. Just under 27% of the Commission’s budget (\$458,097) was allocated to “all other” operating expenditures to support program activities. Of the total Commission budget, approximately 33% (\$563,813) were anticipated revenues from federal worksharing agreements with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development.

CASE ACTIVITY

As in past years, the Commission continued to devote the majority of its resources to the processing of complaints of discrimination filed with it. During FY 2020, 775 new complaints were filed, which represents an increase from the previous year. The Commission closed 701ⁱⁱ cases in the same time period. The pending inventory of cases has increased by 10% since FY 2019.

HISTORICAL CASE ACTIVITY DATA 2011 - 2020

FISCAL YEAR	2020	% +/-	2019	2018	2017	2016	2015	2014	2013	2012	2011
ACTIVE CASES FY START	768 ⁱⁱⁱ	- 6%	710	795	726	756	684	713	746	817	670
+ CASES FILED	775	8%	715	709	687	611	739	654	651	639	764
- CASES CLOSED	701	- 6%	748	755	615	621	667	683	684	710	617
ACTIVE CASES FY END	742	10%	677	749	798	723	756	684	713	746	817

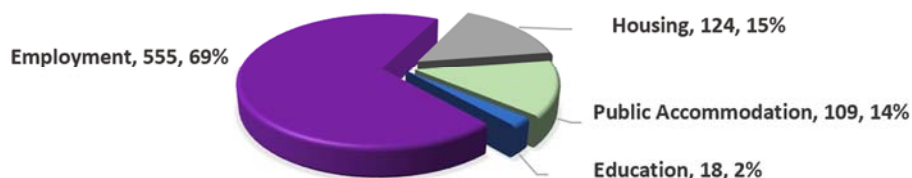


As usual, in FY2020, the vast majority of complaints filed (69%) alleged employment discrimination.

HISTORICAL CASES FILED BY JURISDICTION FY 2011 - 2020

JURISDICTION	FY	2020	% +/-	2019	2018	2017	2016	2015	2014	2013	2012	2011	
EMPLOYMENT		554	69%	9%	508	492	482	480	548	518	483	528	618
HOUSING		124	15%	17%	106	113	103	60	92	73	104	74	78
PUBLIC ACCOMMODATION		110	14%	-14%	128	104	105	71	98	63	64	37	72
EDUCATION		18	2%	6%	17	14	5	5	8	3	3	4	4
CREDIT EXTENSION		-			2	-	-	2	2	-	-	-	-
OFFENSIVE NAMES		-			-	-	-	-	-	-	-	-	-
TOTALS		806 ^{iv}			761	723	695	618	748	656	654	643	772

FY 2020 CHARGES FILED BY JURISDICTION



775 New Cases Filed (31` Cases Dual Jurisdiction)
806 Cases by Jurisdiction

COMPLAINTS FILED

In FY 2020, 775 new complaints were filed with the Commission. Many Commission complaints involve protected classes that vary depending on the unique areas of jurisdiction under which each case arises. Very often, a single complaint will contain multiple distinct allegations of discrimination, or “claims”, that require different factual and legal analysis. A total of 3,185 claims were named in FY 2020 complaints, representing complex investigations in many cases. These more complex investigations require substantially increased staff and Commission work. The Commission tracks both cases and the details of each claims identified in each case in order to accurately reflect the nature and depth of our work and resources required.

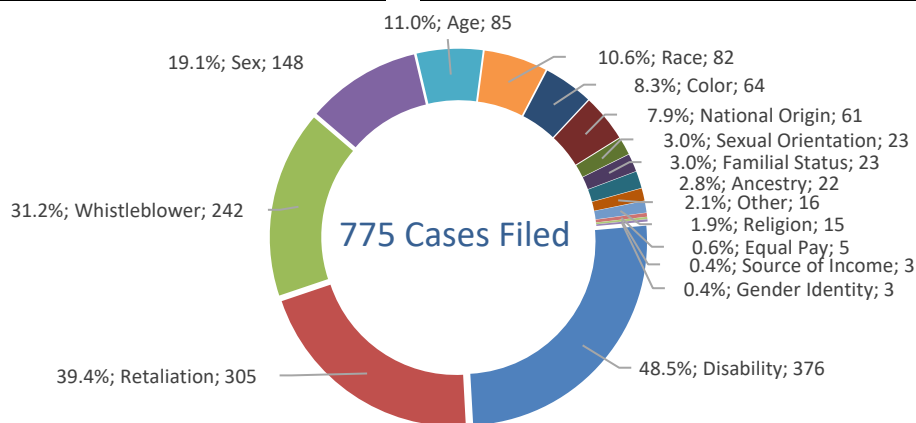
Within the 775 cases newly filed in FY 2020, disability discrimination was the protected class most often invoked, at 48.5% of cases (376 cases). The second and third bases most frequently alleged protected classes were MHRA

retaliation, at 39.4% of cases (305 cases), and whistleblower retaliation, alleged in 31.2% of cases (242 cases). The fourth most common allegation asserted in cases was sex discrimination, in 19.1% of cases (148 cases); it is disappointing to note that sexual harassment was alleged in 44.6% of sex discrimination filings (66 out of 148 sex discrimination cases filed). The protected classes next most often invoked in complaints were: race or color discrimination, at 10.6% and 8.3% of cases respectively (82 and 64 cases); national origin, in 7.9% of cases (61 cases); religion, in 3% of cases (23 cases); and sexual orientation, in 3% of cases (23 cases). The remaining protected classes, which were invoked collectively in fewer than 6.1% of cases (48 cases), include ancestry in 2.8% of cases; source of income in 1.9% of cases, equal pay in .6% of cases, familial status in .4% of cases, gender identity in .4% of cases.

When a complaint filed with the Commission does not fall under the jurisdiction of the MHRA, it is dismissed for lack of jurisdiction. In the fiscal year, 45 cases contained allegations identified systemically as “other” bases.

FY 2020 New Case Filings - Type of Protected Class Allegations

ALLEGED BASES	2020	F19 – F20 Change +/-	2019	2018	2017	2016	2015	2014	2013	2012	2011	
Disability	376	48.5%	1.2%	47.3%	48.7%	51.8%	44.6%	52.0%	48.9%	45.6%	43.1%	39.5%
Retaliation	305	39.4%	0.7%	38.7%	36.5%	36.7%	28.0%	30.9%	29.6%	22.2%	25.8%	16.2%
Whistleblowers'	242	31.2%	-3.2%	34.4%	37.8%	29.1%	31.5%	36.3%	37.5%	31.3%	40.9%	31.6%
Sex	148	19.1%	-5.2%	24.3%	21.9%	18.5%	21.0%	22.4%	22.0%	23.9%	23.8%	20.1%
Age	85	11.0%	-2.1%	13.1%	11.0%	12.6%	15.8%	12.0%	15.4%	14.5%	13.3%	14.2%
Race	82	10.6%	4.2%	6.4%	9.2%	6.3%	6.3%	9.7%	9.3%	8.1%	7.0%	9.6%
Color	64	8.3%	0.5%	7.8%	5.9%	5.4%	4.1%	8.2%	7.5%	7.0%	5.0%	8.2%
National Origin	61	7.9%	1.7%	6.2%	4.4%	5.4%	4.1%	5.7%	6.3%	5.4%	3.0%	5.5%
Religion	23	3.0%	-0.2%	5.5%	1.4%	1.7%	2.1%	2.8%	3.2%	2.0%	1.9%	3.0%
Sexual Orientation	23	3.0%	2.3%	3.2%	4.8%	0.9%	2.1%	3.1%	3.4%	5.4%	3.9%	5.8%
Ancestry	22	2.8%	0.6%	2.2%	1.6%	1.7%	1.1%	2.0%	2.9%	2.8%	2.3%	1.6%
Source of Income	15	1.9%	-3.6%	1.4%	0.8%	2.0%	0.7%	0.5%	0.6%	1.7%	0.3%	1.4%
Equal Pay	5	0.6%	-0.4%	1.0%	0.0%	0.0%	0.2%	0.1%	0.3%	0.0%	0.2%	0.0%
Familial Status	3	0.4%	-1.0%	0.7%	1.1%	0.7%	2.1%	1.2%	1.8%	3.1%	3.3%	2.7%
Gender Identity	3	0.4%	0.0%	0.4%	0.1%	0.3%	0.8%	0.7%	0.3%	0.0%	0.5%	0.3%
Workers' Comp	0	0.0%	-0.3%	0.3%	0.0%	0.1%	0.3%	0.4%	1.5%	0.3%	0.5%	0.3%
CASES FILED	775		715	709	701	615	741	656	654	640	770	



This chart describes what protected classes were alleged in the 775 cases filed with the Commission: cases often allege discrimination in more than one protected class.

CASES CLOSED

The Commission closed 701 cases in the FY 2020. Of the 701 cases, 45 cases were from post reasonable grounds cases activities. It is worth noting that the MHRA itself provides only for two statutory results in cases: a finding of “reasonable grounds” or a finding of “no reasonable grounds”. Since cases that are withdrawn related to settlement or which end via a right-to-sue letter are not “reasonable grounds” findings, they actually are dismissed pursuant to the Act as “no reasonable grounds” findings. This can leave our “reasonable grounds” rate statistics to be less than fully informative, so we report in more detail the various ways in which Commission cases close.

BEFORE Commission Determination

- *Settlements (196)*. The Commission encourages voluntary settlement and works with the parties to achieve a resolution that is mutually acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement; a pre-determination agreement can be one which the parties work out on their own (usually resulting in a request by complainant to withdraw the complaint) or one which a Commission investigator or neutral mediator facilitated (usually resulting in a settlement agreement shared with the Commission). During the period, 196 cases resolved voluntarily, with 105 cases resolved by settlement agreement and 91 by withdrawal of complaint with benefits to the complainant before the Commission issued a determination; complainants obtained \$4,160,696 in monetary relief in these closures.
 - Our Third Party Neutral Mediation Program, available for a small fee, is very successful in resolving claims; in FY 2020, our skilled mediators facilitated settlement in 44% (40 out of 90) cases mediated.^{vi} In addition to monetary awards, settlements often include non-monetary, equitable relief such as an offer of a job or housing unit, modifications providing accessibility, reinstatement, cleared personnel records, policy changes, recommendation letters, and non-retaliation provisions.
- *“Right-to-Sue” letters (132)*. If the Commission has not completed its investigation within 180 days of a complaint’s filing, a complainant may request that the Commission issue him/her a right-to-sue letter, which terminates the Commission’s investigation and authorizes the complainant to proceed to court with MHRA remedies intact. Complainants requested 132 right-to-sue letters in FY 2020.
- *Administrative Dismissals (108)*. The Commission’s Executive Director has authority to dismiss a complaint where a complainant has failed to substantiate a claim of discrimination, the Commission lacks jurisdiction, the complaint is untimely, a complainant fails to cooperate, or a respondent declares bankruptcy. See Commission Procedural Rule, 94-348 Code of Maine Regulations Ch. 2, § 2.02(H). During FY 2020, the Executive Director dismissed 108 cases: 41 for lack of jurisdiction; 50 due to complainant’s failure to cooperate/proceed with the investigation; 16 for other administrative reasons; and one due to Respondent bankruptcy.
- *Withdrawals without benefits to complainant (23)*. At any time before the Commission issues a report summarizing its investigation, a complainant may choose to withdraw a complaint of discrimination. After a report has been issued, the Commission may allow a complaint to be withdrawn. Withdrawals most often occur when complainants, after reviewing the respondents’ written answers to the complaint or hearing the facts presented by respondents at a conference, decide that they do not wish the Commission to continue processing their case any longer. Complainants withdrew 23 complaints during FY 2020.

Public Hearings Determinations (238)

If a case is not administratively resolved as described above, an investigator prepares a report summarizing their investigation and the legal framework applicable to each claim, and recommending a finding as to whether reasonable grounds exist to believe that unlawful discrimination occurred. The Commission sets these reports for public hearing. If neither party submits a written objection to the recommended findings, the Commission places the report on its Consent Agenda and at public hearing adopts the recommendations in all Consent Agenda reports without argument. If one party does submit a written objection to the recommendations, the Commission hears oral argument on the case at a public meeting and then votes on each recommendation.

In FY 2020, Commissioners received and voted on 238^{vii} cases resulting in 258 determinations. Before looking into this data in closer detail, it is worth noting that not every claim of discrimination leads to a distinct determination by the Commission – many claims are grouped together (or subsumed) in one determination. In the final analysis, the Commission found reasonable grounds to believe unlawful discrimination occurred in 42 cases; this equates to a reasonable-grounds rate of 17.7% of cases decided. Out of the 42 reasonable grounds cases voted on in the period, 34 cases were closed and 8 cases remained open at the end of the period.

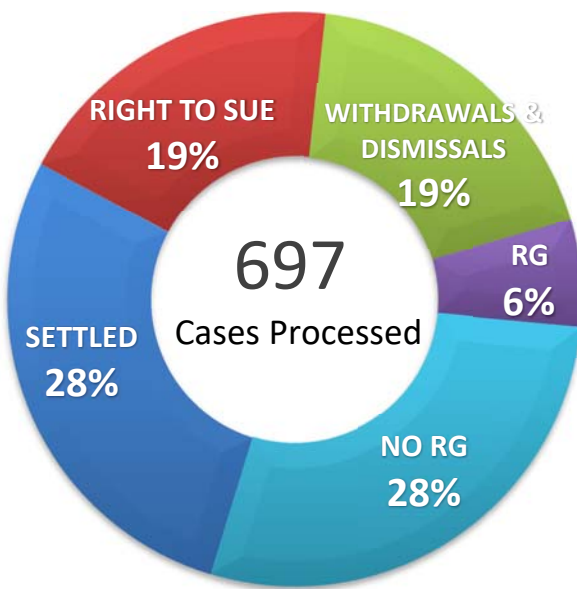
- Uncontested cases (121). A majority of recommended determinations by Commission staff were not contested by the parties. In 121^{viii} of the 238 cases voted on (51%), neither party contested the recommended decisions; these

cases appeared on the Commission’s Consent Agenda. For uncontested cases listed on our Consent Agenda, Commissioners made no-reasonable-grounds findings in 113 cases, and reasonable-grounds findings in 11 cases.

- Contested cases (117). In 117 of the 238 cases voted on by Commissioners (49%), one party or both contested the recommended decision. These 117 contested cases were scheduled for hearing. After our hearings ended, Commissioners found no reasonable grounds to believe that discrimination occurred in 103 contested cases, and reasonable grounds to believe that discrimination occurred in 31 contested cases^{ix}.

REASONABLE-GROUNDS RATES

Given the 697 new cases determined in FY 2020, and the fact that there were reasonable-grounds findings in 42 cases, the Commission’s reasonable-grounds rate for all cases processed in FY 2020 was 6%. This could be interpreted to mean that 94% of cases processed were in the respondent’s favor, but that would not be truly accurate, as so many cases which technically had to be closed with a no-reasonable-grounds finding actually resulted in benefits flowing to complainants via settlement agreements and right-to-sue letters. A more relevant statistic that reflects the Commission’s actual rate of finding reasonable grounds (or not) in cases is to look at cases decided after full pleading and argument: cases in which an investigator’s report was issued. In FY 2020, the Commission’s overall rate of finding reasonable grounds to believe discrimination occurred in cases where an investigator’s report was issued was 17.6%. ^x It is worth noting that 51% of cases with investigator’s reports (121 of 238 cases) were not contested. When recommended decisions were contested (117 out of 238 cases), the reasonable-grounds rate was much higher: 26% of cases (31 of 117). Viewed conversely, this means that in FY 2020, a respondent in a fully contested Commission matter decided on its merits stood a 74% chance of prevailing in the case^{xi}.



FY 2020 Summary of Case Activity

Action	# Cases (%)
<i>Withdrawals & Dismissals</i>	131 (19%)
<i>NO RG Determinations</i>	196 (28%)
<i>Right to Sue</i>	132 (19%)
<i>Settlements</i>	196 (28%)
<i>RG Determinations</i>	42 (6%)

CASES CLOSED

The Commission closed 701 cases in FY 2020^{xii}. Of the 701 cases, 45 cases were from post-reasonable-grounds cases activities. It is worth noting that the MHRA itself provides only for two statutory results in cases: a reasonable-grounds finding or a no-reasonable-grounds finding. Since cases that are withdrawn related to settlement or which end via a right-to-sue letter are not reasonable-grounds findings, they actually are dismissed pursuant to the Act as no-reasonable-grounds findings. This can leave our reasonable-grounds rate statistics to be less than fully informative, so we report in more detail the various ways in which Commission cases close.

Post-Reasonable-Grounds Conciliations

If the parties reach a conciliation resolution including public interest remedies sought by the Commission, there is a formal agreement by the Commission, complainant and respondent with the Commission monitoring implementation of terms. If complainant and respondent resolve a post-reasonable grounds case but do not include the Commission in the agreement, or there is no resolution at all, the Commission determines whether to pursue relief in the public interest on its own. During FY 2020, **15 post-reasonable grounds cases were successfully resolved via conciliation agreements**

with public interest and private relief; the monetary value of these benefits was \$61,485, and significant non-monetary relief in the form of improved policies and training, postings, and monitoring also was achieved.

LITIGATION

The Act authorizes the Commission to file a lawsuit in court in the name of the Commission, for the use of the complainant and in the public interest to address unlawful discrimination and prevent its recurrence, in reasonable-grounds cases in which post-decision conciliation has failed. The Commission Counsel makes recommendations to the Commission in each post-reasonable-grounds case in which conciliation has failed, to assist the Commission in deciding whether to file a lawsuit in each of the cases. Where the Commission votes to file a lawsuit, Commission Counsel directs these legal efforts and represents the Commission. During FY 2020, Commission Counsel filed seven new complaints and one amicus brief on behalf of the Commission. Three cases that had been referred to Counsel for litigation or amicus filings were resolved. The Commission was a party in one court case throughout the year, and an amicus in one case. At the end of the Fiscal Year, there were three cases pending in court in which the Commission was a party.

CONCLUSION

This Annual Report has outlined the Commission's activities for FY2020, including: investigating 775 new complaints (with 3,185 distinct claims of discrimination); continuing investigative work on 710 complaints pending from FY 2019; closing 748 cases; participating in/delivering 58 trainings; and providing testimony at the Maine Legislature. Given all of this, and our extremely small staff of 14, and the fact that half of FY 2020 was during a worldwide pandemic forcing all agency activity to occur remotely, the sheer volume of the Commission's work in FY2020 was staggering (and accomplished with very limited resources). Each Commissioner and staff member at the agency feels responsible to the public to enforce the MHRA in Maine in the manner in which that law was written and intended. We appreciate the opportunity to have done that in the fiscal year, and look forward to doing so in the next.

ⁱ Special revenue funds account for \$215,728.

ⁱⁱ The data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized case system that presents data given certain defined parameters. Cases in which the Commissioners find reasonable grounds to believe discrimination occurred continue through a conciliation process and therefore may not be closed and reported within the same year the Commission decision occurred. The figures cited in this section of the report represent cases considered by the Commission and closed in Fiscal Year 2020.

ⁱⁱⁱ After updating inventory data, the FY 2020 beginning inventory was adjusted up from 677 to 668 due to case consolidations and coding corrections.

^{iv} Because 31 of the 775 new complaints filed fell under dual jurisdictions, there were a total of 806 complaints filed by jurisdiction.

^v As noted above, data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized case system that presents data given certain defined parameters. There were additional case closures that occurred in fiscal year but which were not counted in as closures in our computer system for technical reasons

^{vi} The date mediations were performed may differ from the date of the actual settlement and may fall outside the reporting period. The Commission's FY 2020 approved mediation budget was \$44,000 (which is entirely self-funded). In the fiscal year, the Commission received \$36,380 in program fees (\$225 by each of party in a case) from parties for mediations. In FY2020 mediators were paid \$24,333 (a set fee of \$400/case) to for completing 61 mediations. The Controller of the State of Maine collected \$132 in STA-CAP tax (or 7.6%) of expenditures; STA-CAP tax is a mandatory tax for non-exempt accounts administered by the State of Maine, the Mediation program was granted an exemption to STA-CAP in early FY 2020 after legislative approval.

^{vii} The disparity between these two rates is because 20 of the 238 cases voted on contained a split finding - one claim in the case led to a finding of reasonable grounds but another claim in the case led to a finding of no reasonable grounds.

^{viii} 3 uncontested cases resulted in a split finding vote of both reasonable grounds and no reasonable grounds.

^{ix} There were 258 hearing case outcomes; of the 238 individual cases, 20 cases had split reasonable grounds and no reasonable grounds findings.

^x There were 697 hearing case outcomes; of the 748 individual cases, 20 cases had split reasonable grounds and no reasonable grounds findings.

^{xi} 31 out of 117 cases contested were reasonable grounds cases.

^{xii} As noted above, data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized case system that presents data given certain defined parameters. There were additional case closures that occurred in fiscal year but which were not counted in as closures in our computer system for technical reasons

REPORT: Governor's Panel to Review and Make Recommendations for Improvement of the Maine Human Rights Commission and Its Operations

September 27, 2016

INTRODUCTION	1
A. REVIEW OF THE STRUCTURE AND OPERATION OF THE MHRC	5
Introduction	5
Methodology.....	7
Overview of Procedure and Process at the Commission	7
B. IDENTIFY FACTORS CAUSING AND/OR CONTRIBUTING TO THE PERCEPTIONS OF PREJUDICE AGAINST RESPONDENTS AND BIAS IN FAVOR OF COMPLAINANTS	14
C & D. IDENTIFY RULES, PRACTICES, AND PROCEDURES THAT ARE UNDULY BURDENSOME TO PARTICIPANTS IN THE MHRC ADMINISTRATIVE PROCESS AND/OR ARE UNFAIR TO RESPONDENTS AND/OR COMPLAINANTS	17
RECOMMENDATIONS TO IMPROVE PRACTICES AND PROCEDURES	18
Recommendation #1	18
Recommendation #2	18
Recommendation #3	19
Recommendation #4	19
Recommendation #5	20
Recommendation #6	20
Recommendation #7	20
Recommendation #8	20
Recommendation #9	21
Recommendation #10	22
Recommendation #11	22
Recommendation #12	22
Recommendation #13	23
APPENDIX.....	24

INTRODUCTION

Governor Paul LePage established the Maine Human Rights Commission Review Panel by Executive Order No. 2015-009, dated October 14, 2015. The Review Panel consists of eight members representing various constituent groups, or interested parties, as follows:

1. One attorney who regularly represents respondents before the MHRC: Eric Uhl.
2. One attorney who regularly represents complainants before the MHRC: James Clifford.
3. One person from or recommended by the National Federation of Independent Businesses: Colleen Bailey.
4. One person from or recommended by the Maine Apartment Owners and Managers Association: Chris McMorrow.
5. One person from or recommended by Pine Tree Legal: Frank D'Alessandro.
6. One person with a working knowledge of and familiarity with best administrative investigative practices: Patricia Peard.
7. One person recommended by the MHRC: Zach Heiden.

In addition, the Governor's Office appointed a member to serve as administrative liaison to the Review Panel, Joyce Oreskovich, Director the Maine Bureau of Human Resources. Eric Uhl served as chair, and James Clifford served as secretary. All members of the Review Panel devoted countless hours in meetings, deliberations, interviews, and investigations. The members represented a diverse and comprehensive spectrum of opinions, experiences, and perspectives. All members served very capably and contributed greatly to the Review Panel's mission.

The Executive Order instructed the Review Panel to:

- Conduct a review of the structure and operation of the MHRC;
- Identify factors causing and/or contributing to the perceptions of prejudice against respondents and bias in favor of complainants;
- Identify rules, practices, and procedures that are unduly and unnecessarily burdensome to participants in the MHRC administrative process;

- Identify rules, practices, and/or proceedings that are unfair to respondents and/or complainants; and
- Issue a report to the Governor which includes the results of its review in each of the above-listed areas as well as recommendations for improvement in laws, rules, practices, and/or procedures identified as causing or contributing to the problems identified.

The Review Panel met 13 times, approximately monthly, alternating meetings between Portland and Augusta. The Review Panel met with and interviewed MHRC Commissioner Sallie Chandler, MHRC Executive Director Amy Sneirson, and MHRC Counsel Barbara Hirsch. In addition, Review Panel members met separately with, and obtained information and input from, members of their respective constituencies, including members of the defense bar, members of the plaintiffs' bar, business owners and representatives, apartment owners, tenants and tenants groups, and another MHRC Commissioner, Mavourneen Thompson. Pat Peard devoted many hours interviewing and meeting with all staff members of the MHRC and a former chief investigator. The Review Panel kept minutes of its meetings and maintained copies of documents that it examined in connection with its review. The minutes and other documents are available to the public under the Freedom of Access Act.

As discussed in more detail in the sections to follow, the Review Panel unanimously agreed that the MHRC, its Commissioners, and its staff are not actually prejudiced, biased, or unfair toward respondents or complainants. The vast majority of cases that are heard by the Commission are decided in favor of respondents. A precise empirical review of perceptions of biases and prejudices was beyond the capacity of the Review Panel. Some members recounted many examples of perceptions or biases and prejudices against both complainants and respondents, while other members maintained they were not convinced of such perceptions, or that any purported perceptions were attributable to other factors, such as lack of information,

misunderstanding of processes, or over-worked and misunderstood staff. In any event, it is important to emphasize that the Review Panel, in all of its diverse representations, found the MHRC to be devoted to its mission and to have a desire to be fair and unbiased toward all parties. Even if different members of the Review Panel found that the outside perception of those efforts varied, all members agreed that there was no evidence that the MHRC or its staff ever intentionally meant to be unfair or biased toward any party. In many cases, the reports of bias or unfairness were directly attributable to the Maine Human Rights Act itself, or the requirements imposed on the MHRC by federal employment and housing laws and regulations. Of course, the MHRC is charged with investigating all alleged violations as required by the applicable laws.

In this regard, it should be noted that some—but not all—members of the Review Panel felt that the Executive Order creating the Review Panel represented an inappropriate intrusion on a separate, independent administrative agency, and that some of the charges in the Executive Order were not justified. Other members felt just as strongly that the charges were justified and that changes needed to be made. However, despite these different perspectives (which made the work of the Review Panel fair and balanced in any event) all of the members of the Review Panel agreed to work together to overcome these different perspectives and to focus on recommendations that would make the MHRC and its processes more efficient and fair to all participants, complainants and respondents. In fact, notably, most of the recommendations made in this report have the approval of *all members* of the Review Panel. The fact that such a diverse group of members, representing diverse interests, unanimously agreed to substantially all of the recommendations for improvements gives great weight to those recommendations.

In general, the members of the Review Panel agreed that—given the statutory mandate of the MHRC and its powers and duties under the Maine Human Rights Act—an organization that is efficient, well-staffed, well-funded, and well-trained is imminently more desirable than an organization that is ineffective or generates false perceptions of bias or unfairness because it is under-funded, inefficient, and over-worked. It is in this spirit that the Review Panel submits its findings and recommendations, with the hope that implementing these recommendations will provide the people of Maine with an agency that is well-respected and effective.

A. REVIEW OF THE STRUCTURE AND OPERATION OF THE MHRC

Introduction

Before going into specifics of this review it is important to have some context for the overall operation of the Commission. In the Annual Report of the Commission for 2015 which is the most recent report the following information is noteworthy.

In 2015 the number of new complaints filed with the Commission was 739 which was an increase of 13% from 2014 (654). The 654 complaints filed in 2014 was an increase from the previous year of only three complaints. However, in 2013 there was an increase of 2% in the number of complaints filed, and in 2012 there had been a 16% increase in complaints filed. Going back to 2009 there has been a steady increase in complaints filed. By comparison, New Hampshire and Rhode Island have considerably fewer filings on average. New Hampshire has 200 to 225 cases a year, and Rhode Island has approximately 400. New Hampshire has 4 investigators and Rhode Island has 7.

Maine operated during much of this past year (2016) with five investigators. A new investigator has recently been hired so the roster will return to 6. There is no administrative support for the Maine investigators who each can have a case load at any time of up to 80 cases.

Of all of the cases coming into the Commission, approximately 25% are disposed of through settlement through dispute resolution. Another 36.5 % are resolved because a Right to Sue letter is issued to the complainant upon request after 180 days. This represents two-thirds of the cases. The remaining one-third of the cases is managed by the investigators through a report. Approximately 50% of the complaints filed come from *pro se* complainants, which increases the work that must be undertaken by Commission staff.

By any measure this is a very heavy workload.¹ In 2015 the investigators wrote reports in 227² cases. The Commissioners actually heard argument in only 78 of those cases. The rest were uncontested. In 15% of the 227 cases, the Commission found “reasonable grounds” to believe discrimination had taken place. Despite best efforts, at the end of Fiscal Year 2015, 756 cases were still pending at the Commission. This represented a 10.5% increase from the number of pending cases at the end of the previous fiscal year.

The average number of days a case is with the Commission is 388, and the average number of days a case is with an investigator is 174 days. By the time a case actually gets to an investigator, the case has generally already been at the Commission an average of 7 months. Each investigator attempts to complete 4.75 reports a month. A thorough review of the statistics in the Annual Reports of the Commission from 2008 through the present makes it clear that a very hard working staff is running in place just to continuously fall behind.³

It is only within the context of this ratio of work coming in to the number of staff that one can properly review the actual procedures and practices used by the Commission to accomplish its work.

¹ Despite this level of steadily increasing work the Commission operates on an annual budget of less than \$1,000,000. The State of Maine budgets approximately \$500,000 for the Commission and the remaining funds come from the Federal Equal Employment Opportunity Commission (EEOC) and the Federal office of Housing and Urban Development (HUD). The EEOC pays \$700.00 for a closed case, and HUD pays \$2600. Each agency requires its own separate proprietary electronic reporting system.

² It is important to remember that most cases do not involve only one issue. During Fiscal Year 2014, on average each case involved 8.5 separate issues that each needed to be addressed in the investigator’s report.

³ In addition to all of the work outlined here required to handle complaints filed with the Commission, the staff, investigators, Executive Director and Commission Counsel participate in approximately 34 or 35 educational programs a year.

Methodology

The Review Panel conducted the following interviews in order to assess the procedures utilized at the Commission: (1) Interview with all of the investigators in November 2015; (2) Amy Sneirson, Executive Director of the MHRC, and Barbara Hirsch, Esquire, MHRC Commission Counsel, met with the Review Panel on December 9, 2015; (3) Amy Sneirson was interviewed at the Commission offices on January 13, 2016; (4) Barbara Lelli, a former MHRC Chief Investigator was interviewed in February 2015; (5) MHRC Commissioner Sally Chandler met with the Review Panel on February 4, 2016; (6) MHRC Commissioner Mavourneen Thompson met separately with members of the Review Panel.

Overview of Procedure and Process at the Commission

When we began this review, the procedure that was in place can best be described as labyrinthine. As Ms. Sneirson has stated, the Commission was founded 44 years ago and very little has changed in the process utilized from that point until today or in the level of staffing despite a steady increase in cases.⁴

The Commission Intake form may be accessed on-line, but it cannot be filed on-line. The Complaint does not become formally accepted as a Charge until the Complainant signs the Complaint and the signature is notarized. These on-line forms are sent to the intake officer. The intake officer reviews the intake form to see if there is enough information to go forward with a *prima facie* case. If so, the intake officer drafts the complaint. If not, then the intake officer has

⁴ Ms. Sneirson made some changes in May 2015 which will be discussed at a later point in this section.

to call the person back to see if there is more information. In order to save some time the process was changed from using the phone⁵ to trying to get additional information by e-mail.

The complaint is supposed to be drawn up within 10 days of the intake form coming in. In actuality the time required to finalize may be as long as 4 weeks. At one point there were 160 intake forms waiting to be finalized. They are dealt with in the order they are received, except that HUD complaints, education complaints and current employees are given priority. Each Charge is reviewed by the intake officer to see if it is timely. The 300 day limitation period runs from the first date the complainant contacts the Commission, not from the date of the notarized signature.

Currently, the Commission cannot accept electronic signatures. They must all be originals. The Commission, by statute, cannot refuse to accept a complaint even if it is from a “serial filer.” The Commission does not now have the authority to mete out any sanctions for those complainants or respondents who abuse the process. The intake process was described as creating a “bottleneck” for the whole investigation process.

At the beginning of May 2015, Ms. Sneirson made some changes to the intake process in order to make it move more efficiently. There is no longer one dedicated intake officer. Rather, the investigators, except for the senior investigator,⁶ now take turns as the intake officer of the day. With this new procedure, three front office staff have the same job description, which enables them to help with whatever task is required at the time. At the same time, the compliance officer position was eliminated and this position became a paralegal position. This

⁵ The phone at the Commission has now been automated which certainly saves staff time. As is true with the courts, the Commission has the situation where persons are calling all day, every day. Having the phone automated assists in better screening calls so they can be prioritized.

⁶ There is no longer a Chief investigator position.

person is tasked with answering questions from the public and assisting with FOAA requests and litigation. The purpose of these changes in the intake process was to have a more flexible staff who can work interchangeably.

Once the complaint is drafted, it must be sent out to the complainant and then it must be signed and sent back with the required notarization. This process is, of course, faster when the complainant is represented by counsel and the complaint is drafted by counsel. However, it bears repeating that approximately 50% of the complainants are not represented by an attorney. The date each draft complaint is sent out is logged into the system for either EEOC or HUD. Their current goal is to produce 40 draft complaints a month and to get each one out within 30 days of its receipt. The Commission staff members have never been able to meet this goal.

When the complaint is returned, it, along with any other materials, is placed in a mail slot that is marked “new charges.” At this point the senior investigator looks at the complaint and drafts questions and requests for information to be sent to the respondent. The investigator may also put together questions for the complainant related to any issues of jurisdiction or concerns that there is not a *prima facie* case. After review, the senior investigator may also forward cases to Ms. Sneirson at this point in time if it appears the case should be administratively dismissed. This is the first place in the process where the complaint can be dismissed.

When the complaint is finalized, it is sent to the respondent along with questions. The questions that go out to respondents are not tailored to the specific case but are taken off of templates. The senior investigator is allowed to change the template but this is not frequently done. The goal at this point is to get the questions out as quickly as possible. The Commission rules require that respondents be notified within ten (10) days of the complaint becoming a charge but this requirement is almost never met.

After the questions and requests for information are drafted the new charge and the questions go to Commission legal counsel for a final legal review. Currently, Commission Counsel is actually drafting the questions herself. When legal counsel review is completed, the packet of the new charge and the questions goes back to the staff. At this point the case has to be opened in the computer system so that EEOC or HUD filing requirements are met. The file is also checked to make sure that the case has been properly put in the intake system, and at this point it is assigned a case number and labels are printed for the necessary file folders.

At this point, the case is now officially opened. The person who inputs the data for the EEOC or HUD must have knowledge of state and federal law because the filing with either agency is very detailed and very time consuming. After this input process, the computer will print out the notification documents for EEOC or HUD. These documents go with the New Charge, the questions and requests for information and the Non-Disclosure notice, which is sent to respondents. Before this packet can actually go out, if there is a disability discrimination claim alleged, there also needs to be an authorization from the complainant to permit access to health information. In such a case, the Charge must be copied and all information relating to the specifics of the disability must be redacted by hand. Once all of this is done, the staff is still required to enter notes in the computer system as to exactly what they have done.

The staff then determines when the respondent's answer is due. The staff then actually places a post-it note on the file folder indicating this due date. The file is then placed on a shelf in the office. When the answer from the respondent is received, if it is late, another 30 days is allowed and noted in a letter. There are no more extensions permitted by request of counsel except in extraordinary circumstances because these requests from respondents' counsel have

also really clogged-up the system. The respondent now has 60 days to respond unless it is a “red dot” case,⁷ in which case the deadline is 45 days for the respondent to answer.

Once the folder is placed on the shelf, the senior investigator will review the file and decide whether it should be assigned to an investigator or whether there should be an attempt at early mediation. Most cases go to an investigator, and they are lined up on the shelf by date. The experienced investigators are allowed to go to the shelf and pick the cases to which they want to be assigned. HUD cases only go to investigators specifically trained for those cases.⁸ With new investigators who are being trained, the senior investigator has more control over which cases are assigned to the new investigator.

The case load for each investigator is up to 80 cases. The senior investigator is responsible to check to see if an investigator needs more cases. The staff and the investigator all track the statute of limitations on a case. The date for the running of the statute is noted on the inside of the file folder. The investigator also sends out a letter to the parties telling them he or she has been assigned to the case. This letter is not a legal requirement but it does make it clear to the parties that it will be a while (often several months) before the investigator can actually get to consideration of the case.

The investigators put their cases in order according to the statute of limitations date. Once they have a case, the investigator is required to develop a case plan for each case, which is the road map from which they work as the case goes forward. Usually, an investigator is

⁷ A “red dot” case includes a case where an employee complainant is still working for the company, education cases, cases where a reasonable grounds case is thought to be likely, a case where there may be irreparable harm or a case involving a repeat offender.

⁸ This discussion of process does not focus on HUD cases because they are a small percentage of the cases and they have different and very demanding deadlines. There are approximately 100 HUD cases a year. They are very burdensome and time consuming for the staff.

actively working on about 10 cases at a time. The investigators can also make the decision on their own as to whether or not they will schedule a fact-finding conference. Each month the investigator works to meet the standard for their annual review of closing nine (9) cases through any means or writing 4.5 reports.⁹ If this standard was not met previously, there were no consequences. Now, if an investigator does not meet the standard, it will impact their ability to work from home. Even if a case settles that an investigator thought would be part of their 4.5 report requirement, they must find something else to replace it.

When there is a settlement, the investigator will ask once for the parties to supply the information about the amount of the settlement. This information is required by the EEOC. If the parties do not respond, the matter is given to Ms. Sneirson to try to get the required data.

After 180 days, an attorney or a party may request that a Right to Sue letter be issued. All of these requests go to Ms. Sneirson, who reviews them and then directs the staff to issue the letter, if it is appropriate.

When an investigator finishes a report based on a review of all the material submitted by the parties and the evidence taken at a fact-finding conference, if any, it is sent to Commission counsel to be reviewed for legal sufficiency. Counsel reads the entire file. If Counsel signs off, then the decision and the file are sent to Ms. Sneirson. She then skims the file and reads the report and reviews any edits that may have been made by Counsel. More than 50% of the time, if there are problems with the reports, Counsel just fixes them with the investigator. Ms. Sneirson reviews the report with redline changes, and she can make additional changes. Then the report goes back to the investigator in redline with all of the edits. The investigator also receives comments from Ms. Sneirson and Counsel. There is a specific comment sheet that is

⁹ This standard has been changed because of the new job duty assigned to investigators to be intake officers.

used for this purpose. The investigator accepts the changes and prints out a final version of the report. It is then signed. The signed report and file are then sent to Ms. Sneirson yet again. Ms. Sneirson signs and then the report and recommended decision and file go back to staff. The decision is sent out to the parties, and the case is assigned on the Commission agenda. There is no limit on how many cases can be on an agenda. The number is really controlled by the statute of limitations on the cases and how many reports Counsel can actually review.

After all of this takes place, the staff then have to go into the EEOC or HUD data base and indicate the report was issued. The staff person also has to produce the letter that goes to each party telling them that they have 17 days to file objections to the report. If there are submissions by a party, the submission must also be sent to the other party. The parties are not required to provide copies to the other party. These steps clearly present another bottleneck and a procedural flaw. When the submissions come in, the investigator must review the submission for new evidence, and if there is new evidence, decide if it impacts the decision in the report. If the new evidence makes no difference for the decision, which is true in most cases, then Ms. Sneirson redacts that information before it goes out to the other party.

The material—including the investigator’s report and submissions from the parties contesting the report—used to be delivered to the Commissioners by mail before their scheduled meeting. Now, all of the Commissioners have been provided with tablets, and they receive the information electronically. This has greatly eased the burden on staff and the Commissioners.

B. IDENTIFY FACTORS CAUSING AND/OR CONTRIBUTING TO THE PERCEPTIONS OF PREJUDICE AGAINST RESPONDENTS AND BIAS IN FAVOR OF COMPLAINANTS

The Governor directed the Review Panel to “identify factors causing and/or contributing to the perceptions of prejudice against Respondents and bias in favor of Complainants.”

The Review Panel did not identify any evidence of actual prejudice against Respondents or bias in favor of Complainants. The perception of prejudice or bias is based, at least in part, on misunderstandings regarding why the MHRC does its work, what the MHRC’s work is, and how the MHRC performs its role. The perception is also based on organizational and procedural issues, identified in this report, that lead one side or the other to believe that they are being treated unfairly. In the end, the statistics show that Respondents prevail in a substantial majority of the cases brought before the MHRC. In FY2014, approximately two-thirds of the complaints (62%) filed with the MHRC resulted in settlement (25.8%) or administrative dismissals (36.5%). Of the remaining 1/3 (38%) of the cases, which resulted in an investigator’s report and recommendation, the MHRC found reasonable grounds to support a violation in only 15% of the cases (representing 13% of the various claims brought in those cases). Overall, for all cases filed in FY2014, the MHRC found reasonable grounds to support a violation in only 5% of the cases filed.

For example, the Panel encountered widespread misunderstanding concerning why the MHRC conducts investigations of complaints, with some believing that the MHRC conducts investigations of people or entities that it believes have committed discrimination. In reality, the MHRC is legally required to investigate all complaints filed with it, so long as they are made within the proper statutory time period—not more than 300 days after the alleged act of discrimination. See 5 M.R.S.A. §4611 (delineating the proper statute of limitations on

allegations of unlawful discrimination); 5 M.R.S.A. §4612 (setting forth the obligation of the Commission to investigate). Mandatory investigation of complaints—even complaints that the Respondent believes are unjustified—is not a “prejudice against Respondents,” but rather the legal obligation of the MHRC, as required by the underlying Maine Human Rights Act.

In addition, the Panel encountered misunderstanding concerning what the MHRC’s work is, with some confusing the Commission with a court of law, including the capacity to demand that Respondents pay damages or enter settlements. The MHRC is charged, by statute, with conducting investigations and making recommendations. 5 M.R.S.A. §4566. It is also permitted to appear in court and before other administrative bodies. 5 M.R.S.A. §4566(8). The Commission does not have enforcement authority. If, after investigating, the Commission concludes that there were no reasonable grounds to believe that unlawful discrimination has occurred, it is required to dismiss the complaint. 5 M.R.S.A. §4612(2).

If the Commission concludes that there are reasonable grounds to believe that unlawful discrimination has occurred, it has only three options: (1) it can attempt “to eliminate such discrimination by informal means, such as conference, conciliation, and persuasion,” 5 M.R.S.A. §4612(3); (2) it can file a civil action in Superior Court on behalf of the complainant, 5 M.R.S.A. §4612(4); or (3) it can issue an order denoting its conclusion, which is not accompanied by any injunctive or monetary sanctions of any kind. In other words, despite the common misperception, the Commission does not impose punishment.

The Panel also encountered misunderstanding concerning how the Commission carries out its responsibilities. Some were under the impression that the Commission forced Respondents to pay large amounts of money to settle cases, when in reality the Commission, through its staff, only serves as a mediator to help Complainants and Respondents resolve

disputes informally. Some also believed that the Commission makes demands for information from Respondents because of vindictiveness, when in reality the Commission is legally obligated by its own rules, as well as the rules of the EEOC and HUD, to ask about specific issues (the Commission might be in a position to make more targeted requests of Respondents as well as Complainants if it had more staff). And, some Respondents, who were not represented by lawyers at the Commission, were confused about the presentation of evidence and the development of the record.

The panel also found that in some cases, the perception of bias or prejudice appears to result from an understaffed and underfunded organization struggling to keep pace with the case load. These staffing and funding challenges can result in organizational deficiencies and procedural delays that also contribute to the misperceptions.

In general, terms, the perceptions of prejudice against Respondents or bias in favor of Petitioners were not the fault of the Commission or its staff. In addition to the recommendations in this report, public education and outreach about the Commission, and its mission and procedures, may alleviate some of these misperceptions.

C & D. IDENTIFY RULES, PRACTICES, AND PROCEDURES THAT ARE UNDULY BURDENSOME TO PARTICIPANTS IN THE MHRC ADMINISTRATIVE PROCESS AND/OR ARE UNFAIR TO RESPONDENTS AND/OR COMPLAINANTS

The Review Panel found a number of rules, practices, procedures that were unduly burdensome to participants and could lead to a perception of unfairness. The overall process of the intake, file preparation, request for information to Respondents, investigation, review, report writing process, submission to parties for objections, and involvement of the Commissioners, as discussed in part B. above is inherently inefficient and burdensome, both to the MHRC staff and to the parties. The specific rules, practices, and procedures that the Review Panel found to be unduly burdensome are addressed in the next section of this report, regarding recommendations.

RECOMMENDATIONS TO IMPROVE PRACTICES AND PROCEDURES

It is important to emphasize that many of the recommendations outlined below are inter-dependent and should be considered as a whole. In other words, the Review Panel believed that implementing these recommendations together would be most effective. That is not to say, however, that implementing one or more of these recommendations would not be effective or would not help to promote efficiency and perceptions of fairness. Certainly, implementing any of these recommendations would help to address these issues.

Recommendation #1: Hire a management consultant/efficiency expert. The Review Panel strongly recommends engaging a professional consultant with an expertise in organizational development workflow analysis to follow up with MHRC on many of the issues raised in our review of the processes and procedures of the MHRC set forth above. Such a report would enable the legislature to make informed decisions on whether to increase funding or dedicate additional resources to MHRC, and would lay the groundwork for improvements in the efficiencies of the MHRC's procedures and operations.

Recommendation #2: Hire more investigators – to investigate. The Panel was very concerned that MHRC investigators were required to assist pro se complainants draft charges. Even if “firewalls” were established to prevent conflicts or bias, the investigators should be spending their time investigating cases rather than drafting charges. It would greatly aid in the efficiency of the process—and mitigate perceptions of unfairness—to provide the MHRC with enough investigators to actually conduct thorough and sufficient investigations, rather than spend so much time on administrative functions. In any case, the Review Panels agrees that additional investigators are needed to address and resolve the increasing number of charges filed with the MHRC every year.

Recommendation #3: Use “intake specialists” (advocates). This recommendation was supported by most of the Panel members, with the exception of one member, who reported that the Maine Employment Lawyers Association and other plaintiffs’ lawyers opposed hiring “advocates” similar to those employed by the Workers Compensation Board. However, all members of the Review Panel unanimously supported the idea of an “intake specialist” who would be responsible for screening, intake, and initial charge drafting, as well as providing information on the MHRC processes at each step of the procedure, especially in light of the staffing shortage with investigators. These “intake specialists” would *not* provide legal advice. Given the fact that many of the concerns regarding perceptions of unfairness stem from misunderstandings about the process, intake specialists would serve a vital role in educating and leading unrepresented parties through the process. These specialists would assist both complainants and respondents. The Review Panel understands that these additional staff members would present a budget and operations issue, but in the Panel’s view, it would be wise to train and hire one or more intake specialists to assist unrepresented parties on both sides.

Recommendation #4: Increase education and training for MHRC staff and MHRC Commissioners. The Review Panel found that devoting additional training resources to the investigators, particularly tailored to conducting interviews and investigations with neutrality, would be favorable for all parties and would address perceptions of unfairness. In addition, the Review Panel found that at least in some circumstances, the Commissioners themselves did not fully understand their roles or even the overall responsibilities, and limitations, of the MHRC. Providing more training and promoting a better understanding and expertise in the investigators and Commissioners themselves is important. This recommendation was unanimously favored by the Panel.

Recommendation #5: Increase number of administrative staff. The Review Panel also agreed that hiring one administrative support staff would give the investigators more time to investigate, alleviate some of the administrative delays, and help eliminate the backlog that is frustrating to participants. The Review Panel is also hopeful that the management consultant recommended in #1 above could work with the MHRC to come up with additional ways to improve the process and increase efficiencies.

Recommendation #6: Modernize computer and technology systems to permit electronic filing, electronic signatures. The Review Panel realizes that such improvements would be costly and would not be as easy to implement. But the current system is highly inefficient and outdated, and this is likely behind many of the perceptions of unfairness that results from a sense of a lack of responsiveness. In the long run, a modernized infrastructure would go a long way to addressing many of the problems relating to unnecessarily burdensome procedures for both complainants and respondents.

Recommendation #7: Expand mediation program. The Review Panel believes that additional mediators should be added to the roster and that the MHRC should consider an early neutral evaluation program, comprised of volunteers from the bar or other resources to avoid additional budget increases, to analyze certain cases. Parties from both sides expressed a desire for early conciliation if possible. Members of bar—from both sides, respondents and complainants—have expressed a willingness to volunteer as mediators to help this program.

Recommendation #8: Develop a “dual track” system; consider changing state law requiring 180 days before right to sue letter issued. All Review Panel members supported the idea of developing dual tracks, i.e., one alternate, “fast” track for represented parties who wish to pursue it, and another for cases involving one or more pro se litigants or parties who do not wish

to pursue the fast track. This idea was also supported by attorneys representing both sides. The Review Panel believes that this “dual track system” would allow the MHRC to focus on contested matters involving pro se litigants or those choosing to remain active in the process outlined in 5 M.R.S. § 4612. The Review Panel recognizes that this process would require a statutory change to the mandatory 180 day waiting period under the MHRA. Accordingly, the Review Panel recommends an appropriate amendment to 5 M.R.S. § 4612 to provide for this additional track.¹⁰ To pursue the alternate track, both parties would have to consent. Members of the Review Panel would be willing to work with Commission Counsel to explore these issues and develop a more detailed recommendation for this dual track procedure.¹¹

Recommendation #9: Improve and streamline the requests from the MHRC for information, discovery, and document requests. A majority of Review Panel members believe that the MHRC should address and revise the current system in which Respondents are required to respond to a number of burdensome and potentially irrelevant questions and requests for production of information and documents. Many Review Panel members found these requests for information and documents, especially so early in the process, to be a significant source of frustration, an undue burden, and a basis for a perception of unfairness. Two panel members noted the objections of their constituents but remained open to changes so long as they

¹⁰ The Panel recognizes that this change in the current 180 day requirement may also involve negotiations with the EEOC.

¹¹ If parties agree to the fast track, the MHRC could provide a “checklist” of sorts as conditions precedent to obtaining the so-called “right-to-sue” letter. For example, a right-to-sue letter could be issued within 60 or 90 days, or some other time period, if the Executive Director or Commission Counsel, in their discretion, are satisfied that (i) the represented parties have met or conferred at least once in good faith, (ii) the parties exchanged certain documents (i.e., personnel file, medical records in disability cases, documents and reasons to support the allegations in the Charge), (iii) the parties provided certain basic information (i.e., basis for claims, written reason for termination, number of employees, and other information required by the MHRC to satisfy its obligations), (iv) there was a minimal substantive response to the charge, and (v) the parties have either discussed settlement options or exchanged written settlement demands and counteroffers.

did not compromise due process or the ability for complainants to discover relevant information and documents. In this regard, the Review Panel was hopeful that increased staffing would permit the investigators to use fewer and more specifically tailored requests for information and documents from respondents.

Recommendation #10: Increase and improve public relations and outreach. The Review Panel spent a considerable amount of time on this topic throughout the many monthly meetings. This recommendation is intended to address the “perceptions” of bias and unnecessary rules or practices noted repeatedly throughout the Executive Order and voiced by certain Panel members and as addressed in this report above. In other words, if—as the majority of the Review Panel seems to agree—there is no evidence that the MHRC actually is biased or unfair, but if the business community or other sectors continue to perceive that such bias exists, it would be entirely appropriate for the legislature to explore developing a community outreach and education program and for the MHRC to respond accordingly. Some Review Panel members noted that it would be encouraging for the MHRC to work in conjunction with state and local chambers of commerce in this regard.

Recommendation #11: Commissioners should be appointed in timely fashion. The Review Panel found frustration from staff and Commissioners that some Commissioners were required to serve beyond their designated term, and the Panel agreed that it is important to maintain fresh and engaged Commissioners to review and act on cases. In addition, the organizational development expert could work with the MHRC on improving work flow for the Commissioners.

Recommendation #12: Filing Fees. A suggestion was raised, by one member, and explored to invoke a modest filing fee for Complainants. Most members took the position that

many Complainants could not afford to pay even a modest filing fee of \$50, for example. The suggested recommendation was revised so that a Complainant could pursue a waiver of the filing fee if the Complainant states, and demonstrates, that he or she is unable to afford the fee.

Several Panel Members noted objections to this recommendation on behalf of Complainants and the MHRC, respectively. However, in the interests of providing perspectives from all members of the Review Panel, this recommendation from one of the members is included in this report.

Recommendation #13: Increase the MHRC's budget to implement these recommendations. This recommendation was unanimously favored, although one member differed on the timing of the budget increases. In any event, when fiscally feasible, more funding is required to pay for more staff, training, outreach, and the other recommendations noted above. The Review Panel was surprised to learn of the relatively small amount of state funding supporting the day-to-day operations of the MHRC.

Respectfully submitted,

Colleen Bailey
James Clifford
Frank D'Alessandro
Zach Heiden
Chris McMorrow
Patricia Peard
Eric Uhl

APPENDIX

EXCERPTS FROM THE MAINE HUMAN RIGHTS ACT

Any interested person should be familiar with the full scope of the MHRC as established by the Maine Human Right Act. Here is a sampling of some, but not all, of the MHRC's mission, powers, and duties:

Members

The Maine Human Rights Commission, established by section 12004-G, subsection 15, shall be an independent commission of no more than 5 members. No more than 3 of the members may be of the same political party. The members shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to be the chair.

5 M.R.S.A. § 4561.

Powers and Duties of the Commission

The commission has the duty of investigating all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity. Without limiting the generality of the foregoing, it has the duty of investigating all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons. Based on its investigations, it has the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State.

To carry out these duties, the commission shall have the power:

1. Office. To establish and maintain a principal office, and such other offices within the State as it may deem necessary;

2. Meetings. To meet and function at any place within the State;

3. Personnel. To appoint a full-time executive secretary and counsel to the commission, not subject to the Civil Service Law, and determine their remuneration; and to appoint, subject to the Civil Service Law, other personnel including, but not limited to, investigators, attorneys, compliance personnel and secretaries, as it shall deem necessary to effectuate the purposes of this Act;

4. Hearings. To hold hearings, administer oaths and to take the testimony of any person under oath. There shall be no executive privilege in such investigations and hearings, but law enforcement officers, prosecution officers and judges of this State and of the United States shall be privileged from compulsory testimony or production of documents before the commission. Such hearings and testimony may relate to general

investigations concerning the effectiveness of this Act and the existence of practices of discrimination not prohibited by it, as well as to investigations of other alleged infringements upon human rights and personal dignity. The commission may make rules as to the administration of oaths, and the holding of preliminary and general investigations by panels of commissioners and by the executive secretary;

4-A. Subpoena power. Pursuant to a complaint which has been filed in accordance with section 4611 by a person who has been subject to unlawful discrimination, the commission may issue subpoenas; as provided in subsection 4-B, to compel access to or production of premises, records, documents and other evidence or possible sources of evidence or the appearance of persons, provided that there is reasonable cause to believe that those materials or the testimony of the persons are material to the complaint. The commission may not issue subpoenas except as provided in this subsection.

4-B. Subpoenas; contest of validity. If a subpoena is issued, notice must be given to the person who is alleged to have engaged in the unlawful discrimination. The person upon whom the subpoena is served may contest its validity. A judicial review of the subpoenas is permissible in any Superior Court;

5. Services. To utilize voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

6. Advisory groups. To create local or statewide advisory agencies and conciliation councils to aid in effectuating the purposes of this Act. The commission may study or may empower these agencies and councils to study the problems of discrimination in all or specific fields of human relationships when based on race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, and foster good will among the groups and elements of the population of the State. Agencies and councils may make recommendations to the commission for the development of policies and procedures. Advisory agencies and conciliation councils created by the commission must be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

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 2. Rules adopted to implement section 4553-A are major substantive rules as defined in chapter 375, subchapter 2-A;

8. Appearance. To appear in court and before other administrative bodies by its own attorneys;

9. Notices and forms. To require the posting of notices or the adoption of forms by businesses subject to this Act, to effectuate the purposes of this Act;

10. Publications. To publish results of investigations and research to promote good will and minimize or eliminate discrimination based on race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin;

11. Reports. To report to the Legislature and the Governor at least once a year describing the investigations, proceedings and hearings the commission has conducted and the outcome and other work performed by the commission, and to make recommendations for further legislation or executive action concerning abuses and discrimination based on race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, or other infringements on human rights or personal dignity; and

12. Other acts. To do such other things as are set out in the other subchapters, and everything reasonably necessary to perform its duties under this Act.

5 M.R.S.A. § 4566.

Complaint

Any aggrieved person, or any employee of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination, except that a complaint must be filed with the commission not more than 300 days after the alleged act of unlawful discrimination. In addition, any person may file a complaint pursuant to section 4632.

5 M.R.S.A. § 4611.

Procedure on Complaints

1. Predetermination resolution; investigation. Upon receipt of such a complaint, the commission or its delegated single commissioner or investigator shall take the following actions.

A. The commission or its delegated single commissioner or investigator shall provide an opportunity for the complainant and respondent to resolve the matter by settlement agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and any final agreement are confidential and may not be disclosed without the written consent of the parties to the proceeding nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this paragraph, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement. The commission may adopt rules providing for a 3rd-party neutral mediation program. The rules may permit one or more parties to a proceeding to agree to pay the costs of mediation. The

commission may receive funds from any source for the purposes of implementing a 3rd-party neutral mediation program.

B. The commission or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the commission, or its designated representative, must have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The commission may issue subpoenas to compel access to or production of those materials or the appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and may serve interrogatories on a respondent to the same extent as interrogatories served in aid of a civil action in the Superior Court. The commission may administer oaths. The complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint, is a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission. An investigation is concluded upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs. Prior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. Notwithstanding any other provision of this section, the complaint and evidence collected during the investigation of the complaint may be used as evidence in any subsequent proceeding, civil or criminal. The commission must conclude an investigation under this paragraph within 2 years after the complaint is filed with the commission.

2. Order of dismissal. If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding.

3. Informal methods, conciliation. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, but finds no emergency of the sort contemplated in subsection 4, paragraph B, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. Everything said or done as part of such endeavors is confidential and may not be disclosed without the written consent of the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this subsection, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. If the case is disposed of by such informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding.

4. Civil action by commission.

A. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination or to members of a racial, color, sex, sexual orientation, physical or mental disability, religious or nationality group or age group if relief is not immediately granted, or if conciliation efforts under subsection 3 have not succeeded, the commission may file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders. In a complaint investigated pursuant to a memorandum of understanding between the commission and the United States Department of Housing and Urban Development that results in a reasonable grounds determination, the commission shall file a civil action for the use of complainant if conciliation efforts under subsection 3 are unsuccessful.

B. Grounds for the filing of such an action before attempting conciliation include, but are not limited to:

(1) In unlawful housing discrimination, that the housing accommodation sought is likely to be sold or rented to another during the pendency of proceedings, or that an unlawful eviction is about to occur;

(2) In unlawful employment discrimination, that the victim of the discrimination has lost or is threatened with the loss of job and income as a result of such discrimination;

(3) In unlawful public accommodations discrimination, that such discrimination is causing inconvenience to many persons;

(4) In any unlawful discrimination, that the victim of the discrimination is suffering or is in danger of suffering severe financial loss in relation to circumstances, severe hardship or personal danger as a result of such discrimination.

5. Confidentiality of 3rd-party records. The Legislature finds that persons who are not parties to a complaint under this chapter as a complainant or a respondent have a right to privacy. Any records of the commission that are open to the public under Title 1, chapter 13, must be kept in such a manner as to ensure that data identifying these 3rd parties is not reflected in the record. Only data reflecting the identity of these persons may be kept confidential.

6. Right to sue. If, within 180 days of a complaint being filed with the commission, the commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the complainant may request a right-to-sue letter, and, if a letter is given, the commission shall end its investigation.

5 M.R.S.A. § 4612.

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE 1 OF 20 PAGES
2. CONTRACT (Proc. Inst. Incident) NO. 45310019C0029		3. EFFECTIVE DATE 10/01/2018		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. FP190026	
5. ISSUED BY EEOC OCFO ASD 133 M Street, N.E., 45W20A Washington, DC, 20507 Attn: Anthony Price (202) 663-4218		CODE 453100	6. ADMINISTERED BY (If other than Item 5) EEOC New York District Office 33 Whitehall Street, 5th Floor New York, NY, 10004 Attn: Holly Shabazz (212) 336-3643		CODE 453100

7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) MAINE HUMAN RIGHTS COMMISSION 19 UNION STREET, #51 STATE HOUSE STATION AUGUSTA, ME, 04333-0051 ATTN: AMY M. BEIRSON		8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)	
9. DISCOUNT FOR PROMPT PAYMENT Net Days - 30		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN ITEM See Schedule	

11. SHIP TO/MARK FOR See Schedule	CODE 095358110	FACILITY CODE	12. PAYMENT WILL BE MADE BY EEOC Payment, Interior Business Center Attn: EEOC Invoice Processing Team Denver, CO, 80235	CODE 12CPAY
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13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(e) () <input checked="" type="checkbox"/> 41 U.S.C. 253(c) (5)	14. ACCOUNTING AND APPROPRIATION DATA See Schedule
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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
	See Schedule				

15G. TOTAL AMOUNT OF CONTRACT \$ 266,200.00

(X)	SEC	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM	2		I	CONTRACT CLAUSES	2
	B	SUPPLIES OR SERVICES AND PRICES/COSTS	3	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT	3		J	LIST OF ATTACHMENTS	3
	D	PACKAGING AND MARKING	3	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE	3		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	3
	F	DELIVERIES OR PERFORMANCE	3		L	INSTRS., CONDS., AND NOTICES TO OFFERORS	3
	G	CONTRACT ADMINISTRATION DATA	3		M	EVALUATION FACTORS FOR AWARD	3
	H	SPECIAL CONTRACT REQUIREMENTS	3				

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 1 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein)	18. <input type="checkbox"/> SEALED-BID AWARD (Contractor is not required to sign this document.) Your bid on Solicitation Number including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your bid, and (b) this award/contract. No further contractual document is necessary. (Block 18 should be checked only when awarding a sealed-bid contract.)
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19A. NAME AND TITLE OF SIGNER (Type or Print) Amy Sweirson, Executive Director of HRC	19B. NAME OF CONTRACTOR	19C. DATE SIGNED 5/28/2019	19D. UNITED STATES OF AMERICA	19E. NAME OF CONTRACTING OFFICER Price, Anthony R	19F. DATE SIGNED 5/28/19
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TABLE OF CONTENTS:

Listing of Incorporated Purchase Requisitions.....3
Section B - Supplies or Services and Prices/Costs.....3
Section C - Description/Specifications/Work Statement.....6
Section D - Packaging and Marking.....9
Section E - Inspection and Acceptance Terms.....9
Section F - Delivery or Performance.....10
Section G - Contract Administration Data.....12
Section H - Special Contract Requirements.....15
Section I - Contract Clauses.....17
Section J - List of Documents, Exhibits, and other Attachments.....19

Listing of Incorporated Purchase Requisitions

Incorporated Purchase Requisition Numbers:

FP190026

Section B - Supplies or Services and Prices/Costs

Item Number	Base Item Number	Supplies/Services	Quantity	Unit
0001		TITLE VII, ADEA, ADA, AND GINA CHARGE RESOLUTIONS:	329	EA
Contract Type: Firm Fixed Price				
			Unit Price	\$800.00
			Extended Price	\$263,200.00
Description: Processing and Resolving, Title VII, ADEA, ADA and GINA Charges. Each Charge must have been filed since October 1, 2014, (or since October 1, 2013, for each charge where a determination of reasonable cause is issued and the charge is processed through hearings and/or litigation) and resolved in accordance with a charge resolution plan if applicable.				
Purchase Requisitions		FP190026		
		ACRN		
		Funded Amount		\$263,200.00

IDC Type: Not Applicable

Item Number	Base Item Number	Supplies/Services	Quantity	Unit
0002		FY 2019 EEOC/FEPA TRAINING: Training to facilitate successful completion of contract, including EEOC-Sponsored Annual Training.	1	EA
Contract Type: Firm Fixed Price				
			Unit Price	\$2,000.00
			Extended Price	\$2,000.00
Description: Period of Performance: 10/01/2018 – 09/30/2019.				

Purchase Requisitions	FP190026		
		ACRN	
		Funded Amount	\$2,000.00

IDC Type: Not Applicable

Item Number	Base Item Number	Supplies/Services	Quantity	Unit
0003		FY 2019 FEPA ENGAGEMENT FUNDING: Submission of an acceptable written proposal detailing a joint EEOC/FEPA enforcement, outreach, or training activity in support of a Strategic Enforcement Plan or District Complement plan prior to 9/30/2019	1	EA
Contract Type: Firm Fixed Price				
			Unit Price	\$1,000.00
			Extended Price	\$1,000.00
	Description:			
Purchase Requisitions	FP190026			
			ACRN	
			Funded Amount	\$1,000.00

IDC Type: Not Applicable

Item Number	Base Item Number	Supplies/Services	
0004		OPTION YEAR 1 - TITLE VII, ADEA, ADA, AND GINA CHARGE RESOLUTIONS:	
	Description: Processing and Resolving, Title VII, ADEA, ADA and GINA Charges. Each Charge must have been filed since October 1, 2015, (or since October 1, 2014, for each charge where a determination of reasonable cause is issued and the charge is processed through hearings and/or litigation) and resolved in accordance with a charge resolution plan if applicable. Period of Performance: 10/01/2019 - 09/30/2020.		
Purchase Requisitions			

IDC Type: Not Applicable

Item Number	Base Item Number	Supplies/Services	
0005		OPTION YEAR 1 - FY 2020 EEOC/FEPA TRAINING: Training to facilitate successful completion of contract, including EEOC-Sponsored Annual Training.	
Description: Period of Performance: 10/01/2019 – 09/30/2020.			
Purchase Requisitions			

IDC Type: Not Applicable

Item Number	Base Item Number	Supplies/Services	
0006		OPTION YEAR 2 - TITLE VII, ADEA, ADA, AND GINA CHARGE RESOLUTIONS:	
Description: Processing and Resolving, Title VII, ADEA, ADA and GINA Charges. Each Charge must have been filed since October 1, 2016, (or since October 1, 2015, for each charge where a determination of reasonable cause is issued and the charge is processed through hearings and/or litigation) and resolved in accordance with a charge resolution plan if applicable. Period of Performance: 10/01/2020 - 09/30/2021.			
Purchase Requisitions			

IDC Type: Not Applicable

Item Number	Base Item Number	Supplies/Services	
0007		OPTION YEAR 2 - FY 2021 EEOC/FEPA TRAINING; Training to facilitate successful completion of contract, including EEOC- Sponsored Annual Training.	
Description: Period of Performance: 10/01/2020 – 09/30/2021.			

Purchase Requisitions		
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IDC Type: Not Applicable

Clauses incorporated by reference

None

Clauses incorporated by full text

None

Section C - Description/Specifications/Work Statement

Clauses incorporated by reference

None

Clauses incorporated by full text

Section C - Description/Specifications/Work Statement

C.1 Background

A. The Equal Employment Opportunity Commission (EEOC) is authorized by statute to use the services of State and Local Fair Employment Practices Agencies (FEPAs) to assist it in meeting its statutory mandate to enforce Title VII of the Civil Rights Act of 1964, as amended (Title VII); the Age Discrimination in Employment Act (ADEA) of 1967, as amended; the Americans with Disabilities Act (ADA) of 1990, as amended; and, the Genetic Information Nondiscrimination Act of 2008. The EEOC also recognizes the need to ensure the employment rights of individuals granted by Federal, State, and Local anti-discrimination laws.

B. As part of the Congressional mandate, the EEOC is required to establish an integrated system for a more expeditious resolution of employment discrimination charges. The EEOC has entered into a partnership with the FEPA, herein referred to as the Contractor, for continuous development and enhancement of this system.

C.2 Scope of Work

A. The Contractor agrees to work with the EEOC in the maintenance and enhancement of a national, integrated employment discrimination law enforcement and charge resolution system by accomplishing various objectives that include, but are not limited to, the following:

1. Implementation by the Contractor of procedures that provide for professional intake of all charges the FEPA initially receives, prompt notification to respondents, resolution of charges on a current basis, determinations supported by evidence, and resolutions with remedies;

2. The training of Contractor personnel in charge processing procedures compatible with those of the EEOC, on an as needed basis;

3. Use by the Contractor of an employment discrimination charge form that, within statutory limitations, is acceptable to the EEOC and the Contractor;

4. Use by the Contractor of processing terminology (such as common language pertaining to types of resolutions) that is the same as or compatible with that used by the EEOC;

5. The development and maintenance of a system to ensure that the EEOC and the Contractor maintain compatible procedural and substantive standards;

6. The identification by the Contractor and the EEOC of legislative changes that may be appropriate for the establishment of integrated and efficient charge processing systems; and

7. Use of an effective case management system, and as applicable, adherence to a Charge Resolution Plan that:

- a. enhances quality and efficiency in the Contractor's charge resolution systems;
- b. establishes annual charge resolution objectives and provides mechanisms for fixing accountability and measuring progress toward those objectives;
- c. develops procedures and processes designed to reduce inventories of dual-filed charges that will ensure maintenance of a charge inventory of less than 365 days; and
- d. ensures that quality standards are met and are commensurate with the EEOC's policies and statutory responsibilities.

B. When an agreement on the above requirements is reached between the Contractor and the EEOC, they must be included as part of the executed Worksharing Agreement. The effective date of the Worksharing Agreement will run concurrently with the effective date of this contract. Upon execution, the Worksharing Agreement dated 09/26/2018, is incorporated by reference into this contract.

C. The Contractor and EEOC, as a condition to the maintenance of this contract, shall approve the Worksharing Agreement. Once the Contractor or the EEOC has been designated to process the charge, only the designated party will process the charge. The other party shall refrain from processing the charge pending completion by the initial processor to preclude duplication of effort.

D. The Contractor shall:

1. Implement in partnership with the EEOC, a system that permits each party to perform various functions on behalf of the other, for example, accepting charges for each other, within the statutory limitations; and

2. Commit itself to maintenance of effort. Should the Contractor or the governmental body that provides its funds (a) reduce the Contractor's resources in anticipation of or as a result of the EEOC contract funds, (b) place restrictions on the use of its funds, or (c) revise the Contractor's operating procedures or regulations that impact on its ability to perform under its contract, the EEOC may consider it to be a material breach of this contract and may, among other things, reduce its funding of this contract or require the return of all or a portion of the funds provided by the EEOC under this contract.

E. It is understood and expressly agreed to by both parties to this contract that all provisions of the EEOC's Contracting Principles for State and Local FEPA for Fiscal Year 2019 are incorporated in their entirety into this contract.

C.3 Statement of Work

Processing of Charges - Title VII Charges, and/or ADEA Charges (if applicable), ADA Charges and/or GINA Charges (if applicable):

A. The Contractor shall submit charges to the EEOC for contract credit including, but not limited to, no cause findings, successful settlements, successful conciliations, administrative resolutions, final orders issued following and pursuant to administrative hearings and litigation. The EEOC shall not award any contract credit for resolutions by the Contractor based on no jurisdiction (except in cases where an investigation is actually required to determine jurisdiction) or resolutions based on the charging party's failure to establish a bona fide charge.

B. All charges submitted for credit under this contract shall be completed by the Contractor between October 1, 2018 and September 30, 2019 as follows:

1. All charges will be evaluated and determinations made in accordance with the theories of discrimination in employment as developed under Title VII, the ADEA, ADA and the GINA, as appropriate.

2. Investigation and resolution of individual charges pursuant to this contract shall be conducted in a manner designed to effectuate relief for the charging party and shall be carried out as expeditiously as possible.

3. All final actions, litigation, and intake services for which payment is requested under this contract will be processed and awarded contract credit in compliance with the State and Local Handbook, the ADA Technical Assistance Manual for ADA charges, and the Worksharing Agreement.

4. Contract credit submissions will include final dispositions of charges (i.e. final actions). When administrative appeal rights exist, the final disposition of a charge occurs only after the time for appeal has expired or the appeal has been processed to completion. In cases where the administrative appeal has been processed, the date of the notice of the final result of the appeal is the operative date. This applies in all cases where an administrative appeal is provided, whether the case is administratively resolved, dismissed, decided, or when no cause is found. The fifteen-day period during which a Substantial Weight Review may be requested and/or the period during which a Substantial Weight Review is conducted is not considered for the purposes of computing the operative date of the final disposition of a charge.

5. Contract credit submissions that are not final dispositions will include:

a. Charges to be litigated by the Contractor where the EEOC receives copies of the complaints bearing confirmation of the filing dates with the Court, or other appropriate official confirmation of the filing dates of the complaints;

b. Certain types of charges that must be transferred to the EEOC that are not final actions by the Contractor, as specified in the State and Local Handbook and;

c. Intake services by the Contractor where the EEOC accepts for processing a charge initially filed outside the jurisdiction of the Contractor, or any other FEPA, and for which the Contractor has prepared all charge intake documentation, including a complete affidavit, as required by the EEOC. In addition, contract credit for intake services will be given when the EEOC accepts for processing a charge initially filed with but not jurisdictional with the Contractor and the COR determines and justifies that there is a need to service charging parties who live at great distances from an EEOC or FEPA office.

6. Charge resolutions submitted for contract credit pursuant to this contract will be identified by the Contractor by timely and accurate data entries on the EEOC IMS or any successor system, if applicable. Where the Contractor is not on the EEOC IMS or any successor system, charge resolutions submitted for credit pursuant to this contract will be designated in a monthly status report from the Contractor to the COR.

7. All charges will be processed by the Contractor in accordance with the Contractor's applicable State or Local Laws.

8. Contract credit will not be allowed for any charge subject to a processing fee. If such a fee is imposed or

implemented during the period of the contract, the contract may be terminated in accordance with Clause 52.249-4, Termination for Convenience of the Government (Services) (Short Form).

9. The Contractor shall preserve all case files and records relevant to all charges or actions until final disposition of such charges or actions by the Contractor and the EEOC and other federal authorities including federal courts.

Section D - Packaging and Marking

None

Clauses incorporated by reference

None

Clauses incorporated by full text

Section D - Packaginig and Marking

Charge/case file material and reports to be furnished to the designated field office may be through the regular U.S. mail and should be adequately packaged to assure safe delivery to the designated office or via electronic transmission.

Section E - Inspection and Acceptance Terms

None

Clauses incorporated by reference

None

Clauses incorporated by full text

Section E - Inspection and Acceptance Terms

E.1 INSPECTION AND ACCEPTANCE

A. Inspection and Acceptance shall be made by the COR. Inspection and acceptance shall be made pursuant to the standards set forth in the EEOC's Compliance Manual, and applicable section(s) of the State and Local Handbook.

B. The COR will ensure that the Contractor maintains performance that is consistent with the criteria and requirements contained herein, as well as in the Substantial Weight Review Procedures and Worksharing Agreements. The EEOC District Office will conduct an on-site evaluation of the investigative and administrative charge processing procedures of the Contractor as needed. Accordingly, the Contractor is expected to comply with reasonable requests for providing and/or making available information concerning various aspects of their processes and procedures as they relate to or impact on the management and disposition of the dual-filed inventory. Such information includes but is not limited to staffing information, case management printouts, charge processing documentation, and any other material and data as may be related and/or apply to the processing of dual-filed charges or administration of the contract.

Section F - Delivery or Performance

Line Item: 0001

Period Of Performance Start Date	Period Of Performance End Date	Period Of Performance Address
10/1/18	9/30/19	EEOC Office of Field Programs - State and Local 131 M Street, N.E., 5th Floor Washington DC US 20507

Line Item: 0002

Period Of Performance Start Date	Period Of Performance End Date	Period Of Performance Address
10/1/18	9/30/19	EEOC Office of Field Programs - State and Local 131 M Street, N.E., 5th Floor Washington DC US 20507

Line Item: 0003

Period Of Performance Start Date	Period Of Performance End Date	Period Of Performance Address
10/1/18	9/30/19	EEOC Office of Field Programs - State and Local 131 M Street, N.E., 5th Floor Washington DC US 20507

Clauses incorporated by reference

None

Clauses incorporated by full text

Section F - Deliveries or Performance

F.1 PERIOD OF PERFORMANCE

A. The period of performance under this contract shall be from **October 1, 2018 through September 30, 2019**, with two one-year options to extend the term of the contract. (See Section I, 52.217-9 "Option to Extend the Term of the Contract").

B. The period of performance for Option Period I and Option Period II are as follows:

Option Period I – October 1, 2019 through September 30, 2020

Option Period II – October 1, 2020 through September 30, 2021

F.2 TIME OF DELIVERY/DELIVERABLES

A. When the Contractor enters a charge in the EEOC computerized Integrated Mission System (IMS) or any successor system the following procedures shall be used. The Contractor will:

1. Make accurate and timely charge data entries in the IMS or successor system, and the Contractor is responsible for ensuring that all appropriate charge information is available for extraction by the collection manager in a timely manner. Charge resolutions submitted for contract credit review will not be accepted for payment if it is determined that any required data entry has not been made by the FEPA. A determination not to award contract credit made may be reversed under the procedures set forth in Section III.B.5.a. of the FY 2019 Contracting Principles.

2. Enter basic charge data into the IMS or successor system within five business days of the Contractor's receipt of each charge as set forth in Section III.B.5.a of the FY 2019 Contracting Principles in order to be eligible to receive contract credit.

3. Provide EEOC with a list of final actions within a time frame agreed upon by the COR and the Contractor, but usually no later than 30 calendar days after the resolution of each charge to meet the requirement of Section III. B.2 of the FY 2019 Contracting Principles. The Contractor must ensure the timely and accurate entry of data into the IMS or successor system. The COR will generate charge data lists and reports through the IMS or successor system to verify that this requirement is being met throughout the term of this contract.

4. Enter all charge data for contract credit submissions through each quarter not later than the 8th calendar day of the month following each quarter.

B. When the Contractor is not on the IMS or successor system, the following procedures shall be used. The Contractor will:

1. Submit monthly contract production reports to the COR for review. The monthly reports shall consist of EEOC Forms 322 - FEPA Performance Report and 472 - FEPA Charge List. Upon award of the contract, the monthly reports must be received by the COR not later than the 8th calendar day of the month following each month.

2. Furnish to the COR, separate written reports as may be expressly required.

3. Provide the EEOC with a list of charge resolutions with respect to dual-filed charges within a time frame agreed upon with the COR, but no later than thirty (30) calendar days after the charge resolution dates. The lists of charge resolutions will be provided on EEOC Form 472. After receipt of the lists, and when requested by the COR, the Contractor will forward all charge file information, or a copy of such information, within five business days of the requests. The COR may extend or reasonably alter the five-day time frame as deemed necessary and appropriate (For non-certified Contractors, file information must be submitted within five business days of submission of the Form 472/resolution listing unless the time frame is extended or otherwise modified by the COR). Failure to timely submit reports and charge file information will result in the denial of contract credit for the affected resolutions.

4. The Contractor must make timely and accurate submission to the EEOC of EEOC Form 322 and EEOC Form 472. All reports covering the first three quarters of the FY 2019 contract must be received by the EEOC prior to September 30, 2019.

C. Proposal for FY 2019 FEPA Engagement

The Contractor must submit to the Contracting Officer Representative prior to September 30, 2019, a written proposal detailing a joint enforcement, joint outreach or joint training activity with the EEOC District Office which (1) identifies and supports a specific priority contained in either EEOC's Strategic Enforcement Plan or the District Office's Complement Plan, (2) contains sufficient details and a certification that the FEPA is willing and able to perform the actions it proposed to perform, and (3) which the EEOC finds to be feasible and acceptable.

Section G - Contract Administration Data

Total Obligated Amount:\$266,200.00

The Obligated Amount is broken down by line of accounting as follows:

Contract ACRN:	LOA:2019 0100B1919D 10SLPPS FPSP NA 251010 999996 9999 SLCR NA NA NA
Amount:	\$263,200.00
Clin 0001:	\$263,200.00
Contract ACRN:	LOA:2019 0100B1919D 10SLPPS FPSP NA 251010 999996 9999 SLTRNG NA NA NA
Amount:	\$2,000.00
Clin 0002:	\$2,000.00
Contract ACRN:	LOA:2019 0100B1919D 10SLPPS FPSP NA 251010 999996 9999 SLJOUT NA NA NA
Amount:	\$1,000.00
Clin 0003:	\$1,000.00

Requesting Office Address

EEOC Office of Field Programs - State and Local
131 M Street, N.E., 5th Floor
Washington DC 20507
Phone:
Contact Details:
Yao, James
JAMES.YAO@EEOC.GOV

Fax:

COTR Office Address

EEOC New York District Office
33 Whitehall Street, 5th Floor
New York NY 10004
Phone: 212-336-3667
Contact Details:

Fax: 212-336-3621

Issuing Office Address

EEOC OCFO ASD
131 M Street, N.E., 4th Floor
Washington DC 20507
Phone:
Contact Details:
Price, Anthony R
ANTHONY.PRICE@EEOC.GOV

Fax: 202-663-4178

Submit Invoices To Address

EEC Invoice, Interior Business Center
Link: <https://www.ipp.gov/>
Denver CO 80235
Phone:
Contact Details:

Fax:

Administration Office Address

EEOC New York District Office
33 Whitehall Street, 5th Floor
New York NY 10004
Phone: 212-336-3667
Contact Details:

Fax: 212-336-3621

Remit To Office Address

EEC Payment, Interior Business Center
Attn: EEOC Invoice Processing Team
7301 W. Mansfield Avenue
Mail Stop D 2770
Denver CO 80235
Phone:
Contact Details:

Fax:

Clauses incorporated by reference

None

Clauses incorporated by full text

Section G - Contract Administration Data

G.1 CONTRACT ADMINISTRATION DATA

- A. Contracting Officer: See Block 20A of SF 26
- B. Inspection and Acceptance: See Section E of the Schedule
- C. Accounting and Appropriation Data: See Accounting Line, Accounting and Appropriations Data
- D. Contracting Officer's Representative:
Holly Shabazz
EEOC State and Local Program Manager
EEOC New York District Office
Office Telephone: (212) 336-3643
Email: holly.shabazz@eeoc.gov
- E. Paying Office: See Block 12 of SF-26
- F. Program Director:
Michael J. Dougherty, Director
State and Local Programs
Office of Field Programs
131 M Street, N.E., Fifth Floor
Washington, DC 20507
Telephone: (202) 663-4801

G.2 CONTRACTING OFFICER

The Contracting Officer shall be the only individual authorized to modify any of the terms of the contract or redirect the efforts of the Contractor.

G.3 CONTRACTING OFFICER REPRESENTATIVE

The EEOC State and Local Coordinator/Program Manager for the District Office will serve as the Contracting Officer's Representative (COR) during the performance of this contract. The name of the authorized COR will appear in Section G.1 Contract Administration Data. The COR shall monitor the contract for the Program Director and provide the Contractor with technical guidance. Technical guidance shall mean providing details or interpretation of the scope of work and the requirements set forth in the contract. It is intended that any details, interpretations or suggestions furnished shall not constitute any changes in terms and conditions of the contract. The COR has the responsibility for monitoring and evaluating all phases of the Contractor's performance in order to determine compliance with the technical requirements of the contract. The COR is responsible for providing oversight to the District Office District Resource Manager (DRM) for the preparation of the official receiving report to record acceptance in EEOC's financial system procurement module. No payment may be made until a properly completed receiving report is transmitted to the payment office.

G.4 INVOICING INSTRUCTIONS

A. The Contractor shall submit an original invoice(s) and any other information required to make payments to the following address:

Interior Business Center
C/O Equal Employment Opportunity Commission
IBC Vendor Payments
Attention: EEOC Invoice Processing Team
7301 W. Mansfield Avenue
Mail Stop D 2770
Denver, CO 80235

- B. The contractor may submit an invoice electronically to the following e-mail address:
eEOC_vendor_payments_IBCDenver@IBC.DOI.Gov
- C. A copy of the invoice must be sent to the designated COR.

G.5 PAYMENT SCHEDULE

Upon contract execution, an advance payment invoice not to exceed fifty (50) percent of the number of charge resolutions stated in the contract, must be submitted by the Contractor. Subsequent payments will be based on the Contractor's actual production of accepted charge resolutions. No payment will be made until the contract and subsequent modifications, if any, are returned, properly executed, to the Equal Employment Opportunity Commission, Acquisition Services Division, 131 M Street, N.E., 4th Floor, Washington, D.C. 20507.

G.6 CONTRACT ADJUSTMENTS FOR TRAINING

The EEOC may adjust the contract for training when the following conditions exist:

- A. If the Contractor has not invoiced for training completed within a thirty (30) calendar day period, the Contracting Officer may unilaterally deobligate the amount of funds the government determines to be in excess of the amount needed to pay for training.

B. In the event the government determines before training is to be conducted that the amount of funds provided under the contract should be reduced or increased as a result of a revised estimation of the amount of funds needed to pay for training, the Contracting Officer may unilaterally modify the contract to provide funds for training in accordance with the government's revised estimate.

Section H - Special Contract Requirements

Clauses incorporated by reference

None

Clauses incorporated by full text

Section H - Special Contract Requirements

H.1 TITLE VII, ADA AND GINA CONFIDENTIALITY PROVISIONS

A. The Contractor agrees to abide by the confidentiality provisions of Title VII, ADA and the GINA as those provisions are interpreted by the EEOC. The Contractor shall not make public in any manner whatever the following information if said information was obtained from the EEOC:

1. The existence of a Title VII, ADA and/or GINA charge filed by a particular charging party against a particular respondent, unless a Title VII, ADA and/or GINA lawsuit has been instituted,
2. Information obtained by the EEOC pursuant to its investigation authority (Section 709(a)), unless a Title VII, ADA and/or GINA lawsuit involving that information has been instituted and,
3. Things said or done by the parties (i.e. charging parties and respondents, and the EEOC) during the settlement efforts or conciliation of a charge, unless a Title VII, ADA and/or GINA lawsuit has been instituted.
4. Pursuant to Paragraph 4(b) of the EEOC Memorandum of Understanding with the Office of Federal Contract Compliance Programs (OFCCP), information compiled by OFCCP and provided to the EEOC may be provided to an FEP Agency (i.e. the Contractor) upon its request. It is further understood and agreed that the Contractor will not disclose to the public any such information without first requesting and obtaining the express written approval of the Director of OFCCP.

B. EEOC-furnished EEO Reports may be made public by the Contractor during a hearing conducted by the Contractor that involves the above information.

H.2 CONTRACT ADJUSTMENTS

A. The COR will review production on a quarterly basis. The Contractor is expected to produce approximately 1/4 of the total charge resolutions required under the contract each quarter. If the annualized linear production of the Contractor's actual production at anytime indicates that the Contractor is producing at a rate that would not meet the number of charge resolutions required under the contract, the government may unilaterally modify the contract price and the total number of charge resolutions (downward adjustments) to reflect the annualized charge production projection.

B. The government has the unilateral option to increase the number of contracted charge resolutions and/or intake services (upward adjustments), based on the actual or projected production of charge resolutions and intake services.

H.3 RIGHTS IN DATA

The Government shall have access to all case files created and developed in the performance of this contract at all reasonable times when they are in the possession of the Contractor. The Contractor shall have access to such case files at all reasonable times while they are in the possession of the EEOC. No case files, reports, studies, findings or other information collected or created in the performance of this contract shall be released by the Contractor except as authorized in accordance with the Confidentiality Provisions set forth at paragraph H.1 above.

H.4 INDEMNIFICATION

The Contractor shall indemnify the Government, its officers, agents, employees and assignees, for all claims of any nature arising out of the performance of this contract, including costs and expenses resulting from such claims.

H.5 ACKNOWLEDGMENT OF GOVERNMENT

The Contractor agrees that in the communication or release of all information concerning work performed or work to be performed under this contract, such communication or release, written or oral, shall be jointly approved by the COR and the Contractor, and shall include a statement indicating that the project or effort is co-sponsored by the EEOC.

H.6 DIRECT AND INDIRECT COSTS

This is a fixed price contract. No additional funds will be added for direct or indirect costs incurred by the Contractor in the performance of services that exceed the unit price(s) indicated in the pricing schedule.

H.7 NOTICE OF ADVERSE COURT ACTION

The Contractor will provide written notification to the Program Director of any adverse local, state, or federal court decision issued against the Contractor relevant to the Equal Opportunity clause in Section I of this contract. Such notice shall be provided within ten (10) business days of the court's decision.

H.8 PRIVACY ACT

This contract requires the collection, creation and maintenance of records that are subject to the Privacy Act of 1974. See the Privacy Act Notification Clause and the Privacy Act Clause incorporated into this contract in Section I. The records compiled, created and maintained pursuant to this contract are included in the EEOC's Privacy Act System EEOC-3, "Title VII, Americans with Disabilities Act, and Genetic Information Nondiscrimination Act Discrimination Case Files," or Privacy Act System EEOC-1, "Age and Equal Pay Discrimination Case Files." The contents and operation of these systems are described in Federal Register Notice, "Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Systems of Records", dated November 17, 2016, and included in Section J of this contract. The EEOC's Privacy Act regulations, at 29 CFR, Part 1611 are hereby incorporated by reference.

H.9 CHARGE DATA SYSTEM - DATABASE

The Contractor is expected to reconcile its database with the EEOC's database as necessary and appropriate. If significant discrepancies occur and cannot be eliminated through a routine reconciliation, the EEOC may request a hard inventory of the Contractor's charge inventory. Such hard inventory must be conducted in accordance with guidelines prescribed by the EEOC.

H.10 FEPA ENGAGEMENT FUNDING

To be eligible to invoice for the funding, in the amount of \$1,000, the Contractor must submit to the Contracting Officer Representative prior to September 30, 2019, a written proposal detailing a joint enforcement, joint outreach or joint training activity with the EEOC District Office which (1) identifies and supports a specific priority

contained in either EEOC's Strategic Enforcement Plan or the District Office's Complement Plan, (2) contains sufficient details and a certification that the FEPA is willing and able to perform the actions it proposes to perform, and (3) which the EEOC finds to be feasible and acceptable.

H.11 Information Security Related to Use of EEOC's Integrated Mission System (IMS) OR Successor System

FEPA Directors are responsible for authorizing IMS or successor system account creation and determining the appropriate level of system access to provide each user by employing the concept of least privilege - providing the minimal level of access required to perform their job functions. When determining the appropriate level of access for a user, the FEPA Director must consider the status of the user's government background investigation (whether completed or in-process). Depending on the business need and sensitivity of the data, it may be appropriate to limit/restrict a user's system access until the background investigation is completed.

FEPA Directors must ensure that, upon a user's separation, IMS or successor system access is removed and system accounts are disabled as of the close-of-business on the employee's separation date.

Inactive accounts (accounts that have not been logged in within 30 days) will be disabled by the EEOC.

A certification of system accounts by each FEPA Director must be performed annually. During this review a list of active system users will be forwarded to the FEPA Director for their review. Each FEPA Director or their designee must review the account listing to ensure that all individuals listed for each system have the need and the proper level of access for each system. Any modifications or deletions must be forwarded by the Director to EEOC for action and the Director must then certify the accuracy of the report. This process has been automated to be accessed, reviewed, and certified from within the IMS system or successor system.

Users must access IMS or successor system from workstations that are compliant with the security and privacy policy requirements of their state/local government oversight bodies. At a minimum, workstations must include anti-virus protection that is updated on a regular basis.

FEPA Directors are responsible for ensuring that their employees, contractors, contingent workers, and all other users of EEOC's IMS or successor system receive Information Security Awareness Training on an annual basis.

Section I - Contract Clauses

Clauses incorporated by reference

None

Clauses incorporated by full text

Section I - Contract Clauses

52.217-9 Option to Extend the Term of the Contract. (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 days prior to the contract expiration date; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 36 months. (End of clause)

52.252-2 Clauses Incorporated by Reference. (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): www.acquisition.gov/far/index.html. (End of clause)

Clause Number	Clause Title
52.202-1	Definitions. (NOV 2013)
52.203-3	Gratuities. (APR 1984)
52.203-5	Covenant Against Contingent Fees. (MAY 2014)
52.203-6	Restrictions on Subcontractor Sales to the Government. (SEP 2006)
52.203-7	Anti-Kickback Procedures. (MAY 2014)
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (MAY 2014)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity. (MAY 2014)
52.203-12	Limitation on Payments to Influence Certain Federal Transactions. (OCT 2010)
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights. (APR 2014)
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017)
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (MAY 2011)
52.204-12	Unique Entity Identifier Maintenance. (OCT 2016)
52.204-13	System for Award Management Maintenance. (OCT 2018)
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (OCT 2015)
52.215-2	Audit and Records - Negotiation. (OCT 2010)
52.215-8	Order of Precedence - Uniform Contract Format. (OCT 1997)
52.222-3	Convict Labor. (JUN 2003)
52.222-21	Prohibition of Segregated Facilities. (APR 2015)
52.222-28	Equal Opportunity. (SEPT 2016)
52.222-35	Equal Opportunity for Veterans. (OCT 2015)
52.222-36	Equal Opportunity for Workers with Disabilities. (JUL 2014)
52.222-37	Employment Reports on Veterans. (FEB 2016)
52.222-40	Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)
52.222-50	Combating Trafficking in Persons. (JAN 2019)
52.222-54	Employment Eligibility Verification. (OCT 2015)

52.223-6	Drug-Free Workplace. (MAY 2001)
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving. (AUG 2011)
52.224-1	Privacy Act Notification. (APR 1984)
52.224-2	Privacy Act. (APR 1984)
52.225-13	Restrictions on Certain Foreign Purchases. (JUN 2008)
52.229-4	Federal, State, and Local Taxes (State and Local Adjustments). (FEB 2013)
52.232-1	Payments. (APR 1984)
52.232-8	Discounts for Prompt Payment. (FEB 2002)
52.232-11	Extras. (APR 1984)
52.232-25	Prompt payment. (JAN 2017)

52.232-33	Payment by Electronic Funds Transfer ? System for Award Management. (OCT 2018)
52.232-39	Unenforceability of Unauthorized Obligations. (JUN 2013)
52.233-1	Disputes. (MAY 2014)
52.233-3	Protest after Award. (AUG 1996)
52.233-4	Applicable Law for Breach of Contract Claim. (OCT 2004)
52.242-2	Production Progress Reports. (APR 1991)
52.243-1 *A1	Changes - Fixed-Price. (AUG 1987) - Alternate I (APR 1984)
52.244-6	Subcontracts for Commercial Items. (JAN 2019)
52.245-1	Government Property. (JAN 2017)
52.249-4	Termination for Convenience of the Government (Services) (Short Form). (APR 1984)
52.249-8	Default (Fixed-Price Supply and Service). (APR 1984)
52.252-2	Clauses Incorporated by Reference. (FEB 1998)
52.253-1	Computer Generated Forms. (JAN 1991)

Section J - List of Documents, Exhibits, and other Attachments

None

Clauses incorporated by reference

None

Clauses incorporated by full text

Section J - List of Documents, Exhibits, and other Attachments

Attachment A - Worksharing Agreement for FY 2019

Attachment B - SF LLL, Disclosure of Lobbying Activities, 2 Pages

Attachment C - Federal Register Notice, Dated November 17, 2016

WORKSHARING AGREEMENT

BETWEEN

THE MAINE HUMAN RIGHTS COMMISSION

and

THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Region 1/New York District Office

FOR FISCAL YEAR 2019

I. INTRODUCTION

A. The Maine Human Rights Commission, hereinafter referred to as the FEPA, has jurisdiction over allegations of employment discrimination filed against employers of one or more employees occurring within the State of Maine based on: race, color, sex, sexual orientation (which includes actual or perceived sexual orientation, gender identity and expression), physical or mental disability, religion, ancestry or national origin, age, or previous assertion of a workers' compensation claim or right, pursuant to 5 Maine Revised Statutes §§ 4551 et seq.; genetic information or testing, pursuant to 5 Maine Revised Statutes §§ 19301-19302; and having made a report protected by the Maine Whistleblowers' Protection Act pursuant to 26 Maine Revised Statutes §§ 833-840.

The U.S. Equal Employment Opportunity Commission, hereinafter referred to as the EEOC, has jurisdiction over allegations of employment discrimination occurring throughout the United States where such charges are based on race, color, religion, sex, or national origin, all pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000(e)) (hereinafter referred to as Title VII). The EEOC has jurisdiction to investigate and determine charges of discrimination based on age (40 or older) under the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 621 et. seq.) (ADEA), for unequal wages based on sex under the Equal Pay Act of 1963, as amended (29 U.S.C. § 206) (EPA), and over allegations of employment discrimination based on disability pursuant to Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101) (ADA), and over the use or acquisition of genetic information as the basis for employment decisions pursuant to Title II of the Genetic Information Nondiscrimination Act of 2008.

B. In recognition of, and to the extent of the common jurisdiction and goals of the two (2) Agencies, and in consideration of the mutual promises and covenants contained herein, the FEPA and the EEOC hereby agree to the terms of this Worksharing Agreement, which is designed to provide individuals with an efficient procedure for obtaining redress for their grievances under appropriate Maine and Federal laws.

II. FILING OF CHARGES OF DISCRIMINATION

- A. In order to facilitate the assertion of employment rights, the EEOC and the FEPA each designate the other as its agent for the purpose of receiving and drafting charges, including those that are not jurisdictional with the agency that initially receives the charges. The EEOC's receipt of charges on the FEPA's behalf will automatically initiate the proceedings of both the EEOC and the FEPA for the purposes of Section 706 (c) and (e) (1) of Title VII. This delegation of authority to receive charges does not include the right of one Agency to determine the jurisdiction of the other Agency over a charge. Charges can be transferred from one agency to another in accordance with the terms of this agreement or by other mutual agreement.
- B. The FEPA shall take all charges alleging a violation of Title VII, the ADEA, the EPA, GINA or the ADA where both the FEPA and the EEOC have mutual jurisdiction, or where the EEOC only has jurisdiction, so long as the allegations meet the minimum requirements of those Acts, and for charges specified in Section III. A. 1. below, refer them to the EEOC for initial processing.
- C. Each Agency will inform individuals of their rights to file charges directly with the other Agency and or assist any person alleging employment discrimination to draft a charge in a manner that will satisfy the requirements of both agencies to the extent of their common jurisdiction.

Normally, once an agency begins an investigation, it resolves the charge. Charges may be transferred between the EEOC and the FEPA within the framework of a mutually agreeable system. Each agency will advise Charging Parties that charges will be resolved by the agency taking the charge except when the agency taking the charge lacks jurisdiction or when the charge is to be transferred in accordance with Section III (DIVISION OF INITIAL CHARGE-PROCESSING RESPONSIBILITIES).

- D. For charges that are to be dual-filed, each Agency will use EEOC Charge Form 5 (or alternatively, an employment discrimination charge form which within statutory limitations, is acceptable in form and content to the EEOC and the FEPA) to draft charges. When a charge is taken based on disability, the nature of the disability shall not be disclosed on the face of the charge.
- E. Within ten calendar days of receipt, each Agency agrees that it will notify both the Charging Party and the Respondent of the dual-filed nature of each such charge it receives for initial processing and explain the rights and responsibilities of the parties under the applicable Federal, State, or Local statutes.

III. DIVISION OF INITIAL CHARGE-PROCESSING RESPONSIBILITIES

In recognition of the statutory authority granted to the FEPA by Section 706(c) and 706(d) of Title VII as amended; and by Title I of the Americans with Disabilities Act, and the transmittal of charges of age discrimination pursuant to the Age Discrimination in Employment Act of 1967, the primary

responsibility for resolving charges between the FEPA and the EEOC will be divided as follows:

A. The EEOC and the FEPA will process all Title VII, ADA, GINA, and ADEA charges that they originally receive.

1. For charges originally received by the EEOC and/or to be initially processed by the EEOC, the FEPA waives its right of exclusive jurisdiction to initially process such charges for a period of 60 days for the purpose of allowing the EEOC to proceed immediately with the processing of such charges before the 61st day.

In addition, the EEOC will initially process the following charges:

-- All Title VII, ADA, and concurrent Title VII/ADA charges jurisdictional with the FEPA and received by the FEPA 240 days or more after the date of violation;

-- All disability-based charges that may not be resolved by the FEPA in a manner consistent with the ADA.

-- All concurrent Title VII/EPA charges;

-- All charges against the FEPA or its parent organization where such parent organization exercises direct or indirect control over the charge decision-making process;

-- All charges filed by EEOC Commissioners;

-- Charges also covered by the Immigration Reform and Control Act;

-- Complaints referred to the EEOC by the U.S. Department of Justice, Office of Federal Contract Compliance Programs, or Federal fund-granting agencies under 29 CFR § 1640, 1641, and 1691.

-- Any charge where the EEOC is a party to a Conciliation Agreement or a Consent Decree that, upon mutual consultation and agreement, is relevant to the disposition of the charge. The EEOC will notify the FEPA of all Conciliation Agreements and Consent Decrees that have features relevant to the disposition of subsequent charges;

-- Any charge alleging retaliation for filing a charge with the EEOC or for cooperating with the EEOC; and

-- All charges against Respondents that are designated for initial processing by the EEOC in a supplementary memorandum to this Agreement.

2. The FEPA will initially process the following types of charges:

-- Any charge alleging retaliation for filing a charge with the FEPA or cooperating with the FEPA;

-- Any charge where the FEPA is a party to a Conciliation Agreement or a Consent Decree that, upon mutual consultation and agreement, is relevant to the disposition of the charge. The FEPA will provide the EEOC with an on-going list of all Conciliation Agreements and Consent Decrees that have features relevant to the disposition of subsequent charges;

-- All charges that allege more than one basis of discrimination where at least one basis is not covered by the laws administered by the EEOC but is covered by the FEPA Ordinance, or where the EEOC is mandated by federal court decision or by internal administrative EEOC policy to dismiss the charge, but the FEPA can process that charge.

-- All charges against Respondents that are designated for initial processing by the FEPA in a supplementary memorandum to this Agreement; and

-- All disability-based charges against Respondents over which the EEOC does not have jurisdiction.

- B. Notwithstanding any other provision of the Agreement, the FEPA or the EEOC may request to be granted the right to initially process any charge subject to agreement of the other agency. Such variations shall not be inconsistent with the objectives of this Worksharing Agreement or the Contracting Principles.
- C. Each Agency will on a quarterly basis notify the other of all cases in litigation and will notify each other when a new suit is filed. As charges are received by one Agency against a Respondent on the other Agency's litigation list a copy of the new charge will be sent to the other Agency's litigation unit within 15 working days.

IV. EXCHANGE OF INFORMATION


- A. Both the FEPA and the EEOC shall make available for inspection and copying to appropriate officials from the other Agency any information that may assist each Agency in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, investigative files, conciliation agreements, staffing information, case management printouts, charge processing documentation, and any other material and data as may be related to the processing of dual-filed charges or administration of the contract. The Agency accepting information agrees to comply with any confidentiality requirements imposed on the agency providing the information. With respect to all information obtained from the EEOC, the FEPA agrees to observe the confidentiality provisions of Title VII, the ADEA, the ADA and GINA.
- B. In order to expedite the resolution of charges or facilitate the working of this Agreement, either Agency may request or permit

as well as training, outreach and technical assistance efforts encompassed by the Plan.

- D. The EEOC will provide original forms to be copied by the FEPA, in accordance with the Regulations and the Compliance Manual to be used by the FEPAs in correspondence with Charging Parties and Respondents.
- E. If a dispute regarding the implementation or application of this agreement cannot be resolved by the FEPA and District Office Director, the issues will be reduced to writing by both parties and forwarded to the Director of the Office of Field Programs for resolution.
- F. This Agreement shall operate from the first day of October 2018 to the thirtieth day of September 2019 and may be renewed or modified by mutual consent of the parties.

I have read the foregoing Worksharing Agreement and I accept and agree to the provisions contained therein.

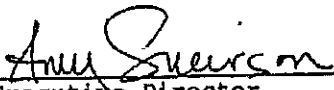
Date 9/26/18



District Director

U.S. Equal Employment Opportunity Commission
New York District Office

Date 26 Sept 2018



Executive Director
Maine Human Rights Commission

For the Commission.

Jenny R. Yang,
Chair.

EEOC Systems of Records

Universal Routine Uses.

EEOC-1 Age Discrimination in Employment Act, Equal Pay Act, and Section 304 of the Government Employee Rights Act Discrimination Case Files.

EEOC-2 Attorney Referral List.
EEOC-3 Title VII, Americans with Disabilities Act, and Genetic Information Nondiscrimination Act

EEOC-4 Biographical Files.

EEOC-5 Correspondence and Communications.

EEOC-6 Freedom of Information Act and Privacy Act Records

EEOC-7 Employee Pay and Leave Records.

EEOC-8 Employee Travel and Reimbursement Records.

EEOC-9 Claims Collection Records.

EEOC-10 Grievance Records.

EEOC-11 Adverse Actions Against Nonpreference Eligibles in the Excepted Service Records

EEOC-12 Telephone Call Detail Records.

EEOC-13 Employee Identification Cards.

EEOC-14 Reserved

EEOC-15 Internal Harassment Investigation Files.

EEOC-16 Office of Inspector General Investigative Files.

EEOC-17 Defensive Litigation Files.

EEOC-18 Reasonable

Accommodation Records.

EEOC-19 Revolving Fund

Registrations.

EEOC-20 RESOLVE Program

Records.

EEOC-21 Emergency Management Records.

EEOC-22 EEOC Personnel Security Records.

EEOC/GOVT-1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

Universal Routine Uses: The following routine uses of the records apply to and are incorporated by reference into each system of records published below:

a. To appropriate agencies, entities, and persons when: (1) EEOC suspects or has confirmed that there has been a breach of the system of records; (2) EEOC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), or the Federal government; and (3) the disclosure made to such agencies, entities, and persons is reasonably

necessary to assist in connection with EEOC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

b. To another Federal agency or Federal entity when information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the agency (including its information systems, programs, and operations), or the Federal government.

EEOC-1

SYSTEM NAME:

Age Discrimination in Employment Act, Equal Pay Act, and Section 304 of the Government Employee Rights Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge or complaint of discrimination was filed (see Appendix A). Records of complaints filed under section 321 of the Government Employees Rights Act of 1991 are located in the Office of Federal Operations 131 M Street NE., Washington, DC 20507, after a hearing has been requested.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons other than federal employees and applicants who file charges or complaints with EEOC alleging that an employer, employment agency or labor organization has violated the Age Discrimination in Employment Act of 1967 or the Equal Pay Act of 1963, or who file complaints under section 304 of the Government Employees Rights Act of 1991.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the records compiled during the investigation of age and equal pay discrimination cases and during the investigation and hearing of complaints filed under section 304 of the Government Employees Rights Act of 1991. These records include:

a. Documents submitted by charging party or complainant such as charge of discrimination, personal interview statement, and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective

bargaining agreements, and petitions to revoke or modify subpoenas.

c. Records gathered and generated by EEOC in the course of its investigation and, in complaints filed under section 304 of the Government Employees Rights Act of 1991, during the hearing, such as letters of referral to state fair employment practices agencies, correspondence with state fair employment practices agencies, witness statements, investigator's notes, investigative plan, report of initial and exit interview, investigator's analyses of evidence and charge, subpoenas, decisions and letters of determination, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 29 U.S.C. 208, 211, 623, 626; 42 U.S.C. 2000e-16c; 44 U.S.C. 3101; 2 U.S.C. 1220.

PURPOSE:

This system is maintained for the purpose of enforcing the prohibitions against employment discrimination contained in the Age Discrimination in Employment Act, the Equal Pay Act and section 304 of the Government Employees Rights Act of 1991.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under the Age Discrimination in Employment Act, Equal Pay Act, or section 304 of the Government Employees Rights Act of 1991.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential and non-privileged information from closed ADEA/EPA case files (a file is closed when the Commission has terminated its investigation and has decided not to sue) to the employer where a lawsuit has been filed against the employer involving that information, to other employees of the same employer who have been notified by the Commission of their right under 29 U.S.C. 216 to file a lawsuit on their own behalf, and their representatives.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before EEOC.

h. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request for information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

i. To disclose information to other federal agencies in accordance with Memoranda of Understanding or similar agreements between EEOC and other agencies that provide for coordination, cooperation, and confidentiality of documents in EEOC's employment discrimination enforcement efforts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and electronically.

RETRIEVABILITY:

These records are retrievable by charging party name, employer name, and charge number.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to electronic records is limited, through use of usernames and passwords, to those whose official duties require access.

RETENTION AND DISPOSAL:

All private sector charge files not designated for permanent retention will be retained for three years following the fiscal year in which they were closed. (For example, if a charge was closed on March 31, 2014, in FY 2014, the three-year retention period would begin on October 1, 2014, which is the first day of FY 2015.) These non-permanent files will be retained for one year in the EEOC field office where the charge of discrimination was filed. Afterwards, the non-permanent files will be transferred to the Federal Records Center (FRC). The FRC will destroy the files after the three-year retention period is met. Permanent files will be retained in the field office for three years and then transferred to FRC. FRC will transfer the files to the National Archives and Records Administration (NARA) for permanent retention when eligible.

Closed non-permanent private sector charge files that are the subject of Freedom of Information Act (FOIA) requests are retained for six years after the FOIA response is provided. The files will be transferred to FRC one year after completion of all actions taken under FOIA/Privacy Act. Alternatively, the files may be included as part of the permanent files retained by the EEOC field office.

Closed private sector charge files that are the subject of a Section 83 request are retained for six years after the Section 83 response is provided. The files will be transferred to FRC one year after completion of all actions taken under FOIA. Alternatively, the files may be included as part of the permanent files retained by the EEOC field office.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the office in the field where the charge was filed (see Appendix A). Director of the Office of Field Programs, 131 M Street NE., Washington, DC 20507. Director of the Office of Federal Operations, 131 M Street NE., Washington, DC 20507 (only for complaints filed under section 321 of the Government Employees Right Act of 1991).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

EEOC-2

SYSTEM NAME:

Attorney Referral List.

SYSTEM LOCATION:

All District Offices (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys who represent plaintiffs in employment discrimination litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains attorneys' names, business addresses and telephone numbers, the nature and amount of their civil rights litigation experience; their state and federal bar admissions; whether the attorneys have the capacity and desire to handle class actions; whether the attorneys charge consultation fees (and how much); whether the attorneys will waive the consultation fee; the types of fee arrangements the attorneys will accept; and whether the attorney speaks a foreign language fluently.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e-4(g); 44 U.S.C. 3101.

PURPOSE:

This system is maintained for the purpose of providing charging parties, upon their request, with information about local attorneys who represent plaintiffs in employment discrimination litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

- a. To refer charging parties to attorneys who handle litigation of employment discrimination lawsuits.
- b. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms, on index cards and electronically.

RETRIEVABILITY:

Indexed alphabetically by names of the attorneys.

SAFEGUARDS:

Access to this system of records is restricted to EEOC personnel who have a legitimate use for the information. This system is stored in filing cabinets. Access to electronic records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Files are reviewed and updated annually.

SYSTEM MANAGERS AND ADDRESS:

Regional Attorney at each District Office (see Appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the appropriate system manager. It is necessary to furnish the following information: (1) Full name of the individual whose records are requested; (2) mailing address to which the reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

EEOC-3**SYSTEM NAME:**

Title VII, Americans with Disabilities Act, and Genetic Information Nondiscrimination Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge of discrimination was filed (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, other than federal employees and applicants, who file charges alleging that an employer, employment agency, labor organization or joint labor-management apprenticeship committee has violated Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), or any combination of the three.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records compiled during the investigation of race, color, religion, sex, national origin, disability, and genetic information discrimination cases. These records include:

- a. Documents submitted by charging party, such as a charge of discrimination, a personal interview statement, medical records, and correspondence.
- b. Documents submitted by employer such as position statement, correspondence, statements of witnesses, documentary evidence such

as personnel files, records of earnings, EEO data, employee benefit plans, seniority lists, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, and petition to revoke or modify subpoenas.

c. Records gathered and generated by EEOC in the course of its investigation such as letters to state or local fair employment practice agencies, correspondence with state fair employment practice agencies, witness statements, investigator's notes, investigative plan, investigator's analysis of the evidence and charge, report of initial and exit interviews, copy of deferral to state, subpoenas, decisions and letters of determination, analysis of deferral agency action, conciliation agreements, correspondence, and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2000a-5, -8 and -9; 42 U.S.C. 12117; 44 U.S.C. 3101, 42 U.S.C. 2000ff-10.

PURPOSE:

This system is maintained for the purpose of enforcing the prohibitions against employment discrimination contained in Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and Title II of the Genetic Information Nondiscrimination Act of 2008.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

- a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, or Title II of the Genetic Information Nondiscrimination Act of 2008.
- b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.
- c. To disclose non-confidential or non-privileged information contained in these records to the following persons after a notice of right to sue has been issued:
 1. Aggrieved persons and their attorneys in case files involving Commissioner Charges provided that such persons have been notified of their status as aggrieved persons;
 2. Persons or organizations filing on behalf of an aggrieved person provided

that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose, and their attorneys;

3. Employers and their attorneys, provided that the charging party or aggrieved person has filed suit under Title VII, the Americans with Disabilities Act, Title II of the Genetic Information Nondiscrimination Act of 2008, or any combination of the three.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state, or local agencies responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

g. To disclose information to officials of disciplinary boards or committees under the control of a state or local government when they are investigating complaints against attorneys in connection with their representation of a party before EEOC.

h. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request for information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

i. To disclose information to other federal agencies in accordance with Memoranda of Understanding or similar agreements between EEOC and other agencies that provide for coordination, cooperation, and confidentiality of documents in EEOC's employment discrimination enforcement efforts.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM**STORAGE:**

These records are maintained in file folders and electronically.

RETRIEVABILITY:

These records are retrievable by charging party name, employer name, and charge number.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to electronic records is limited, through use of usernames and passwords, to those whose official duties require access.

RETENTION AND DISPOSAL:

All private sector charge files not designated for permanent retention will be retained for three years following the fiscal year in which they were closed. (For example, if a charge was closed on March 31, 2014, in FY 2014, the three-year retention period would begin on October 1, 2014, which is the first day of FY 2015.) These non-permanent files will be retained for one year in the EEOC field office where the charge of discrimination was filed. Afterwards, the non-permanent files will be transferred to the Federal Records Center (FRC). The FRC will destroy the files after the three-year retention period is met. Permanent files will be retained in the field office for three years and then transferred to FRC. FRC will transfer the files to the National Archives and Records Administration (NARA) for permanent retention when eligible.

Closed non-permanent private sector charge files that are the subject of Freedom of Information Act (FOIA) requests are retained for six years after the FOIA response is provided. The files will be transferred to FRC one year after completion of all actions taken under FOIA/Privacy Act. Alternatively, the files may be included as part of the permanent files retained by the EEOC field office.

Closed private sector charge files that are the subject of a Section 83 request are retained for six years after the Section 83 response is provided. The files will be transferred to FRC one year after completion of all actions taken under FOIA/Privacy Act. Alternatively, the files may be included as part of the permanent files retained by the EEOC field office.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the office in the field where the charge was filed (see Appendix A). Director of the Office of

Field Programs, 131 M Street NE., Washington, DC 20507.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Act.

EEOC-4**SYSTEM NAME:**

Biographical Files.

SYSTEM LOCATION:

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Commissioners, General Counsels and Commission officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes for each the name, date and place of birth, education, employment history, and other biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 42 U.S.C. 2000e-4.

PURPOSE:

This system is maintained for the purpose of providing information about EEOC officials to members of the Congress and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used

- To answer public and congressional inquiries regarding EEOC Commissioners, General Counsels and Commission officials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Stored electronically.

RETRIEVABILITY:

Indexed by last name of the Commissioner, General Counsel or Commission official.

SAFEGUARDS:

Files are kept in the Office of Communications and Legislative Affairs, which is locked evenings, weekends, and holidays.

RETENTION AND DISPOSAL:

Maintained permanently.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

EEOC-5**SYSTEM NAME:**

Correspondence and Communications.

SYSTEM LOCATION:

All locations listed in appendix A and all headquarters offices, 131 M Street NE., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Charging parties, members of the general public, members of Congress and current and former federal employees who seek information or assistance from EEOC.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Inquiries from members of Congress, the White House and members of the general public, including current and former federal employees.
- EEOC responses to the above inquiries.
- Computer tracking system indicating the dates inquiries are received, to whom and when they are assigned for response and the dates they are answered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 2000e-4.

PURPOSE:

This system is maintained for the purpose of responding to inquiries from members of Congress and the public seeking information or assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

FY 2021 EXTENSION OF WORKSHARING AGREEMENT

Inasmuch as there have been no substantive changes in the processes, procedures, statutes, policies or regulations that would adversely affect or substantially alter the work sharing arrangement between the EEOC's New York District Office and the Maine Human Rights Commission, or that would affect the processing of charges filed under the pertinent Federal, state or local statutes, the parties agree to extend the current work sharing agreement that was executed on September 26, 2018 through the FY 2021 Charge Resolution Contract Option Period, from October 1, 2020 through September 30, 2021. The agencies agree to work together in furtherance of the provisions of EEOC's current Strategic Plan when assessing the allocation of charges under this agreement and to cooperate in compliance and enforcement efforts as well as training, outreach and technical assistance efforts encompassed by the Plan. By executing this extension, the parties agree to abide by the confidentiality provisions of GINA as well as the other statutes cited in the agreement. This agreement, as well as the attendant Worksharing Agreement may be reopened and amended by mutual consent of the parties.



For the Maine Human Rights Commission

29 Sept 2020
Date

For the EEOC New York District Office

Date

2021 CONTRIBUTIONS AGREEMENT

SCHEDULE OF ARTICLES

1. SCOPE OF WORK (FIXED PRICE)
2. PERIODS OF PERFORMANCE
3. INSPECTION AND ACCEPTANCE
4. CONDUCT OF WORK
5. INSTRUMENT AMOUNT AND REQUESTS FOR PAYMENT
6. NARRATIVE REPORT
7. CRITERIA FOR PROCESSING
8. 2 C.F.R. PART 200
9. USE OF COOPERATIVE AGREEMENT FUNDS AND NO COMINGLING
10. MAINTENANCE OF EFFORT
11. HUD'S SUBSTANTIAL INVOLVEMENT
12. ASSURANCES
13. USE OF CONSULTANTS
14. PUBLICATIONS AND NEWS RELEASES
15. REPRODUCTION OF REPORTS
16. FLOW DOWN PROVISIONS
17. DISPUTES
18. MAINTENANCE OF RECORDS
19. CUSTOMER SERVICE STANDARDS
20. REPORTING REQUIREMENTS
21. TRAINING
22. INITIAL CONTACT DATE
23. CHANGES LIMITING EFFECTIVENESS OF RECIPIENT'S LAW
24. FHAP AND FIRST AMENDMENT

25. TESTING

26. RELEASE OF INFORMATION WHILE COMPLAINT IS OPEN

27. SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, AND
SOURCE OF INCOME CAUSE DETERMINATIONS

Appendix A: Statement of Work

Attachment A: Criteria for Processing

Attachment B: Standards for Timeliness

Attachment C: Payment Amounts for FHAP Complaint Processing

Attachment D: LOCCS Security Procedures (FHAP)

1. SCOPE OF WORK (FIXED PRICE)

The Recipient (or Agency) shall furnish all the necessary personnel, materials, services, equipment, facilities (except at otherwise specified herein), and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work (SOW) and all attachments for the firm fixed price set forth herein.

2. PERIODS OF PERFORMANCE

The Recipient shall provide all services hereunder during the periods of performance. For the FY2021 Cooperative Agreement, the periods of performance are as follows:

Complaint Processing: July 1, 2020 – June 30, 2021

Administrative Costs, Training: October 1, 2020 – September 30, 2021

3. INSPECTION AND ACCEPTANCE

The Government Technical Monitor (GTM), if so delegated, may accomplish inspection and acceptance of all but the final products. The Government Technical Representative (GTR) shall accomplish acceptance of all final products. The GTR is identified in Block 9 of the HUD-1044.

4. CONDUCT OF WORK

During the effective period of this instrument, the GTR or GTM shall be responsible for monitoring the technical effort of the Recipient, unless the Recipient is notified in writing by the Cooperative Agreement Officer (CAO) of a replacement. The CAO is identified in Block 8a of the HUD-1044.

Only the CAO has the power to authorize deviations from this instrument, including deviations from the Statement of Work. In the event the Recipient does deviate without written approval of the CAO, such deviation shall be at the risk of the Recipient, and any costs related thereto shall be borne by the Recipient.

5. INSTRUMENT AMOUNT AND REQUESTS FOR PAYMENT

Fully certified agencies are eligible for Contributions funding. Additionally, agencies that have received Capacity Building funds for one year *may be* eligible for Contributions funds, in the Department’s discretion. Contributions funds consist of three categories: Complaint Processing; Administrative Costs; and Training. For FY2021, HUD *may*, subject to availability, also provide Special Enforcement Efforts (SEE) funds as well as Partnership funds.

- **Complaint Processing** – GTRs shall determine payment amounts based upon the FY2021 Payment Amounts for FHAP Complaint Processing, which are found at Attachment C.

- **Administrative Costs** – AC funds are tied to the quantity of a Contributions agency’s caseload. As introduced in FY2018, HUD will continue to provide an increased amount of AC funds to FHAP agencies operating in high-cost areas. The enhancement will be provided by applying a locality adjustment developed by HUD’s Office of Policy Development and Research to the FHAP agency’s base award. The locality adjustment recognizes and is intended to ameliorate the fact that some FHAP agencies operate in areas with higher labor costs and other economic and administrative cost factors. For FY2021, we will apply only those locality adjustments that result in an increase in AC funding. The FHAP Division will monitor the effects of this change and refinements may be made in subsequent years.

For FY2021, FHAP agencies that acceptably process 100 or more complaints during the Complaint Processing Period will receive 20% of the agency’s total FHAP obligation for FY2020, with a locality adjustment where appropriate. For purposes of this calculation, “total FHAP obligation” will not include any Partnership funds or SEE funds the agency may have received in FY2020. This will also not include any CARES Act funds an agency may have received in FY2020.

- **Training** – Training funds are assigned to FHAP agencies based on the number of agency employees to be trained (including all staff who work in a capacity directly related to an agency’s fair housing enforcement program). Training funds can be used for attendance at the National Fair Housing Training Academy (NFHTA), as well as any other HUD-approved or HUD-sponsored training. For FY2021, the amount of training funds that each agency will receive will be the same as FY2020.
- **Special Enforcement Effort (SEE) Funds** – For FY2021, the Department has \$100,000 available for Special Enforcement Efforts funding in two categories, as set forth below. **Note** that the categories are separate and distinct, with different application procedures. The total combined amount the Department will provide in SEE funds is \$100,000. FHAP agencies seeking SEE funds under either category must meet the regulatory requirements of 24 C.F.R. § 115.305.

- Enforcement Fund:** In order to provide meaningful support for post-cause enforcement — and thereby increase the number of post-cause enforcement actions taken by FHAP agencies — the FHAP Division is continuing the Enforcement Fund first established in FY2016. Decisions on requests for funds from FHAP agencies will be made in headquarters on a case-by-case basis, with the actual fund commitment taking place in the field as with all other FHAP funds. Funding for this initiative will come from the existing authority for Special Enforcement Efforts at 24 C.F.R. § 115.305. Detailed guidance on the Enforcement Fund will be issued separately.
- Extraordinary Costs Assistance:** Distinct from the Enforcement Fund, FHAP agencies will be allowed to submit requests for SEE funds for costs related to investigations and enforcement that are outside the “ordinary” costs of investigation and enforcement. These costs may arise in either the investigation or enforcement

phase of complaint processing. Examples include, but are not limited to, costs related to interpreters, testing, and expert witnesses (*e.g.*, design and construction experts, expert testimony related to damages). Unlike the application process for the Enforcement Fund, a FHAP agency will request these funds in writing directly from their respective GTR/Region Director. Once the GTR/Region Director has determined that costs are documented and a request is eligible, the Region Director will request a funds assignment from the FHAP Director.

- c. **Partnership Funds** – For FY2021, the Department has \$800,000 available for Partnership funds. All State and local agencies currently participating in the FHAP are eligible to receive an award of 2021 Partnership funds, **except for** those agencies currently suspended or on a Performance Improvement Plan. Detailed guidance on the availability and authorized use(s) of FY2021 Partnership Funds will be issued separately.

The maximum amount for performance under the Articles of this Cooperative Agreement, Appendix, and Attachments, is the total amounts of all categories of Contributions funds (*i.e.*, Complaint Processing, Administrative Costs, and Training as well as SEE and Partnership funds if such funds are made available). Draw-downs are permitted at the discretion of the GTR. Complete draw-downs of the total amount obligated for Complaint Processing funds shall be permitted at any point after June 30, 2021, and before September 30, 2021. Payment is subject to withholding if the CAO determines that the Recipient is not complying with all terms of the Cooperative Agreement, the Appendix, and all Attachments hereto.

6. NARRATIVE REPORT

A Narrative Report describing activities undertaken during the periods of performance pursuant to which payment is being requested is required. The Narrative Report shall include a listing of complaints acceptably processed, including the name of complainant, respondent, and date closed, type of closure, date referred to legal for enforcement action, and descriptions of all activities undertaken to justify all administrative closures. This list must demonstrate that the agency receives and processes a reasonable number of complaints cognizable under the Fair Housing Act, as required in 24 C.F.R. § 115.206(e)(7). The Narrative Report shall also include a description of outreach activities undertaken in support of fair housing case processing to educate the public on fair housing rights and responsibilities. The GTR/GTM should verify that the Recipient is undertaking the education and outreach activities identified. If the Recipient meets the requirements outlined in the *FY2021 FHAP Funding Guidance*, remaining funds may be used to undertake the fair housing education and outreach activities.

7. CRITERIA FOR PROCESSING

The Criteria for Processing are the standards by which HUD determines whether a complaint, cognizable under the Fair Housing Act and processed by the Recipient, warrants reimbursement with FHAP funds. The Criteria for Processing are incorporated herein as Attachment A.

8. 2 C.F.R. PART 200

The Administrative Requirements for Grants and Cooperative Agreements (2 C.F.R. part 200) are hereby incorporated by reference. The Agency must be familiar with these requirements and verify to the GTR/GTM that the Recipient has a copy on file. A copy of part 200 may be obtained from your GTR/GTM.

9. USE OF COOPERATIVE AGREEMENT FUNDS AND NO COMINGLING

The Recipient is entitled to receive the fixed amount identified in Block 14 of the HUD-1044 for satisfactory completion of the work to be performed, regardless of costs incurred. FHAP funds must be used for the purpose that HUD provided the funds including the processing of complaints cognizable under the Fair Housing Act, training under the Fair Housing Act and the state or local fair housing law, administrative costs associated with fair housing complaint processing, creation and maintenance of data and information systems, and the development and maintenance of fair housing education and outreach projects. The Recipient must segregate FHAP funds from the Recipient's and the state or local government's other funds.

10. MAINTENANCE OF EFFORT

The Recipient must spend at least 20 percent of its total annual budget on fair housing activities if it enforces antidiscrimination law(s) other than a fair housing law. The term "total annual budget" means the entire budget assigned by the jurisdiction to the agency for enforcing and administering antidiscrimination laws, but does not include FHAP funds.

Maintenance of effort also means that the Recipient shall not unilaterally reduce the level of financial resources currently committed to fair housing. Budget and staff reductions occasioned by legislative action outside the control of the Recipient will not, alone, result in a determination of ineligibility. However, HUD will take such actions into consideration in assessing the ongoing viability of a Recipient's fair housing program.

11. HUD'S SUBSTANTIAL INVOLVEMENT

- A. HUD intends to have substantial involvement in the review and approval of all aspects of the work to be carried out as a result of an award under this Agreement.
- B. Anticipated substantial involvement may include, but is not necessarily limited to, the following:
 - 1. Review and guidance during and upon completion of cases cognizable under the Fair Housing Act;
 - 2. Requests for additional information on cases to provide clarification or for completeness of a case investigation or file;

3. Development and presentation of national and regional office fair housing investigation and conciliation training;
4. Participation in the development and presentation of in-house investigation and conciliation training;
5. Participation and approval of education and outreach programs or materials;
6. Provision of appropriate directives and guidance for case processing;
7. Assistance in the investigation, conciliation, and/or enforcement of fair housing cases cognizable under the Fair Housing Act;
8. Requests for updates on the final status of cause determinations; and
9. Review and analysis of agency's fair housing law for determinations of continued substantial equivalence to the Fair Housing Act.

12. ASSURANCES

As a condition for the receipt of FHAP funds, the Recipient assures HUD that it will:

- A. Provide a drug-free workplace;
- B. Comply with the provision of the Hatch Act (5 U.S.C. §§ 1501 – 1508 and 7324 – 7328), which limits the political activities of employees whose principal employment activities are funded in whole or part with federal funds;
- C. Establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain;
- D. Comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728 – 4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, subpart F);
- E. Comply with all federal nondiscrimination laws including, but not necessarily limited to: (a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of federal financial assistance; (b) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex by recipients of federal financial assistance; (c) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability by recipients of federal financial assistance; and (d) the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age by recipients of federal financial assistance;

- F. Comply with all applicable requirements of federal laws, executive orders, regulations, and policies governing this program; and
- G. Comply with the requirements of the Resource Conservation and Recovery Act, which mandates that state agencies using federal funds for procurement programs give preference to products containing recycled materials when purchasing specific products identified in guidelines developed by the Environmental Protection Agency (40 C.F.R. §§ 247 – 253).

13. USE OF CONSULTANTS

Salary payments to consultants under this instrument shall not exceed the equivalent of the maximum daily rate paid to level IV of the Executive Schedule, as evidenced by current pay vouchers.

14. PUBLICATIONS AND NEWS RELEASES

A. Definition. For the purpose of this clause, “publication” includes:

- (1) Any document containing information for public consumption;
- (2) The act of, or any act that may result in, disclosing information to the public; or
- (3) Any products resulting from the education and outreach efforts of the Recipient that are planned to be made available to the public through dedication, assignment by the Government, or other such means as HUD shall determine.

B. Government Ownership of Official Products of Work

All interim and final reports and information, data analyses, special methodology, findings, and their related documents and work products, including reports, work sheets, survey instruments, etc., and any other physical materials and products produced directly under the SOW of this instrument are considered Official Products of Work, owned by the U.S. Government and held for the benefit of the public.

C. Publication of Official Products of Work

Official Products of Work, quotations there from, paraphrasing, or disclosures of interim findings may not be published without the approval of the GTR for a period of sixty (60) days after acceptance of the product by the GTR. Thereafter, the Recipient shall be free to publish without HUD approval.

D. Acknowledgement and Disclaimer

All Official Products of Work, or any part thereof, and any Independent Products and Special Products arising out of this instrument, when published by Recipient or other participants in the work, shall contain the following acknowledgment and disclaimer:

“The work that provided the basis for this publication was supported by funding under a Cooperative Agreement with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government.”

E. Notice of News Release and Public Announcements

Copies of all press releases, formal announcements, and other planned, written issuances containing news or information concerning this instrument that may be made by the Recipient or its staff, or any subcontractor or other person or organization participating in the work of this instrument shall be provided to the GTR at the earliest possible time. News releases and other public announcements may not disclose any interim finding or quote or paraphrase any part of any Official Product of Work without complying with paragraph D above, entitled Acknowledgement and Disclaimer.

The Recipient agrees that no news releases or public announcements involving FHAP funded activities will be released to the public without prior HUD approval. The Recipient further agrees that it will submit any and all press releases/news announcements, studies and/or other products developed with FHAP funds to the GTR for review and approval of at least two weeks prior to its release, unless HUD agrees to waive the two-week submission requirements. Publication flyers, and other routine documents previously approved by the GTR and/or the Department, may be published without further HUD approval.

15. REPRODUCTION OF REPORTS

In accordance with Government Printing and Binding Regulations, reproduction of reports, data or other written materials, if required herein, is authorized, provided that the materials produced do not exceed 5,000 production units of any page and the items consisting of multiple pages do not exceed 25,000 production units in aggregate.

16. FLOW DOWN PROVISIONS

The Recipient shall include provisions of this instrument in all contracts of employment with persons who perform any part of the work under this instrument, and with all subcontractors and other persons or organizations participating in any part of the work under this instrument. There shall be provisions for a further flow down of such requirements to each sub-tier of employees and subcontractors to the extent feasible. If the Recipient subcontracts to a public or private organization any activity for which it receives FHAP funds, it must ensure in writing that the organization is complying with all relevant civil rights laws including: (a) Title VI of the Civil Rights Act of 1964; (b) Title IX of the Education Amendments of 1972, as amended; (c) Section 504 of the Rehabilitation Act of 1973; and (d) the Age Discrimination Act of 1975.

17. DISPUTES

During performance of the instrument, disagreements may arise between the Recipient and the GTR on various issues, such as the acceptability of complaints forwarded for reimbursement. If a dispute arises, the CAO shall be the final authority on the matter and shall prepare a final decision, taking into account all facts and documentation presented. The CAO's decision shall be mailed, emailed, faxed, or telephonically provided to the Recipient.

18. MAINTENANCE OF RECORDS

The GTR and CAO are to maintain all appropriate records relating to the implementation of this cooperative agreement for a period of five years for the GTR files and a period of seven years for the CAO files. The files for the CAO are to be kept in a secure place and should be accessible to others only with the CAO's permission. After five and seven years respectively, the records may be archived at the records center.

The Recipient agrees to maintain records demonstrating its financial administration of FHAP funds. The Recipient also agrees to maintain records of its performance under FHAP, including all past performance assessment reports, performance improvement plans, and other documents relative to the Recipient's performance.

The Recipient agrees to permit reasonable public access to its records as required at 24 C.F.R. § 115.308(c) (*i.e.*, records are made available at the agency's office during normal working hours for public review). The Recipient agrees to permit the Secretary of HUD, Inspector General of HUD, Comptroller General of the United States, and any of their authorized representatives, access to all the pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts and transcripts as they relate to the agency's participation in the FHAP. The Recipient agrees to keep files in such a fashion as to permit the audits under applicable Office of Management and Budget circulars, procurement regulations and guidelines, and the Single Audit requirements for state and local agencies.

19. CUSTOMER SERVICE STANDARDS

The Recipient agrees to ensure that any and all individuals associated with fair housing complaints, including aggrieved persons, complainants, respondents, and representatives, are treated with dignity and respect. The Recipient agrees to maintain regular contact with parties to a complaint, including not allowing more than 30 business days to pass without some form of contact with parties. The Recipient agrees that its staff will not communicate disinterest or distrust in the complaint process to any of the parties to the complaint. Complaints to HUD from individuals associated with FHAP fair housing complaints will be reviewed by the GTR. The GTR will work with the Recipient and the individual to resolve the matter. In addition, customer satisfaction issues identified that may impact the timely and effective processing of fair housing complaints will be considered when HUD conducts performance assessments of the Recipient in accordance with 24 C.F.R. § 115.206.

20. REPORTING REQUIREMENTS

The Recipient agrees to provide the GTR timely information on all fair housing complaints cognizable under the Fair Housing Act, from receipt to closure, regardless of whether payment has been received by the Recipient.

The Recipient agrees to fully utilize the HUD Enforcement Management Systems (HEMS) and input information in HEMS in a timely manner. Failure to meet this requirement shall result in HUD identifying such failure as a deficiency in the FHAP agency's performance assessment, thereby authorizing HUD to proceed with performance deficiency procedures enumerated in the FHAP regulation at 24 C.F.R. § 115.210.

21. TRAINING

The Recipient agrees to send staff to mandatory training sponsored by HUD, including, but not necessarily limited to, the National Fair Housing Training Academy and the National Fair Housing Policy Conference.

22. INITIAL CONTACT DATE

The Recipient must use the Initial Contact Date field in HEMS to record the actual date on which a complainant first contacts the Recipient or FHEO to inquire about filing a housing discrimination complaint, or to report an alleged discriminatory housing practice. The Recipient will be required to comply with the following procedures with respect to documenting a complainant's initial contact.

For cases initially filed with the Recipient, the Recipient must:

- A) Maintain records of each complainant's initial contact with the Recipient, including records of all telephone, e-mail, letters, and in-person contacts;
- B) Place the original record of a complainant's initial contact, or a copy of that record, in the case file under the complainant's evidence section of the file, consistent with the requirements of Chapter 10 of the Title VIII Manual; and
- C) Ensure that the Initial Contact Date field in HEMS reflects the earliest date of contact referenced in the case file.

For cases initially filed with FHEO, the Recipient:

- A) Must ensure that the Initial Contact Date filed in HEMS reflects the earliest date of contact referenced in the case file referred to the Recipient by FHEO;
- B) Must not change the date that FHEO entered in the Initial Contact Date field in HEMS even if records contained in the case file received from FHEO reflect a later date of contact by the complainant. If FHEO has entered an initial date of contact

in HEMS that is earlier than any contact date referenced in the case file, the Recipient must contact the FHEO regional office to obtain any records of contact that may have been omitted from the case file.

23. CHANGES LIMITING EFFECTIVENESS OF RECIPIENT'S LAW

Pursuant to 24 C.F.R. § 115.211(a), if a state or local fair housing law that a Recipient enforces is amended, or rules or procedures concerning the fair housing law are adopted, or judicial or other authoritative interpretations of the fair housing law are issued, the Recipient must notify HUD's Fair Housing Assistance Program Division within 60 days of its discovery. This requirement also applies to the amendment, adoption, or interpretation of any related law that bears on any aspect of the effectiveness of the FHAP agency's fair housing law. Send correspondence to:

Director, Fair Housing Assistance Program Division
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 5206
Washington, DC 20410

24. FHAP AND THE FIRST AMENDMENT

None of the funding made available under the FHAP may be used to investigate or prosecute any activity engaged in by one or more persons that may be protected by the First Amendment of the United States Constitution.

25. TESTING

The following requirements apply to testing activities funded under the FHAP:

- A) Testing must be done in accordance with a HUD-approved testing methodology;
- B) Testers must not have prior felony convictions or convictions of any crimes involving fraud or perjury;
- C) Testers must receive training or be experienced in testing procedures and techniques;
- D) Testers and the organizations conducting tests, and the employees and agents of these organizations, may not: 1) have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury; 2) be a relative or acquaintance of any party in a case; 3) have had any employment or other affiliation, within five years, with the person or organization; or 4) or be a competitor of the person or organization to be tested in the listing, rental, sale or financing of real estate.

26. RELEASE OF INFORMATION WHILE COMPLAINT IS OPEN

As a general rule, the Recipient will not release information collected during the course of the investigation while the complaint is open. There are three exceptions. First, the Recipient will provide information to HUD, consistent with Section 11 of this document. Second, a party to a complaint being investigated by the Recipient is entitled to receive a copy of any document it submitted during the investigation of the complaint. Third, during conciliation, a conciliator may opt to use the strategy of revealing portions of the evidentiary section of the investigative file to the parties. This type of disclosure may also occur during an investigation when a Recipient investigator questions a party or a witness about a document or a statement in a document.

27. SEXUAL ORIENTATION, GENDER IDENTITY, MARITAL STATUS, AND SOURCE OF INCOME CAUSE DETERMINATIONS

Recipient must submit to the Fair Housing Assistance Program (FHAP) Division copies of sexual orientation, gender identity, marital status, and source of income cause determinations. The General Section of HUD's Notice of Funding Availability (NOFA) deems ineligible applicants that have not satisfactorily resolved a cause determination from a FHAP agency for a systemic violation of a state or local prohibition of sexual orientation, gender identity, and source of income housing discrimination. Additionally, on February 3, 2012, HUD issued a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation and Gender Identity, which mandates recipients of HUD funds, FHA-insured lenders, and FHA-mortgagors to provide access to HUD programs without regard to sexual orientation, gender identity, and marital status. Receipt of cause determinations from FHAP agencies on these issues will assist HUD in determining whether an applicant is ineligible for funding under the NOFA and/or has violated the Equal Access Rule. FHAP agencies should submit such determinations electronically to LGBTfairhousing@hud.gov, or send hardcopies to:

Director, Fair Housing Assistance Program Division
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 5206
Washington, DC 20410

APPENDIX A – STATEMENT OF WORK

1. The Recipient agrees to process housing discrimination complaints cognizable under the Fair Housing Act in accordance with the Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement) or Memorandum of Understanding (MOU) between the Recipient and HUD, the Schedule of Articles, the Criteria for Processing, and 24 C.F.R. part 115.
2. The Recipient agrees to cooperate with HUD in the processing of housing discrimination complaints cognizable under the Fair Housing Act in accordance with the Interim Agreement, MOU, the Schedule of Articles, the Criteria for Processing, and 24 C.F.R. part 115.
3. The Recipient agrees to augment its fair housing enforcement efforts by engaging in outreach and education, and engaging and participating in training and technical assistance pursuant to the Interim Agreement and MOU.
4. The Recipient agrees to follow HUD's guidance in processing complaints cognizable under the Fair Housing Act unless and until the Department rescinds such requirement in writing to the Recipient.
5. The Recipient agrees to identify to HUD all staff assigned to carry out fair housing activities by name, position, salary, relevant experience, and percentage of time spent carrying out fair housing responsibilities.
6. The Recipient may be required to participate in customer satisfaction evaluation activities under this agreement. The Recipient agrees to furnish to HUD all information collected from its customers in the form specified by HUD.
7. If the Recipient has aged cases, upon request from HUD, the Recipient must provide updates to HUD on its handling of aged cases and submit a plan to the GTR/GTM for closing such cases.

ATTACHMENT A

FY2021 Criteria for Processing

The Criteria for Processing (Criteria) are the standards by which HUD determines whether a complaint, cognizable under the federal Fair Housing Act and processed by a substantially equivalent state or local agency, meets the minimum requirements for quality and timeliness, and identify the documents that must be submitted to HUD in order to receive reimbursement. The Criteria are designed to assure the uniform, timely, and quality processing of housing discrimination complaints processed under substantially equivalent fair housing laws.

The Criteria are enumerated under major subheadings, most of which describe the type of closure, (*e.g.*, cause, no cause, conciliation). Subheadings I through III set out criteria that apply to most complaints. Subheadings IV through VII set forth additional criteria specific to particular types of complaint closure. For example, to meet the criteria for an administrative closure, criteria under subheadings I (Complaint Filing), II (Notification), III (Cause and No Cause Determinations), and VII (Administrative Closures) may need to be met.

An agency must meet the Criteria for each complaint processed and provide all complaint-related documentation identified in the Criteria to HUD within 30 days of completion of complaint processing. Such documentation must be submitted to HUD via the HUD Enforcement Management System (HEMS). An agency's failure to input all required information in HEMS in a timely manner will negatively impact an agency's performance rating. HUD will address a failure to meet the Criteria through performance deficiency procedures including, but not limited to, technical assistance, performance improvement plans, and suspension from FHAP participation. *See* 24 C.F.R. § 115.307(a)(3) and 24 C.F.R. § 115.210.

HUD utilizes complaint closure review forms which combine the Criteria for Processing and the Standards for Timeliness into checklists for each type of complaint closure. These forms are available to FHAP agencies as an additional technical assistance tool to support high quality case processing.

I. COMPLAINT FILING

A. Quality Requirements:

1. All complaints must be timely filed in accordance with the substantially equivalent state or local fair housing law.
2. All complaints must be in writing, signed by the complainant, and contain the following information:
 - a. The name and address of complainant;
 - b. The name and address of each respondent;
 - c. If a specific property is involved, the property's address and physical description, such as apartment, condominium, house or vacant lot; and
 - d. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.
3. Where the agency determines that there is insufficient information in the complaint to commence an investigation, the agency must notify the complainant in writing by no later than the 5th day after receipt of the complaint and inform the complainant what information he or she must provide in order to commence an investigation and identify a reasonable timeframe for submitting such information. The agency must notify the complainant that unless he or she provides the required information within the specified timeframe, the agency may dismiss the complaint.
4. The FHAP agency must permit complaints to be filed with the assistance of an authorized representative or organization of the complainant.
5. The FHAP agency must permit complaints to be reasonably and fairly amended at any time. Such amendments may include, but are not limited to: a) amendments to cure technical defects or omissions; b) clarification, amplifications, or amendments of allegations in a complaint; or c) joinder of additional or substitute respondents. The FHAP agency should consider amended complaints as having been filed on the date the original complaint was filed.
6. If a FHAP agency requires complaints to be notarized, HUD will not reimburse the agency for a complaint not filed because the complainant did not get the complaint notarized. To preserve the rights of aggrieved persons, a FHAP agency must refer such complaints to HUD for investigation under the federal Fair Housing Act as soon as practicable and, where necessary, consent to their reactivation.
7. Pursuant to 24 CFR § 115.210, and the March 7, 2001 memorandum entitled "Limitations on Accepting as Dual-Filings FHAP Cases That Implicate First

Amendment,” HUD will not reimburse FHAP agencies for complaints that implicate the First Amendment of the U.S. Constitution. The FHAP agency must alert HUD to complaints that it receives that may implicate the First Amendment so that HUD may analyze the complaint and determine if reimbursement is appropriate.

8. Pursuant to a Memorandum of Understanding between HUD and the Internal Revenue Service, the FHAP agency must identify in HEMS whether the property named in a complaint receives Low Income Housing Tax Credits. This is required for every complaint.
9. The FHAP agency must refer complaints to HUD when the agency receives allegations involving a practice that is not prohibited by the substantially equivalent State or local law, but which is prohibited by the federal Fair Housing Act.
10. If a housing discrimination complaint is filed against a recipient of federal financial assistance and therefore implicates civil rights laws that FHEO enforces other than the federal Fair Housing Act (multi-jurisdictional), the FHAP agency shall notify FHEO so that FHEO may process that portion of the complaint. Other civil rights laws enforced by FHEO include:
 - a. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) (prohibiting discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance);
 - b. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (prohibiting discrimination based on disability in programs or activities receiving federal financial assistance);
 - c. Section 109 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 (prohibiting discrimination on the basis of race, color, national origin, religion, or sex in any program or activity funded in whole or in part by the community development block grant programs);
 - d. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (prohibiting discrimination based on disability in programs, services, and activities made available by public entities);
 - e. Architectural Barriers Act, 42 U.S.C. § 4151 *et seq.* (providing that buildings, including publicly owned residences, designed constructed, leased, or altered with certain federal funds must be accessible to persons with disabilities); and
 - f. Age Discrimination Act of 1975, 42 U.S.C. § 6101 (prohibiting discrimination based on age in programs or activities receiving federal financial assistance).

- B. Required Documents: A signed, dated copy of the complaint, any requests for amendment(s) to the complaint, and evidence of compliance with the timeframes and requirements identified above.
- C. Complaint Filing with Multiple Complainants or Respondents: FHAP agencies will be reimbursed only for complaints that involve separate, distinct discriminatory actions that require a separate investigation. Where allegations may be made against two or more respondents, separate complaints should be filed against each respondent only when each respondent's conduct stands alone as a separate violation of the Act. Furthermore, if complainants are married and both are aggrieved persons, a single, joint complaint should be filed. If there are children under age 18 who reside in the household who may have been injured by the alleged discriminatory housing practice(s), they should be listed as "Other Aggrieved Persons" on that same complaint. FHAP agencies should not typically file separate complaints for spouses or children under 18 residing in the household.

II. NOTIFICATION

- A. Quality Requirements: The FHAP agency must notify HUD within five days of receiving complaints that are cognizable under the federal Fair Housing Act. In addition, the FHAP agency must serve notice of the complaint to each complainant and respondent in accordance with the timeframes identified in the substantially equivalent law and the following requirements.
 - 1. The notification letter to the complainant must consist of an acknowledgement of receipt of the complaint for filing, the designation of a complaint number, information related to the agency's processing procedures including the name and telephone number of a FHAP agency contact, and the complainant's rights and obligations under the substantially equivalent law, including time limits and choice of forums.
 - 2. The notification letter to each of the respondents must consist of a description of the alleged housing discrimination practice upon which the complaint is based, include a copy of the complaint, and identify the name and telephone number of a FHAP agency contact. The notice to each respondent must advise respondent of his or her procedural rights and obligations, including the right to file an answer within the timeframe identified in the substantially equivalent law.
 - 3. A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of the investigation, may be joined as an additional or substitute respondent by service of a written notice. The notice must explain the basis for the agency's belief that the joined person is properly joined as a respondent and include information identified in paragraph 2 above.
- B. Required Documents: For complaints that are filed directly with the FHAP agency, the agency must enter information in HEMS regarding the complaint within five days of receiving the complaint, sufficiently notifying HUD of the complaint. In addition, the

agency must provide HUD with a copy of the notification letters sent to the parties and must update HEMS to indicate when the agency sent the notification letters.

III. CRITERIA FOR CAUSE AND NO CAUSE DETERMINATION

Every cause or no cause determination must be based on an investigation that includes sufficient consideration of the complainant's and respondent's evidence, and a sufficient evaluation of any and all conflicting evidence. A cause or no cause determination must be based on a review of all relevant evidence the agency obtained during the investigation. The agency shall not act as an advocate for either the complainant or respondent and shall weigh the evidence objectively in light of the relevant substantially equivalent law. The basis for the cause or no cause determination must be well-documented.

A. Quality Requirements:

In addition to the criteria set forth in subheadings I and II above:

1. Before the end of the 30th day after the complaint is filed, the FHAP agency must initiate a comprehensive investigation of issues raised in the complaint. Respondent's defenses, relevant policies and practices, as well as all other relevant data, must be identified and analyzed and the complainant, respondent, and all relevant witnesses must be interviewed. Contradictions between complainant's allegations and respondent's response must be investigated and when applicable, comparative data must be obtained. Information must be independently corroborated. Simply obtaining respondents' statements rebutting complainant's allegations is insufficient to resolve disputed issues of fact.
2. HUD recommends that FHAP agencies develop investigative plans for every complaint processed that is cognizable under the Fair Housing Act. For guidance on developing an investigative plan, FHAP agencies should refer to Chapter 7 of HUD Handbook 8024.01 REV-2 (Title VIII Complaint Intake, Investigation, and Conciliation Handbook).
3. In planning the investigation, the investigator and his or her supervisor must determine, on a complaint-by-complaint basis, whether on-site inspections and/or interviews are required. For most complaints, on-site inspections and/or interviews are the most thorough way to conduct an investigation. Some cases, *e.g.*, where the complaint does not involve factual disputes or where evidence clearly demonstrates the allegations do not have merit, may not require an onsite visit.
4. During the period beginning with the filing of a complaint and ending with the FHAP agency's determination or charge of discrimination, the agency, to the extent feasible, must attempt to conciliate the complaint (*see* more detail on criteria for conciliation in Section IV of this document).

5. If the agency does not complete the investigative activities with respect to a complaint within 100 days from the date of receipt, it must notify the parties in writing of the reason(s) for the delay. Such notification letters must be sent within 110 days of the filing of the complaint.
 6. At the end of each investigation, the agency shall prepare a Final Investigative Report (FIR). A FIR shall be dated and signed by at least one supervisor. The FIR shall contain:
 - a. The names and dates of contacts with the parties and witnesses, except that the report will not disclose the names of witnesses who request anonymity;
 - b. A summary of correspondence and other contacts with the complainant and the respondent;
 - c. A summary description identifying other pertinent records examined;
 - d. A summary of statements by witnesses, if applicable; and/or
 - e. Interrogatories and answers provided, if applicable.
 7. Each Determination shall be signed and dated by an authorized FHAP official.
 8. The FHAP agency shall send the closure package to HUD within 30 days of closure. (See B below).
 9. The FHAP agency will cooperate with HUD by providing information at regular intervals or upon request related to individual complaint investigations. Upon request, the FHAP agency shall provide status reports for each complaint that is over 100 days old.
- B. Required Documents: The case file shall include all evidence indicating that a comprehensive investigation was commenced and completed in accordance with the above requirements including, but not limited to: a copy of a signed, dated complaint; a copy of a FHAP agency determination, dated and signed by an authorized FHAP official; proof that a FHAP agency sent its determination letter to all parties; a FIR that meets the above listed requirements; an investigative plan (when such plan exists); a copy of the 100-day letters and evidence that they were sent; and all other information pertinent to the investigation, including but not limited to interview notes, documentation of conciliation attempts and, when necessary, independent evidence corroborating respondent's defense(s).

IV. CRITERIA FOR POST-CAUSE COMPLAINTS HEARD IN AN ADMINISTRATIVE HEARING, CIVIL ACTION, OR THROUGH JUDICIAL REVIEW

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements: After a cause determination and a charge of discrimination, or its equivalent, has been issued, and assuming the conciliation was attempted and failed, the complaint must be referred to appropriate counsel to prosecute the charge on behalf of the complainant, at government expense, before an administrative hearing body or civil court.
- B. Documents Required: HUD will accept such a complaint for reimbursement if the agency provides documentation of such a referral in, for example, correspondence, logs, or pleadings. Additionally, the FHAP agency shall provide any final administrative hearing decision, consent decree, or settlement agreement entered to HUD within 30 days of such action. If the agency does not provide this information, HUD may request, and the agency will be required to return, up to 50% of the reimbursement previously paid to the agency for the complaint.

Special Note: While the agency may obtain reimbursement on these complaints prior to final disposition by an administrative hearing body or a civil court, the agency must subsequently report to HUD the final status of such complaints. *See* 24 C.F.R. § 115.206(e)(8). FHAP agencies must input final status information directly in HEMS within 30 days of the administrative or judicial determination.

- C. Post-Cause Administrative Hearings or Judicial Filings: An agency may receive additional funds for engaging in certain post-cause enforcement actions. If, pursuant to the substantially equivalent law, an agency either conducts an administrative hearing or files a civil action upon election to enforce a finding of reasonable cause, HUD may provide additional payment.

Where the triggering event (*i.e.*, conduct of administrative hearing or filing of civil action) for the supplemental payment does not occur, an agreement reached after a cause finding will not qualify as an enforcement action for purposes of this supplemental payment. Such cases will be reimbursed as any other cause case unless the disposition is a conciliation agreement (*i.e.*, an agreement signed by the parties and the FHAP agency), in which case it will be reimbursed as any other case closed with a conciliation agreement. Where the triggering event has occurred, a FHAP agency will receive the supplemental payment even where the case is resolved by a subsequent agreement, *e.g.*, through a consent decree.

Agencies will receive this increased supplemental payment when the agency has engaged in post-cause enforcement actions and has documented its actions in HEMS. This documentation must occur in order for the GTR/GTM to authorize payment.

V. CRITERIA FOR CONCILIATION

During the period beginning with the filing of a complaint and ending with the agency's no cause determination or charge of discrimination, the agency, to the extent feasible, must attempt to conciliate the complaint. In conciliating a complaint, agencies must attempt to achieve a just resolution of the complaint and obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the complainant and take actions to ensure the elimination of alleged discriminatory housing practices and the prevention of their occurrences in the future. These standards for conciliation remain in effect even if conciliation/settlement takes place after the agency's cause determination.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements/Required Documents: The FHAP agency must provide HUD with a signed and dated complaint, a chronology of actions taken up to the conciliation, copies of closure letters sent to the parties indicating that the complaint was closed due to a successful conciliation, together with a copy of the executed conciliation agreement.

The conciliation agreement must be in writing, dated and signed by complainant, respondent, and the authorized FHAP agency representative, and include:

1. HUD and FHAP complaint numbers
2. Names of the parties;
3. Address and description of the subject property;
4. An effective date and the term in which the agreement remains in effect;
5. Relief that remedies the discrimination alleged in the complaint or is otherwise agreed upon by the parties and appropriate based on evidence obtained in the investigation of the matter;
6. As appropriate, relief that adequately vindicates the public interest, and prohibits future discriminatory housing practices by respondent;
7. A statement that the agreement constitutes closure of the complaint at HUD and the FHAP agency;
8. A statement that the agreement shall be made public unless the complainant and respondent otherwise agree, and an authorized representative of the agency determines that disclosure is not required to further the purposes of the substantially equivalent law. Circumstances that may result in partial or complete nondisclosure of a conciliation agreement may include, but are not limited to:
 - Sexual harassment claims;

- A complainant’s physical or mental condition, or medical diagnoses; or
 - The fact that a complainant is a resident in a domestic violence shelter or other protected residence which complainant believes may, if disclosed, be a safety risk.
9. Provisions that allow the FHAP agency to effectively monitor compliance with the agreement.
 10. A statement that violations of other civil rights laws have been alleged (if applicable).

NOTE: A conciliation agreement does not prohibit HUD from taking action against respondent under other civil rights laws. When a complaint is subject to concurrent processing by HUD under other civil rights laws, the FHAP agency may not execute an agreement that resolves matters in regard to these laws without HUD’s consent.

VI. CRITERIA FOR CLOSURES BY SETTLEMENT WITHOUT FHAP AGENCY INVOLVEMENT (A.K.A., WITHDRAWALS WITH RESOLUTION)

If complainant and respondent resolve the complaint without the FHAP agency's involvement, the complainant may withdraw the complaint by submitting a withdrawal request to the FHAP agency.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

- A. Quality Requirements. The withdrawal request must be written; it must be signed and dated by complainant or complainant’s authorized representative; identify the respondent(s) to whom the withdrawal applies; contain the HUD and FHAP agency complaint numbers; state the reason(s) complainant seeks to withdraw the complaint; contain a statement that the withdrawal was not obtained by coercion or threat of retaliation from any person, including but not limited to the respondent; and identify the terms of the resolution.
- B. Required Documents: The FHAP agency must provide FHEO with: a signed and dated complaint; a chronology of the FHAP agency actions prior to the withdrawal request; a copy of the signed and dated withdrawal request; documentation showing that the agency notified the complainant and respondent that the investigation would be terminated as a result of the withdrawal, and that the complainant could re-file the complaint if the terms of the resolution are not satisfied and the re-filing is received within the time limit for filing a complaint under the substantially equivalent law; and a copy of the closure letter.

NOTE: The FHAP agency must not encourage or facilitate resolution without its involvement in lieu of proceeding with conciliation. If HUD discovers that such occurred, it will be addressed through performance deficiency procedures.

VII. CRITERIA FOR ADMINISTRATIVE CLOSURES

Performance Standard 2 in the FHAP regulations, at 24 C.F.R. § 115.206(e)(2), requires that administrative closures only be utilized in limited and appropriate circumstances. It is critical that FHAP agencies not close complaints administratively except under the specific circumstances set forth below.

- A. Withdrawals without Resolution. If complainant decides to withdraw a complaint, even though the complaint has not been resolved, complainant must submit a withdrawal request.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: The withdrawal request must: be written; signed and dated by complainant or complainant's authorized representative; identify the respondent(s) to whom the withdrawal applies; contain the HUD and FHAP agency complaint numbers; state the reason(s) complainant seeks to withdraw the complaint; contain a statement that complainant is aware that the withdrawal terminates the FHAP agency's investigation; contain a statement that the withdrawal was not obtained by coercion or threat of retaliation from any person, including but not limited to the respondent.
2. Required Documents: The FHAP agency must provide FHEO: a signed and dated complaint; a chronology of FHAP agency actions prior to receipt of the withdrawal request; a copy of the signed and dated withdrawal request that meets the Quality Requirements set out above; and a copy of the closure letter provided to all parties indicating closure due to withdrawal by complainant without resolution.

NOTE: If the withdrawal request indicates that there was coercion or threat of retaliation FHAP payment may be denied.

- B. Inability to Locate Complainant. The FHAP agency may administratively close a complaint when additional information is needed from complainant and he or she cannot be located.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: If correspondence sent by the agency is returned with an indication that the complainant moved and left no forwarding address, the agency must take the following progressive steps to locate the complainant before administratively closing the complaint:
 - a. Place at least four telephone calls to complainant's residence, cellphone number, and place of employment, two during normal business hours to work number and two during non-business hours to a residential/cell number. If an email address is available, the agency must attempt to email the complainant at least two times.

- b. Attempt to contact persons identified by complainant at intake to inquire as to complainant's whereabouts.
- c. Check other sources in an effort to obtain complainant's current contact information (*e.g.*, telephone directory, internet searches, postal service, 411 information, utility company, or witnesses previously identified by complainant).
- d. Send a letter to the complainant's last known address by certified mail, advising complainant of the agency's intent to close the case unless complainant contacts the agency within ten days. If the tenth day elapses without a response, the case may be closed administratively by means of a written notice sent to all parties, including complainant at complainant's last known address.

NOTE: If the FIR shows that the complaint was closed due to the inability to contact complainant without following the steps outlined above, the FHAP agency will not be reimbursed for processing the complaint.

2. Required Documents: The FHAP agency must provide the following documentation to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to locate complainant; evidence that the certified letter was returned unclaimed; and a copy of the closure letter sent to the parties indicating closure due to inability to locate complainant.

C. Inability to Locate Respondent

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: A FHAP agency must make every effort to identify the correct name and address of each respondent in a complaint. However, there may be circumstances where a respondent cannot be identified or located. If the complaint identifies multiple respondents and only one cannot be adequately identified, the agency must not close the complaint administratively. Rather, the investigation must proceed and further efforts must be made during the investigation to identify the respondent whose correct name or address remains unknown. The complaint may be amended to remove those respondents who could not be located.

If a sole respondent or all respondents cannot be identified or located, the complaint may be closed administratively if the agency first takes the following steps:

- a. The FHAP agency must attempt to obtain additional information from available sources that could result in identifying or locating the respondent, including internet searches, cellphone numbers, cross

reference directories, or property tax records that may identify the owner or prior residents of the property in question and provide enough information to identify or locate the respondent, serve the complainant, and begin the formal investigation.

- b. If a source appears to know the identity or location of a respondent that the FHAP agency seeks, but that source refuses to provide the information voluntarily, the FHAP agency must subpoena the information.
- c. As appropriate, the FHAP agency should attempt an on-site visit, which may help locate and identify the respondent.
- d. If the above efforts to locate or identify the respondent are unsuccessful, a letter must be sent to the complainant giving him or her 10 days to provide information needed to locate or identify respondents.

NOTE: In the absence of sufficient information, the case may be closed administratively, and written notice by regular and certified mail should be sent to the parties.

Required Documents: The FHAP agency must provide the following documentation to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to locate the respondent, including the signed letters identified in 1(d) above giving notice to complainant or complainant's representative; evidence that certified letters were returned unclaimed; and closure letters to complainant or complainant's representative indicating inability to locate respondent(s).

- D. Failure of Complainant to Cooperate with the Investigation. A complaint may be administratively closed when complainant fails to respond to reasonable requests for information that is needed in order for the FHAP agency to make a determination.

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

Quality Requirements:

- a. The FHAP agency must inform the complainant and their representative of their duty to cooperate with the investigation and the risk of the agency administratively closing the complaint if they fail to cooperate.
- b. The FHAP agency must make repeated attempts to contact complainant and their representatives by telephone and mail requesting the needed information. If these efforts are fruitless, the FHAP agency must send a letter to the complainant by certified mail return receipt giving complainant at least ten days from receipt of letter to provide the needed information to the agency.

- c. If the complainant's cooperation cannot be obtained using the above procedures, and the letter is not returned by the post office (i.e., marked addressee unknown, moved, left no forwarding address, etc.), the complaint should then be closed for failure to cooperate.
 - d. If the complaint is closed for failure of complainant to cooperate with the investigation, a closure letter must be sent to the complainant.
1. Required Documents: The following documents must be provided to FHEO: a signed and dated complaint; evidence that the above progressive steps were taken to obtain complainant's cooperation, including the signed letter identified in 1(b) above giving notice to the complainant or the complainant's representative; and a copy of closure letter to the parties indicating closure because of failure of complainant to cooperate with the investigation.

E. Lack of Jurisdiction

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: In order to qualify for reimbursement, the lack of jurisdiction must not have been apparent on the face of the complaint at the time of filing and must have become known only after further investigation. The following are examples of facts uncovered during an investigation that may justify reimbursement for an administrative closure for lack of jurisdiction: a) the complainant has not suffered the alleged harm needed to establish standing; b) the subject property qualifies for an exemption to coverage of both the Fair Housing Act and the substantially equivalent law. Note that if HUD, but not the agency, has jurisdiction over the complaint, the complaint must be referred to HUD for processing.
 2. Required Documentation: The FHAP agency must provide the following documentation to FHEO: reason(s) for closing the complaint for lack of jurisdiction that demonstrates why HUD does not have jurisdiction, and that the lack of jurisdiction could not have been determined at intake; copies of closure letter sent to the parties that indicate reason for lack of jurisdiction closure, identify FHAP and HUD complaint numbers, and are signed by authorized FHAP agency official.
- F. Trial has Begun. A complaint must not be closed merely because an aggrieved party has filed a civil action with respect to the same alleged discriminatory housing practice(s).

In addition to the appropriate criteria set forth in subheadings I, II, and III above:

1. Quality Requirements: No additional criteria.

2. Required Documents: To receive reimbursement for an administrative closure due to the commencement of a judicial trial the FHAP agency must produce: a document from the clerk of the court in the jurisdiction that hears the complaint or other sufficient documentation demonstrating that a trial has begun.

ATTACHMENT B

FY2021 Standards for Timeliness

Closures of Investigated Complaints

100 days or less:

- Non-systemic complaints, not novel or complex, that are settled or conciliated (including withdrawals with resolution).
- Non-systemic complaints, not novel or complex, where a cause or no cause decision has been made.

300 days or less:

- Systemic complaints that are novel or complex, that are settled or conciliated (including withdrawals with resolution).

350 days or less

- Systemic complaints that are novel or complex, where a cause or no cause decision has been made.

Administrative Closures

Inability to locate:	100 days or less
Lack of jurisdiction:	30 days or less
Failure to cooperate:	60 days or less
Withdrawal without resolution:	75 days or less
Closed because trial commenced:	N/A
Complaints that are reactivated:	N/A

ATTACHMENT C

FY2021 Payment Amounts for FHAP Complaint Processing

Effective Conciliation*:	\$3,200
Cause or no cause:	\$3,000
Post-cause enforcement action supplemental payments:	
• Administrative Hearing held:	\$5,000
• Civil Action filed:	\$8,000
Administrative Closures:	\$1,500
Withdrawals with Resolution:	\$1,500

* **Effective Conciliation** – an “effective” conciliation is one that provides both substantive individual relief for the complainant(s) and meaningful public interest relief. Substantive individual relief includes both monetary relief and other affirmative relief required to make the complainant(s) whole (*e.g.*, approval or restoration of a housing opportunity, approval of a reasonable accommodation or reasonable modification request). The monetary relief afforded to the complainant should not be *de minimis*; it should compensate the complainant(s) for the harm alleged and be commensurate with relief obtained in other similar cases.

For purposes of determining whether a conciliation warrants the higher payment, public interest relief can take a variety of forms depending on the circumstances of a given complaint. Generally, it means the conciliation agreement contains certain requirements such as implementation of nondiscriminatory policies; changes to existing policies and practices; attendance at fair housing training; and/or other action that provides remediation or relief for individuals *other than a complainant(s)*. Public interest relief may also encompass prospective relief such as agreeing to ongoing testing to assure compliance; relief for additional victims not identified in complaints; agreeing to make changes in policies at all of a respondent’s properties (not just the subject property); participation in education and outreach activities; and/or other affirmative relief that protects the public interest.

A pattern of requiring only fair housing training is not meaningful public interest relief. In deciding whether the higher payment is warranted, HUD monitors will consider in every case whether other reasonable, appropriate forms of public interest should have been considered. Additionally, public interest relief cannot be meaningful or effective unless reporting and recordkeeping provisions are included to ensure that all required actions are completed. A conciliation that fails to provide substantive individual relief and public interest relief will be reimbursed at the Full Investigation amount of \$3,000.

ATTACHMENT D

LOCCS Security Procedures (FHAP)

The Line of Credit Control System (LOCCS) is the primary grant disbursement system for HUD programs, including the Fair Housing Assistance Program (FHAP). Grant disbursements are facilitated via the internet through the eLOCCS system. As participants in the FHAP, substantially equivalent state or local agencies are permitted access to LOCCS and eLOCCS.

The Department's Rules of Behavior and security guidelines require that the Approving Official for LOCCS transactions be the CEO, Board Officer, or Agency Director of an organization. An "Approving Official" is a LOCCS administrator who manages "users" in LOCCS. The Approving Official cannot be an individual serving in an interim or acting position and must have decision-making authority for the organization. **The Approving Official is the only individual permitted to be the Secure Connection Coordinator, and those duties may not be delegated.**

To comply with IT Security guidelines, each individual with access to LOCCS must safeguard his/her User ID and Password. User IDs and Passwords must **NOT** be shared with others. Only **authorized** users should access LOCCS. Please note: there is a requirement for a separate LOCCS User ID and password from Secure Systems access for both users and approving officials.

In the event the authorized user leaves the organization, the HUD Government Technical Representative (GTR) assigned to the current grant must be notified and a form HUD-27054 must be submitted to the GTR to terminate the employee who has left the organization and to authorize a new user, to be identified by the FHAP agency.

HUD embraces a "Zero Tolerance Philosophy" for failure to secure important financial information. Failure to abide by conditions above or the general *Rules of Behavior* below applicable to all HUD computer systems will result in the following consequences: access for the individual will be terminated and **will not be reinstated**. The FHAP agency will be required to identify another individual to assume the role of the disqualified individual (*i.e.*, as the approving official or authorized user).

Rules of Behavior for HUD Systems

The U.S. Department of Housing and Urban Development has granted access to the FHAP agency to utilize the Department's automated information resources (*e.g.*, HEMS). As a condition of receiving this access the Agency is required to be aware of the Department's system security policies and to abide by these policies. Security policy emphasizes awareness practices for the purpose of safeguarding the Department's valuable information resources.

The system user identification (USERID) and password issued to users are the FHAP agency's means to access these resources. They are to be used solely in connection with the performance of the responsibilities as set forth in the job description, contract or agreement(s) with the Department. Use by anyone other than authorized users is expressly prohibited. You agree to be responsible for the confidentiality of the assigned information and accountable for all activity

with your user identification (USERID). Further, you agree that you will not provide this confidential USERID/password to another user nor will you sign on to HUD systems so that another person may access or operate the workstation in your absence or on your behalf. ***Actions of this type constitute a breach of system security and will result in immediate termination of your assigned USERID/password from the system.***

In addition, authorized users agree to:

- (a) Log-off the system when leaving the system/workstation area;
- (b) Refrain from leaving written passwords in the workstation area;
- (c) Avoid creating a personal password that can be easily associated with you;
- (d) Avoid posting printouts of sensitive output data on bulletin boards;
- (e) Avoid leaving system output reports unattended or unsecured;
- (f) Control input documents by returning them to files or forwarding them to the appropriate contact person in your office;
- (g) Avoid violation of the Privacy Act which requires confidentiality of personal data contained in government and contractor data files;
- (h) Immediately contact the HUD Inspector General's Office, as appropriate, regarding any suspected violation or breach of system security;
- (i) Cooperate in providing personal background information to be used in conducting security background checks to the extent required by Federal regulations;
- (j) Respond to any inquiries and requests for information you may receive from either the HUD Headquarters or management officials regarding system security practices.
- (k) Protect all electronic/optical media and hardcopy documentation containing sensitive information and properly dispose of it by shredding hardcopy documentation, or by contacting the HITS Help Desk to dispose of electronic/optical media.
- (l) Avoid saving sensitive HUD information on the local drive of a laptop, personally owned computer, or other mobile or portable technology (removable/external hard drives, "flash drives", etc.).
- (m) If sensitive data must be stored on any type of HUD-approved mobile/portable technology (laptops, removable hard drives, "flash drives", etc.), ensure that it is protected via encryption.
- (n) Individuals who telework or remotely access HUD information should do so only through approved remote access solutions (such as hudmobile.hud.gov), and should safeguard all sensitive information accessed in this manner

Assistance Award/Amendment

**U.S. Department of Housing
and Urban Development
Office of Administration**

1. Assistance Instrument <input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Grant		2. Type of Action <input checked="" type="checkbox"/> Award <input type="checkbox"/> Amendment	
3. Instrument Number FF201K211006	4. Amendment Number	5. Effective Date of this Action	6. Control Number Tax ID: 01-6000001
7. Name and Address of Recipient Maine Human Rights Commission #51 State House Station Augusta, ME 04333 Telephone 207-624-6290		8. HUD Administering Office HUD Office of Fair Housing & Equal Opportunity Boston Regional Office 10 Causeway Street, 3rd Floor Boston, MA 02222-1092	
10. Recipient Project Manager Amy Sneirson, Executive Director		8a. Name of Acting Administrator Daniel Weaver	8b. Telephone Number 617-994-8311
11. Assistance Arrangement <input type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Cost Sharing <input checked="" type="checkbox"/> Fixed Price		12. Payment Method <input type="checkbox"/> Treasury Check Reimbursement <input type="checkbox"/> Advance Check <input checked="" type="checkbox"/> Automated Clearinghouse	
14. Assistance Amount		13. HUD Payment Office Fort Worth Field Accounting, P. O. Box 2905 Fort Worth, Texas 76113-2905	
Previous HUD Amount	\$ 0.00	15. HUD Accounting and Appropriation Data	
HUD Amount this action	\$ 209,800.00	15a. Appropriation Number 8621/220144	15b. Reservation number FHEO-01-21-2
Total HUD Amount	\$ 209,800.00	Amount Previously Obligated	\$ 0.00
Recipient Amount	\$ 0.00	Obligation by this action	\$ 209,800.00
Total Instrument Amount	\$ 209,800.00	Total Obligation	\$ 209,800.00

16. Description		
Fund Code	Description	Amount Obligated in this Action
TIN	Case Processing (Carryover Funds)	\$0.00
TIO	Case Processing (Current Funds)	\$149,800.00
TIN	Post-Cause Supplement (Carryover Funds)	\$0.00
TIO	Post-Cause Supplement (Current Funds)	\$8,000.00
ADD	Administrative Costs	\$30,000.00
TRI	Training	\$22,000.00
PA4	Partnership	\$0.00
SEF	Special Enforcement Effort	\$0.00
Total		\$209,800.00

The Cooperative Agreement is comprised of the following documents:

- 1) Cover Page – HUD 1044
- 2) 2021 Contributions Agreement
- 3) Appendix A: FY2021 Statement of Work
- 4) Attachment A: FY2021 Criteria for Processing
- 5) Attachment B: FY2021 Standards for Timeliness
- 6) Attachment C: Payment Amounts for FHAP Case Processing
- 7) Attachment D; eLOCCS Security Procedures

The Performance Period of this Agreement begins 10/1/20 and end 9/30/21.

The funds obligated by this instrument expire on 9/30/2026.

The recipient must comply with all rules and regulations in accordance with the Fair Housing Assistance Program regulations (24 CFR § 115), the Memorandum of Understanding between the Recipient and HUD (including all subsequent addenda), and the FY2021 FHAP guidance.

17. <input checked="" type="checkbox"/> Recipient is required to sign and return three (3) copies of this document to the HUD Administering Office		18. <input type="checkbox"/> Recipient is not required to sign this document.	
19. Recipient (By Name) Amy Sneirson Signature & Title		20. HUD (By Name) Daniel Weaver Signature & Title	
Date (mm/dd/yyyy) 09/09/2021		Date (mm/dd/yyyy) 09/09/2021	
Executive Director		Cooperative Agreement Officer	

form HUD-1044 (8/90)
ref. Handbook 2210.17



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 12 1997

Ms. Patricia Ryan
Executive Director
Maine Human Rights Commission
51 State House Station
Augusta, Maine 04333-0051

Dear Ms. Ryan:

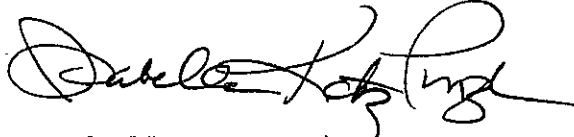
This is to inform you that the Department of Justice, pursuant to 42 U.S.C. § 12188(b)(1)(A)(ii) and 28 C.F.R. § 36.605(b), has certified that the Maine Human Rights Act, 5 MRSA § 4553, and the Maine Accessibility Regulations (together referred to herein as the "Maine law"), adopted on April 14, 1997, meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA). In recognition of this determination, the Department has issued the enclosed certificate and will publish a notice in the Federal Register.

Certification constitutes rebuttable evidence, in any enforcement action, that a building constructed or altered in compliance with the Maine law complies with title III of the ADA. Certification does not apply to elements not addressed by the Maine law or to elements only addressed in the Appendix. A builder who incorporates such elements will not be entitled to rebuttable evidence of ADA compliance with respect to such elements. Certification does not apply to waivers. If a builder obtains a waiver or other exemption from Maine law requirements for any element, the certification determination will not constitute evidence of ADA compliance for that element. Finally, certification applies only to the version of the Maine law and interpretations submitted to the Department. Future amendments and interpretations are non-certified until reviewed by the Department. Please ensure that users of the Maine law are made aware of these aspects of certification.

Congratulations on having created the third certified building code in the United States. You have set a fine example

for other jurisdictions to follow and your efforts will make a lasting difference in the lives of individuals with disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Isabelle Katz Pinzler". The signature is fluid and cursive, with the first name being the most prominent.

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Lawrence Roffee
Executive Director
U.S. Architectural and Transportation
Barriers Compliance Board



U.S. Department of Justice

Special Counsel for Immigration Related
Unfair Employment Practices

Office of Special Counsel

1425 New York Avenue, N.W., Suite 9000
P.O. Box 27728
Washington, D.C. 20038-7728

(202) 616-5594
1-800-255-7688

AGREEMENT

between

MAINE HUMAN RIGHTS COMMISSION

and

**UNITED STATES DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED
UNFAIR EMPLOYMENT PRACTICES**

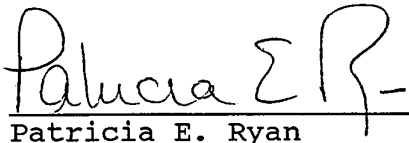
The **Maine Human Rights Commission** is charged with the enforcement of the provisions of the **Maine Human Rights Act** which prohibits discrimination in employment on the basis of national origin, ancestry, race, color, sex, physical and mental disability, religion, age, worker's compensation retaliation, or whistleblower's retaliation. The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 (as amended) which prohibit discrimination in employment on the basis of national origin or citizenship status, or in the form of "document abuse." The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The **Maine Human Rights Commission** and OSC hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency referring the charge will advise the charging party that an opportunity exists to file a complaint with the other agency and will forward a copy of the charge to the other agency as soon as possible.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort. It is understood that neither agency will divulge information under this Agreement in violation of applicable laws.

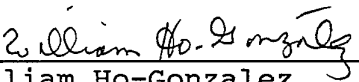
Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.



Patricia E. Ryan
Executive Director
Maine Human Rights Commission

5-16-94

Date



William Ho-Gonzalez
Special Counsel for Immigration
Related Unfair Employment Practices
Civil Rights Division
U.S. Department of Justice

5-9-94

Date