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October 29, 2001

Senator Anne M. Rand, Senate Chair
Representative Charles C. LaVerdiere, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta ME 04333

MAINE=
HUMAN
RIGHTS
COMMISSION

51 STATE HOUSE STATION
AUGUSTA, ME 04333-0051
www.state.me.us/mhrc

Executive Director
PATRICIA E. RYAN

Commission Counsel
JOHN E. CARNES

RE: Government Evaluation Act Review / Program Evaluation Report

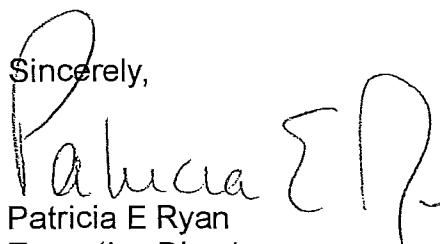
Dear Senator Rand and Representative LaVerdiere:

The Maine Human Rights Commission is pleased to submit its program evaluation report, pursuant to your letter to the Commission of April 30, 2001.

For convenience, we have followed the numbering system of requested items contained in the Program Evaluation report section of the State Government Evaluation Act, 3 M.R.S.A §956(2).

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

Sincerely,


Patricia E Ryan
Executive Director

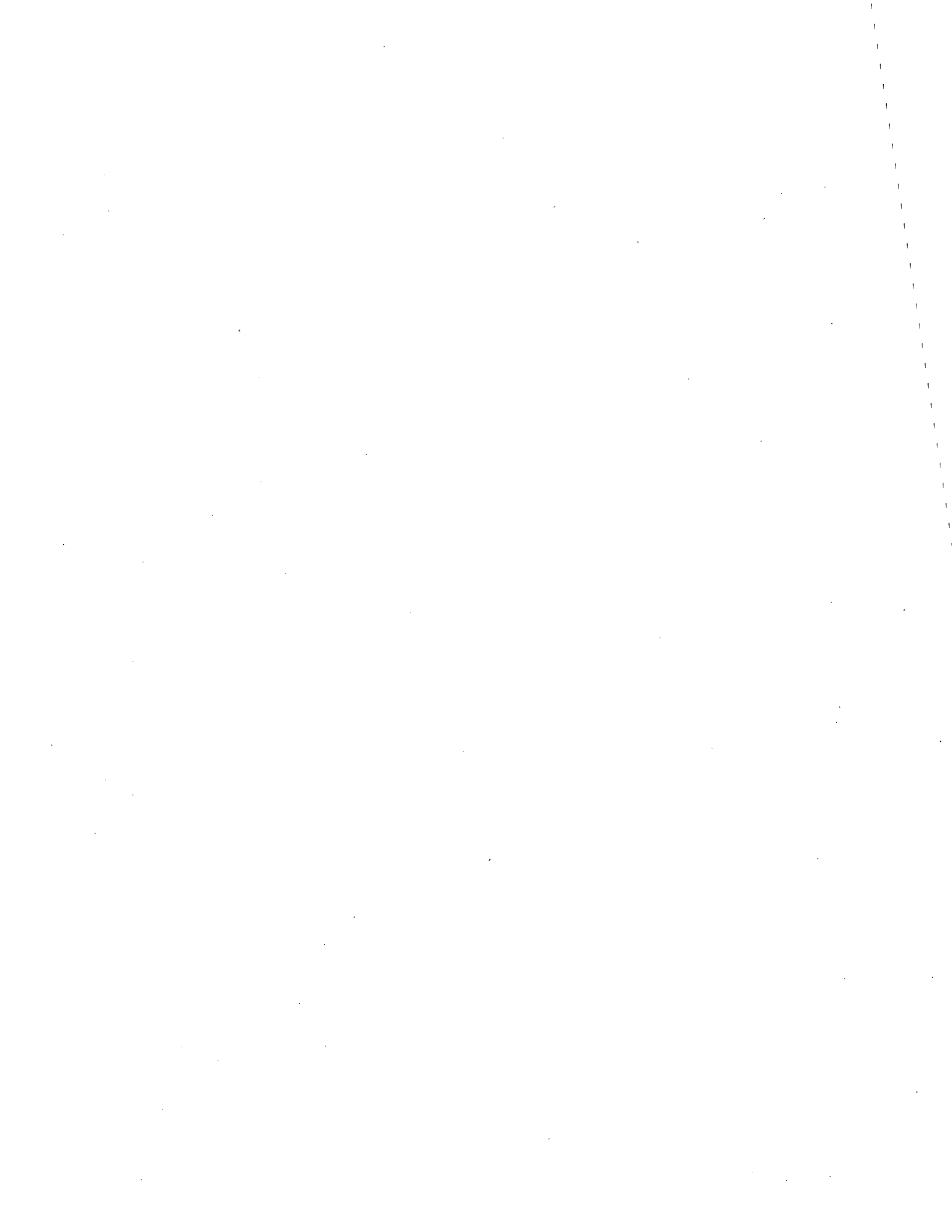
cc: Commissioners

Enc.



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A. ENABLING OR AUTHORIZING LAW

THE MAINE HUMAN RIGHTS ACT

5 M.R.S.A. §4551 et seq.



**HUMAN RIGHTS (HEADING: PL 1971, c. 501, §1 (new); 1971,
c. 622, §19 (amd))**

CHAPTER 337

**HUMAN RIGHTS ACT (HEADING: PL 1971, c. 501, §1 (new);
1971, c. 622, §19 (amd))**

SUBCHAPTER I

**GENERAL PROVISIONS (HEADING: PL 1971, c. 501, §1
(new))**

5 § 4551. Title

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

Section History:
1971, c. 501, § 1 (NEW).

5 § 4552. Policy (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21)

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, 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, marital status, religion, ancestry or national origin; and to prevent discrimination in education on account of sex or physical or mental disability. [1993, c. 327, §1 (amd).]

05 §04552

Policy

(WHOLE SECTION TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21)

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 or physical or mental disability. [1999, c. 629, §1 (amd); §21 (aff).]

Nothing in this chapter confers legislative approval of, or special rights to, any person or group of persons. [1999, c. 629, §1 (new); §21 (aff).]

Section History:
1971, c. 501, § 1 (NEW).

1973, c. 705, § 1 (AMD).
1975, c. 770, § 28 (RPR).
1987, c. 478, § 1 (AMD).
1973, c. 347, § 1 (AMD).
1975, c. 355, § 1 (AMD).
1975, c. 358, § 1 (AMD).
1989, c. 245, § 1 (AMD).
1991, c. 99, § 1 (AMD).
1993, c. 327, § 1 (AMD).
1999, c. 629, § 1 (AMD).
1999, c. 629, § 21 (AFF).

5 § 4553. Definitions (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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

1. Commission. "Commission" means the Maine Human Rights Commission established by this Act.

[1971, c. 501, §1 (new).]

1-A. Commercial facilities. "Commercial facilities" means facilities that are intended for nonresidential use.

[1995, c. 393, §2 (new).]

1-B. Covered entity. For purposes of subchapter III, "covered entity" means an employer, employment agency, labor organization or joint labor-management committee. For purposes of subchapter V, "covered entity" means any applicable private entity or public entity.

[1995, c. 393, §2 (new).]

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

[1995, c. 393, §2 (new).]

2. Discriminate. "Discriminate" includes, without limitation, segregate or separate.

For purposes of subchapter III, "discriminate" also includes, as it relates to individuals with physical or mental disability:

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 disability of the applicant or employee; [1995, c. 393, §3 (new).]

B. Participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability 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; [1995, c. 393, §3 (new).]

C. Utilizing standards, criteria or methods of administration:

(1) That have the effect of discrimination on the basis of disability; or

(2) That perpetuate the discrimination of others who are subject to common administrative control; [1995, c. 393, §3 (new).]

D. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; [1995, c. 393, §3 (new).]

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; [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; [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 with a disability or a class of individuals with disabilities 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 [1995, c. 393, §3 (new).]

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. [1995, c. 393, §3 (new).]

[1995, c. 393, §3 (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.

[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.

[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; 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.

[1995, c. 393, §5 (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.

[1971, c. 501, §1 (new).]

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

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

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

[1989, c. 245, §2 (new).]

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

- A. The rental of a one-family unit of a 2-family dwelling, one unit of which is occupied by the owner; [1971, c. 501, §1 (new).]
- B. The rental of not more than 4 rooms of a one-family dwelling which is occupied by the owner; or [RR 1999, c. 2, §2 (cor).]
- C. 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. [1973, c. 415, §1 (rpr).]

[RR 1999, c. 2, §2 (cor).]

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 shall not be construed to require the mandatory retirement of a member or to deny employment to any person based solely on his normal retirement age.

[1979, c. 350, §1 (new).]

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, and includes the State and all agencies thereof.

[1975, c. 182, §1 (amd).]

7-A. Physical or mental disability. "Physical or mental disability" means any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness, and includes the physical or mental condition of a person that constitutes a substantial disability as determined by a physician or, in the case of mental disability, by a psychiatrist or psychologist, as well as any other health or sensory impairment that requires special education, vocational rehabilitation or related services.

[1991, c. 99, §2 (amd).]

7-B. Person with physical or mental disability. "Person with physical or mental disability" or "individual with a physical or mental disability" means a person who:

- A. Has a physical or mental disability; [1995, c. 393, §6 (new).]
- B. Has a record of a physical or mental disability; or [1995, c. 393, §6 (new).]
- C. Is regarded as having a physical or mental disability. [1995, c. 393, §6 (new).]

[1995, c. 393, §6 (new).]

8. Place of public accommodation. "Place of public accommodation" means a facility, operated by a public 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; [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; [1995, c. 393, §7 (new).]
- C. A motion picture house, theater, concert hall, stadium, roof garden, airdrome or other place of exhibition or entertainment; [1995, c. 393, §7 (new).]
- D. An auditorium, convention center, lecture hall or other place of public gathering; [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; [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; [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; [1995, c. 393, §7 (new).]
- H. A museum, library, gallery or other place of public display or collection; [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; [1995, c. 393, §7 (new).]
- J. A nursery, elementary, secondary, undergraduate or postgraduate school or other place of education; [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; [1995, c. 393, §7 (new).]
- L. Public elevators of buildings occupied by 2 or more tenants or by the owner and one or more tenants; [1995, c. 393, §7 (new).]
- M. A municipal building, courthouse, town hall or other establishment of the State or a local government; and [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. [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.

[1995, c. 393, §7 (rpr).]

8-A. Private entity. "Private entity" means any entity other than a public entity.

[1995, c. 393, §8 (new).]

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

[1995, c. 393, §8 (new).]

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

- A. The State or any local government; [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 [1995, c. 393, §8 (new).]
- C. A state, local or private commuter authority as defined in the federal Rail Passenger Service Act, Section 103 (8). [1995, c. 393, §8 (new).]

[1995, c. 393, §8 (new).]

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

- A. Subchapter III (employment); and [1995, c. 393, §8 (new).]
- B. Subchapter V (public accommodations) with regard to public entities only. [1995, c. 393, §8 (new).]

For purposes of subchapter III, "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 V, "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.

[1995, c. 393, §8 (new).]

9. Real estate broker and salesman. "Real estate broker" and "real estate salesman" have the same definitions as are given respectively in Title 32, section 4001, subsections 2 and 3; but include all persons meeting those definitions, whether or not they are licensed or required to be licensed.

[1971, c. 501, §1 (new).]

9-A. Reasonable accommodation. For purposes of subchapter III, "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 [1995, c. 393, §8 (new).]
- B. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, 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. [1995, c. 393, §8 (new).]

[1995, c. 393, §8 (new).]

9-B. Undue hardship; undue burden. "Undue hardship" or "undue burden" mean 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; [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; [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; [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; [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; [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; [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; [1995, c. 393, §8 (new).]

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

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

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

K. Efforts to minimize costs by spreading costs over time; and [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. [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.

[1995, c. 393, §8 (new).]

9-C. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) Sexual orientation. "Sexual orientation" means having an orientation for heterosexuality, homosexuality or bisexuality, having a history of that orientation or being identified with that orientation. "Sexual orientation" refers to a person's actual or perceived status, condition or gender expression. This chapter is intended to ensure specific defined rights, and not to endorse or extend to any form of sexual behavior, and does not include sexual attraction to a minor by an adult.

[1999, c. 629, §2 (new); §21 (aff).]

9-D. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) Religious entity. "Religious entity" means:

A. A religious corporation, association or society; [1999, c. 629, §3 (new); §21 (aff).]

B. A college, school, university or other educational institution, not otherwise a religious entity, if it is in whole or substantial part funded, controlled, managed or owned by a religious corporation, association or society; or [1999, c. 629, §3 (new); §21 (aff).]

C. A nonprofit organization that is operated for charitable purposes if it is in whole or substantial part funded, controlled, managed or owned by a religious corporation, association or society. [1999, c. 629, §3 (new); §21 (aff).]

[1999, c. 629, §3 (new); §21 (aff).]

10. Unlawful discrimination. "Unlawful discrimination" includes:

A. Unlawful employment discrimination as defined and limited by subchapter III; [1971, c. 501, §1 (new).]

B. Unlawful housing discrimination as defined and limited by subchapter IV; [1971, c. 501, §1 (new).]

C. Unlawful public accommodations discrimination as defined by subchapter V; [1971, c. 501, §1 (new).]

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; [1983, c. 578, §2 (amd).]

E. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) In determining whether any person is acting as an agent or employee of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not controlling; and [1983, c. 578, §2 (amd).]

E. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) In determining whether a person is acting as an agent or employee of another person so as to make the 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; [1999, c. 629, §4 (amd); §21 (aff).]

F. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) Unlawful educational discrimination as defined and limited by subchapter V-B. [1983, c. 578, §2 (new).]

F. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) Unlawful educational discrimination as defined and limited by subchapter V-B; and [1999, c. 629, §5 (amd); §21 (aff).]

G. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) Discrimination in employment, housing, public accommodation and credit as defined in subchapters III, IV, V and V-A, on the basis of sexual orientation, except that a religious entity is exempt from these provisions with respect to discrimination based on sexual orientation. [1999, c. 629, §6 (new); §21 (aff).]

[1999, c. 629, §§4-6 (amd); §21 (aff).]

Section History:

1975, c. 182, § 1 (AMD).

1975, c. 358, § 2 (AMD).

1989, c. 245, § 2 (AMD).

1991, c. 109 (AMD).

1995, c. 393, § 1-8 (AMD).

1999, c. 629, § 21 (AFF):

1971, c. 501, § 1 (NEW).

1973, c. 415, § 1 (AMD).

1979, c. 350, § 1 (AMD).

1983, c. 437, § 1 (AMD).

1983, c. 578, § 1,2 (AMD).

1987, c. 478, § 2 (AMD).

1991, c. 99, § 2 (AMD).

1999, c. 629, § 2-6 (AMD).

1999, RR c. 2, § 2 (COR).

5 § 4554. Construction (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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.

[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; [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 [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. [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.

[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.

[1995, c. 393, §9 (new).]

4. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) Contracts. The exemption provision of section 4553, subsection 10, paragraph G does not prohibit a state agency from including provisions in a contract with any entity, including a religious entity, that may require nondiscrimination on the basis of sexual orientation otherwise consistent with this chapter with respect to and as a condition to continuation of such a contract; nor does this Act require any religious entity to enter into any contract. With respect to a contract with any religious entity, the employment defenses provided in section 4573-A, subsection 2 are applicable to any dispute arising under such a nondiscrimination clause to the extent related to alleged employment discrimination based on sexual orientation.

[1999, c. 629, §7 (new); §21 (aff).]

5. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) Educational policy. This Act does not mandate any public or private educational institution to promote any form of sexuality or sexual orientation or to include such matters in its curriculum.

[1999, c. 629, §7 (new); §21 (aff).]

6. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) Affirmative action. The provisions of this Act relating to sexual orientation are not intended to modify federal or state requirements for affirmative action in effect as of the effective date of this subsection, nor intended to create any new obligations with respect to affirmative action or numerical goals or quotas.

[1999, c. 629, §7 (new); §21 (aff).]

Section History:
1995, c. 393, § 9 (NEW).

1999, c. 629, § 21 (AFF).

1999, c. 629, § 7 (AMD).

5 § 4555. Application

This Act does not apply to the issuance, denial, suspension, revocation or restriction of drivers' licenses by the Secretary of State until April 1, 1996. [1995, c. 393, §10 (new).]

Section History:

1995, c. 393, § 10 (NEW).

SUBCHAPTER II

COMMISSION (HEADING: PL 1971, c. 501, §1 (new))

5 § 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. 989, c. 503, Pt. B, §21 (amd).]

Section History:

1975, c. 771, § 88 (AMD).

1971, c. 501, § 1 (NEW).

1983, c. 812, § 32 (RPR).

1987, c. 709, § 1 (AMD).

1989, c. 503, § B21 (AMD).

5 § 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. [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. [1971, c. 501, § 1 (new).]

Section History:

1971, c. 501, § 1 (NEW).

5 § 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. [1971, c. 501, § 1 (new).]

Section History:

1971, c. 501, § 1 (NEW).

5 § 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. 987, c. 709, §2 (amd).]

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

5 § 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. [1975, c. 771, § 89 (amd).]

Section History:
1971, c. 501, § 1 (NEW).
1975, c. 771, § 89 (AMD).

5 § 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. [1975, c. 182, § 2 (amd).]

To carry out these duties, the commission shall have the power: [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;

[1971, c. 501, § 1 (new).]

2. Meetings. To meet and function at any place within the State;

[1971, c. 501, § 1 (new).]

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;

[1985, c. 785, Pt. B, § 36 (amd).]

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;

[1971, c. 501, § 1 (new).]

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.

[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;

[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;

[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 race or color, sex, 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 shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

[1991, c. 99, §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 II;

[1977, c. 694, § 29 (amd).]

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

[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;

[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 race or color, sex, physical or mental disability, religion, age, ancestry or national origin;

[1991, c. 99, §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 race or color, sex, physical or mental disability, religion, age, ancestry or national origin, or other infringements on human rights or personal dignity; and

[1991, c. 99, §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.

[1971, c. 501, § 1 (new).]

Section History:
1971, c. 501, § 1 (NEW).

1973, c. 347, § 2-4 (AMD).
1975, c. 182, § 2 (AMD).
1975, c. 770, § 29-31 (AMD).
1977, c. 648, § 1 (AMD).
1985, c. 785, § B36 (AMD).
1973, c. 705, § 2-4 (AMD).
1975, c. 355, § 2-4 (AMD).
1975, c. 358, § 3-5 (AMD).
1977, c. 674, § 8 (AMD).
1977, c. 694, § 29 (AMD).
1983, c. 550, § 1 (AMD).
1991, c. 99, § 3-5 (AMD).
1993, c. 303, § 1 (AMD).

5 § 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.

[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.

[1995, c. 393, §11 (new).]

Section History:
1995, c. 393, § 11 (NEW).

SUBCHAPTER III

FAIR EMPLOYMENT (HEADING: PL 1971, c. 501, §1 (new))

5 § 4571. Right to freedom from discrimination in employment (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21)

The opportunity for an individual to secure employment without discrimination because of race, color, sex, physical or mental disability, religion, age, ancestry or national origin is recognized as and declared to be a civil right. [1991, c. 99, §6 (amd).]

05 §04571

Right to freedom from discrimination in
employment

(WHOLE SECTION TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21)

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. [1999, c. 629, §8 (amd); §21 (aff).]

Section History:

1971, c. 501, § 1 (NEW).

1973, c. 705, § 5 (AMD).

1975, c. 355, § 5 (AMD).

1991, c. 99, § 6 (AMD).

1999, c. 629, § 8 (AMD).

1973, c. 347, § 5 (AMD).

1975, c. 358, § 6 (AMD).

1975, c. 770, § 32 (RPR).

1999, c. 629, § 21 (AFF).

5 § 4572. Unlawful employment discrimination (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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

A. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of race or color, sex, 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 V-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, 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 V-B;

(1) This paragraph does not apply to discrimination governed by Title 39-A, section 353; [1991, c. 885, Pt. E, §7 (amd); §47 (aff).]

A. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) 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 V-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 V-B;

(1) This paragraph does not apply to discrimination governed by Title 39-A, section 353; [1999, c. 629, §9 (amd); §21 (aff).]

B. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) 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, 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 V-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, 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 V-B; [1991, c. 885, Pt. E, §7 (amd); §47 (aff).]

B. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) 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 V-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 V-B; [1999, c. 629, §9 (amd); §21 (aff).]

C. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) 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, 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 V-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, 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 V-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; [1991, c. 885, Pt. E, §7 (amd); §47 (aff).]

C. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) 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 V-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 V-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; [1999, c. 629, §9 (amd); §21 (aff).]

D. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) 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, 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 V-B;
- (2) Make or keep a record of race or color, sex, 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 V-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, 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 V-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, 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 V-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, 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 V-B, of that group; or [1995, c. 393, §12 (amd).]

D. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) 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 V-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 V-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 V-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 V-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 V-B, of that group; or [1999, c. 629, §10 (amd); §21 (aff).]

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. [1991, c. 99, §7 (amd).]

[1995, c. 393, §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. [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. [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) Information obtained regarding the medical condition or 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. [1995, c. 393, §13 (new).]

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. [1995, c. 393, §13 (new).]

E. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health 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 condition or history of an employee is subject to the requirements of paragraph C, subparagraphs (2) and (3). [1995, c. 393, §13 (new).]

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. [1995, c. 393, §13 (new).]

[1995, c. 393, §13 (new).]

Section History:

1971, c. 501, § 1 (NEW).
1973, c. 347, § 6 (AMD).
1975, c. 355, § 6 (RPR).
1975, c. 770, § 33 (RPR).
1977, c. 565 (AMD).
1987, c. 55, § 1 (AMD).
1987, c. 559, § B2 (AMD).
1987, c. 782, § 1 (AMD).
1991, c. 885, § E47 (AFF).
1991, c. 885, § E7 (AMD).
1999, c. 629, § 21 (AFF).
1973, c. 705, § 6 (AMD).
1975, c. 358, § 7-10 (AMD).
1989, c. 251, § 1 (AMD).
1991, c. 99, § 7 (AMD).
1995, c. 393, § 12,13 (AMD).
1999, c. 629, § 9,10 (AMD).

5 § 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 which result from pregnancy.

[1979, c. 79 (new).]

2. Pregnant women who are able to work. It shall be 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 woman who is able to work in a different manner from other persons who are able to work.

[1979, c. 79 (new).]

3. Pregnant women who are not able to work. It shall also be 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 woman who is not able to work because of a disability or illness resulting from pregnancy, or from medical conditions which result from pregnancy, in a different manner from other employees who are not able to work because of other disabilities or illnesses.

[1979, c. 79 (new).]

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 woman 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.

[1995, c. 393, §14 (amd).]

5. Small business exception.

[1985, c. 119 (rp).]

Section History:
1979, c. 79 (NEW).

1995, c. 393, § 14 (AMD).

1985, c. 119 (AMD).

5 § 4573. Not unlawful employment discrimination (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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

1. Age. [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; [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. [1995, c. 393, §15 (amd).]

[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 them, 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 of features 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;

[1995, c. 393, §16 (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;

[1995, c. 393, §17 (amd).]

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

[1995, c. 393, §19 (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. [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. [1995, c. 393, §20 (new).]

[1995, c. 393, §20 (new).]

(TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) The provisions of this subchapter relating to sexual orientation do not require or prohibit the provision of employee benefits to an individual for the benefit of that individual's partner. [1999, c. 629, §11 (new); §21 (aff).]

Section History:

1971, c. 501, § 1 (NEW).

1975, c. 355, § 7 (AMD).

1975, c. 770, § 34 (AMD).

1977, c. 580, § 14 (AMD).

1979, c. 350, § 2,3 (AMD).

1991, c. 484, § 3,4 (AMD).

1999, c. 629, § 11 (AMD).

1999, c. 629, § 21 (AFF).

1973, c. 347, § 7 (AMD).

1991, c. 99, § 8-11 (AMD).

1995, c. 393, § 15-20 (AMD).

5 § 4573-A. Defenses (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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 with a disability 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.

[1995, c. 393, §21 (new).]

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.

[1995, c. 511, §1 (new); §3 (aff).]

1-B. Physical or mental disability. This subchapter does not prohibit an employer from discharging or refusing to hire an individual with physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an individual with physical or mental disability, if the individual, because of the physical or mental disability, is unable to perform the duties or to perform the duties in a manner that would not endanger the health or safety of the individual or others or is unable to be at, remain at or go to or from the place where the duties of employment are to be performed.

[1995, c. 511, §1 (new); §3 (aff).]

2. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) 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.

[1995, c. 393, §21 (new).]

2. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) Religious defenses. This subchapter does not prohibit a religious corporation, association, educational institution or society from giving preference in employment to an individual 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.

[1999, c. 629, §12 (amd); §21 (aff).]

Section History:

1995, c. 393, § 21 (NEW).

1995, c. 511, § 3 (AFF).

1995, c. 511, § 1 (AMD).

1999, c. 629, § 12 (AMD).

1999, c. 629, § 21 (AFF).

5 § 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. [1979, c. 350, § 4 (new).]

[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. [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 [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. [1979, c. 350, § 4 (new).]

[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. [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. [1979, c. 350, § 4 (new).]

6. Applicability. This section shall apply to all employers in the State. [1979, c. 350, § 4 (new).]

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

5 § 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. [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. [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. [1985, c. 801, § 3,7 (new).]

Section History:
1985, c. 801, § 3,7 (NEW).

5 § 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. [1989, c. 889, §1 (new).]

Section History:
1989, c. 889, § 1 (NEW).

SUBCHAPTER IV

FAIR HOUSING (HEADING: PL 1971, c. 501, §1 (new))

5 § 4581. Decent housing (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) The opportunity for an individual to secure decent housing in accordance with the individual's ability to pay, and without discrimination because of race, color, sex, physical or mental disability, religion, ancestry, national origin or familial status is hereby recognized as and declared to be a civil right. [1991, c. 99, §12 (amd).]

(TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) The opportunity for an individual to secure decent 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. [1999, c. 629, §13 (amd); §21 (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 subsection regarding familial status apply with respect to housing for older persons.

[1989, c. 245, §3 (new).]

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

A. Provided under any state or federal program that is specifically designed and operated to assist elderly persons as defined in the state or federal program; [1989, c. 245, §3 (new).]

B. Intended for, and solely occupied by, persons 62 years of age or older; or [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. [1997, c. 85, §1 (amd).]

[1997, c. 85, §1 (amd).]

3. Requirements. Housing shall 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, provided that new occupants of the housing shall meet the age requirements of subsection 2, paragraphs B and C; or [1989, c. 245, §3 (new).]

B. Unoccupied units, provided that the units are reserved for occupancy by persons who meet the age requirements of subsection 2, paragraphs B and C. [1989, c. 245, §3 (new).]

[1989, c. 245, §3 (new).]

Section History:

1975, c. 355, § 8 (AMD).

1975, c. 358, § 11 (AMD).

1989, c. 245, § 3 (AMD).

1997, c. 85, § 1 (AMD).

1971, c. 501, § 1 (NEW).

1973, c. 347, § 8 (AMD).

1973, c. 705, § 7 (AMD).

1975, c. 770, § 35 (RPR).

1991, c. 99, § 12 (AMD).

1999, c. 629, § 13 (AMD).

1999, c. 629, § 21 (AFF).

5 § 4582. Unlawful housing discrimination (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

It is unlawful housing discrimination, in violation of this Act: [1991, c. 99, §13 (amd).]

(TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of any prospective purchaser, occupant or tenant of the housing accommodation; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual housing accommodation because of the race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of the individual; or to issue any advertisement relating to the sale, rental or lease of the housing accommodation which indicates any preference, limitation, specification or discrimination based upon race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status; or to discriminate against any individual because of race or color, sex, 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 to evict or attempt to evict any tenant of any housing accommodation because of the race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of the tenant, [1991, c. 99, §14 (amd).]

(TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing

accommodation, or any agent of these to 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; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual housing accommodation because of the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of the individual; or to issue any advertisement relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation, specification or discrimination based upon race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status; or to discriminate against any individual 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 to 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; [1999, c. 629, §14 (amd); §21 (aff).]

(TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) For any real estate broker or real estate sales person, or agent of one of them, to fail or refuse to show any applicant for a housing accommodation any accommodation listed for sale, lease or rental, because of the race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of the applicant or of any intended occupant of the accommodation, or to misrepresent, for the purpose of discriminating because of the race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of the applicant or intended occupant, the availability or asking price of a housing accommodation listed for sale, lease or rental; or for any reason to fail to communicate to the person having the right to sell or lease the housing accommodation any offer for the same made by any applicant; or in any other manner to discriminate against any applicant for housing because of race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of the applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of any applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status, or when the broker knows or has reason to know that the person having the right to sell or lease the housing accommodation has made a practice of discrimination since July 1, 1972; [1991, c. 99, §14 (amd).]

(TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) For any real estate broker or real estate sales person, or agent of one of them, to fail or refuse to show any applicant for a housing accommodation any accommodation listed for sale, lease or rental, because of the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of the applicant or of any intended occupant of the accommodation, or to misrepresent, for the purpose of discriminating because of the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of the applicant or intended occupant, the availability or asking price of a housing accommodation listed for sale, lease or rental; or for any reason to fail to communicate to the person having the right to sell or lease the housing accommodation any offer for the same made by any applicant; or in any other manner to discriminate against any applicant for housing because of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of the applicant or of any intended occupant of the housing accommodation, or to 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 or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status, or when the broker knows or has reason to know that the

person having the right to sell or lease the housing accommodation has made a practice of discrimination since July 1, 1972; [1999, c. 629, §14 (amd); §21 (aff).]

(TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) 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 make or cause to be made any oral or written inquiry concerning the race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of any individual seeking financial assistance, or of existing or prospective occupants or tenants of housing accommodations; or to discriminate in the granting of financial assistance, or in the terms, conditions or privileges relating to the obtaining or use of any financial assistance, against any applicant because of the race or color, sex, physical or mental disability, religion, ancestry, national origin or familial status of the applicant or of the existing or prospective occupants or tenants; [1991, c. 99, §14 (amd).]

(TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) 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 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 individual seeking financial assistance, or of existing or prospective occupants or tenants of housing accommodations; or to discriminate in the granting of financial assistance, or in the terms, conditions or privileges relating to the obtaining or use of any financial assistance, against any applicant because of the race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status of the applicant or of the existing or prospective occupants or tenants; [1999, c. 629, §14 (amd); §21 (aff).]

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; or [1989, c. 245, §4 (amd).]

For any form of public housing or any housing that is financed in whole or in part with public funds offering housing accommodations, containing 20 or more units, constructed on or after January 1, 1984, or begun to be remodeled or enlarged at an estimated total cost of more than \$100,000 after January 1, 1984, to not have at least one unit for each multiple of 20 of those units designed so as to be accessible to and useable by persons with physical disability. Plans to reconstruct, remodel or enlarge an existing building 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. For purposes of this section, a newly constructed housing unit is determined accessible to and useable by persons with physical disability if it meets the requirements of the 1981 standards of construction, Section 4.34, Dwelling Units, adopted pursuant to Title 25, chapter 331. A remodeled, renovated or enlarged housing unit is determined accessible to and useable by persons with physical disability if it meets the requirements of the following 4 parts of the 1981 standards of construction adopted pursuant to Title 25, chapter 331: [1991, c. 99, §16 (amd).]

1. Accessible route. 4.3 accessible route;

[1983, c. 437, §3 (new).]

2. Doors. 4.13 doors;

[1983, c. 437, §3 (new).]

3. Adaptable bathrooms. 4.34.5 adaptable bathrooms; and

[1983, c. 437, §3 (new).]

4. Tactile warnings. 4.29.3 tactile warnings on doors to hazardous areas.

[1983, c. 437, §3 (new).]

With respect to any form of public housing or any housing that is financed in whole or in part with public funds offering housing accommodations containing 20 or more units for which construction is begun after October 1, 1988, no less than 10% of the ground level units and a minimum of 10% of the upper story units connected by an elevator must be accessible to and useable by persons with physical disability. For purposes of this section, a newly constructed housing unit is determined accessible to and useable by persons with physical disability if it meets the requirements of the 1986 standards set forth by the American National Standards Institute in the publication, "Specifications for Making Buildings Accessible to and Useable by Physically Handicapped People," ANSI A 117.1-1986. A remodeled, renovated or enlarged housing unit where the remodeling, renovating or enlarging is begun after October 1, 1988, is determined accessible to and useable by persons with physical disability if it meets the requirements of the following 4 parts of the 1986 American National Standards Institute standards: 4.3 accessible routes; 4.2.3 doors; 4.34.5 adaptable bathrooms; and 4.2.9.3 tactile warnings on doors to hazardous areas. [1991, c. 99, §17 (amd).]

Section History:

1971, c. 501, § 1 (NEW).
1973, b. 705, § 8 (AMD).
1975, c. 355, § 9 (RPR).
1975, c. 358, § 12 (AMD).
1985, c. 638, § 1 (AMD).
1987, c. 730, § 1 (AMD).
1989, c. 245, § 4 (AMD).
1971, c. 622, § 20 (AMD).
1973, c. 347, § 9 (AMD).
1975, c. 151, § 1 (AMD).
1975, c. 770, § 36 (RPR).
1983, c. 437, § 2,3 (AMD).
1991, c. 99, § 13,14,16,17 (AMD).
1999, c. 629, § 14 (AMD).
1999, c. 629, § 21 (AFF).

5 § 4582-A. Unlawful housing discrimination on the basis of disability

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

1. Modifications. For any owner, lessee, sublessee, 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 the person with physical 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; or

[1991, c. 99, §18 (amd).]

2. Accommodations. For any owner, lessee, sublessee, 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 that person equal opportunity to use and enjoy the housing.

[1989, c. 779 (new).]

Section History:

1989, c. 779 (NEW).

1991, c. 99, § 18 (AMD).

5 § 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. [1989, c. 779 (new).]

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

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

[1989, c. 779 (new).]

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

[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. [1989, c. 779 (new).]

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

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

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

[1989, c. 779 (new).]

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

[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 [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. [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.

[1989, c. 779 (new).]

Section History:
1989, c. 779 (NEW).

5 § 4583. Application (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21)

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 which are not based on the race, color, sex, physical or mental disability, religion, country of ancestral origin, familial status or the receipt of public assistance payments of 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 which are not based on the race, color, sex, physical or mental disability, religion, country of ancestral origin, familial status or the receipt of public assistance payments of the applicant for a loan or financial assistance or, of any existing or prospective owner, lessee, tenant or occupant of housing accommodation. [1991, c. 99, §19 (amd).]

05 §04583

Application

(WHOLE SECTION TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21)

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 not based on the race, color, sex, sexual orientation, physical or mental disability, religion, country of ancestral origin, familial status or the receipt of public assistance payments of 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 not based on the race, color, sex, sexual orientation, physical or mental disability, religion, country of ancestral origin, familial status or the receipt of public assistance payments of the applicant for a loan or financial assistance or of any existing or prospective owner, lessee, tenant or occupant of housing accommodation. [1999, c. 629, §15 (amd); §21 (aff).]

Section History:
1971, c. 501, § 1 (NEW).
1973, c. 347, § 10 (AMD).
1975, c. 151, § 2 (AMD).
1975, c. 770, § 37 (RPR).
1999, c. 629, § 15 (AMD).
1999, c. 629, § 21 (AFF).

1973, c. 705, § 9 (AMD).
1975, c. 358, § 13 (AMD).
1989, c. 245, § 5 (AMD).
1991, c. 99, § 19 (AMD).

SUBCHAPTER V

PUBLIC ACCOMMODATIONS (HEADING: PL 1971, c. 501, §1 (new))

5 § 4591. Equal access to public accommodations (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21)

The opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, physical or mental disability, religion, ancestry or national origin is recognized as and declared to be a civil right. [1991, c. 99, §20 (amd).]

05 §04591

Equal access to public accommodations

(WHOLE SECTION TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21)

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. [1999, c. 629, §16 (amd); §21 (aff).]

Section History:

1973, c. 347, § 11 (AMD).
1975, c. 770, § 38 (RPR).
1999, c. 629, § 16 (AMD).
1971, c. 501, § 1 (NEW).
1975, c. 355, § 10 (AMD).
1975, c. 358, § 13-A (AMD).
1991, c. 99, § 20 (AMD).
1999, c. 629, § 21 (AFF).

5 § 4592. Unlawful public accommodations (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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. [1995, c. 511, §2 (new); §3 (aff).]

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

1. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) 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, 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; [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; [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; [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 [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; [1995, c. 393, §22 (new).]

[1995, c. 393, §22 (amd).]

1. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) 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; [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; [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; [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 [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; [1995, c. 393, §22 (new).]

[1999, c. 629, §17 (amd); §21 (aff).]

2. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21)

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, 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, 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, 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;

[1995, c. 393, §22 (amd).]

2. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21)

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;

[1999, c. 629, §17 (amd); §21 (aff).]

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; [1989, c. 301 (new).]
- B. That contains no more than 5 rooms available to be let to lodgers; and [1995, c. 393, §23 (amd).]
- C. In which the owner resides on the premises; [1995, c. 393, §23 (amd).]

[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; [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 [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. [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;

[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;

[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; and

[1995, c. 393, §24 (new).]

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 [1995, c. 393, §24 (new).]

B. That perpetuate the discrimination of others who are subject to common administrative control. [1995, c. 393, §24 (new).]

[1995, c. 393, §24 (new).]

Section History:

1971, c. 501, § 1 (NEW).

1975, c. 355, § 11 (RPR).

1985, c. 638, § 2,3 (AMD).

1995, c. 393, § 22-24 (AMD).

1995, c. 511, § 3 (AFF).

1999, c. 629, § 17 (AMD).

1973, c. 347, § 12 (AMD).

1973, c. 705, § 10 (AMD).

1975, c. 358, § 14 (AMD).

1975, c. 770, § 39 (RPR).

1989, c. 301 (RPR).

1991, c. 99, § 21,22 (AMD).

1995, c. 511, § 2 (AMD).

1999, c. 629, § 21 (AFF).

5 § 4593. Existing facilities

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. [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. [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. [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. [1991, c. 99, §23 (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. [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.

[1995, c. 393, §25 (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 exceeds \$100,000, and the remodeling or enlarging is begun before January 1, 1982, the public accommodation provisions relating to walks, entries, restroom facilities and doors apply.

[1995, c. 393, §25 (amd).]

Section History:

1981, c. 334, § 1,2 (AMD).

1983, c. 437, § 4 (AMD).

1987, c. 390, § 1 (AMD).

1973, c. 705, § 12 (NEW).

1975, c. 355, § 12-14 (AMD).

1977, c. 80, § 1 (AMD).

1991, c. 99, § 23 (AMD).

1995, c. 393, § 25 (AMD).

5 § 4594. Public accommodations and places of employment constructed, remodeled or enlarged after January 1, 1982

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, 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; and [1981, c. 334, § 3 (new).]

B. Any building or facility constructed specifically as a place of employment on or after January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$100,000, and the remodeling or enlarging is begun after January 1, 1982. [1981, c. 334, § 3 (new).]

[1981, c. 334, § 3 (new).]

2. Application. Facilities subject to this section must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, 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; [1981, c. 334, §3 (new).]

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

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

D. 4.29.3 Tactile Warnings on doors to Hazardous Areas; and [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. [1991, c. 99, §24 (amd).]

[1991, c. 99, §24 (amd).]

Section History:

1987, c. 390, § 2,3 (AMD).

1981, c. 334, § 3 (NEW).

1991, c. 99, § 24 (AMD).

5 § 4594-A. Public accommodations constructed, remodeled or enlarged after January 1, 1984

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, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$150,000 and the remodeling or enlarging is begun after January 1, 1984.

[1983, c. 437, § 5 (new).]

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, must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, chapter 331. [1991, c. 99, §25 (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 which are remodeled, enlarged or renovated on or after January 1, 1984, must meet the requirements of the following 4 parts of the 1981 standards of construction adopted pursuant to Title 25, 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. [1991, c. 99, §25 (amd).]

[1991, c. 99, §25 (amd).]

Section History:

1991, c. 99, § 25 (AMD).

1983, c. 437, § 5 (NEW).

1987, c. 390, § 4 (AMD).

5 § 4594-B. Public accommodations constructed, remodeled or enlarged after January 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. [1987, c. 112 (new).]

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

[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, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$150,000 and the remodeling or enlarging is begun after January 1, 1988. [1987, c. 112 (new).]

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

A. Facilities subject to this section constructed on or after January 1, 1988, shall meet the standards of construction. [1987, c. 112 (new).]

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$150,000, shall be 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 which are remodeled, enlarged or renovated on or after January 1, 1988, 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; and
- (4) 4.29.3 tactile warnings on doors to hazardous areas. [1987 c. 402, Pt. B, § 5 (amd).]

[1987, c. 112 (new); c. 402, Pt. B, § 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 [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. [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. [1987, c. 112 (new).]

Section History:
1987, c. 402, § B5 (AMD).
1987, c. 112 (NEW).

5 § 4594-C. Public accommodation constructed, remodeled or enlarged after 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. 987, c. 686, §1 (new).]

B. "Design professional" means an architect or professional engineer registered to practice under Title 32. 987, 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. 987, c. 686, §1 (new).]

987, 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, 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. 987, c. 686, §1 (new).]

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

A. Facilities subject to this section, constructed on or after September 1, 1988, shall 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). 987, c. 686, §1 (new).]

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$100,000, shall be 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 which are remodeled, enlarged or renovated on or after September 1, 1988, 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. 987, c. 686, §1 (new).]

987, c. 686, §1 (new).]

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 987, 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. 987, 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 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. 987, c. 686, §1 (new).]

Section History:
1987, c. 686, § 1 (NEW).

5 § 4594-D. Public accommodations and places of employment constructed, remodeled or enlarged after January 1, 1991

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. [1989, c. 795 (new).]

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

[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, 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.

[1989, c. 795 (new).]

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, must meet the standards of construction. [1989, c. 795 (new).]

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, 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). [1991, c. 99, §26 (amd).]

[1989, c. 99, §26 (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.

[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.

[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.

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

[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.

[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.

[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.

[1993, c. 410, Pt. X, §3 (amd).]

11. Report. The commission shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters by March 1992, regarding the effectiveness of efforts to provide technical assistance and compliance with the standards set forth in this section requiring accessibility by persons subject to this section. The commission shall submit a copy of the report to the Executive Director of the Legislative Council.

[1989, c. 795 (new).]

Section History:

1989, c. 795 (NEW).

1993, c. 349, § 10 (AMD).

1993, c. 410, § X2,3 (AMD).

1993, c. 450, § 1 (AMD).

1991, c. 99, § 26 (AMD).

5 § 4594-E. Waivers for existing buildings (REPEALED)

Section History:

1993, c. 450, § 2 (NEW).

1993, RR c. 2, § 4 (COR).

1995, c. 393, § 26 (RP).

5 § 4594-F. Access to places of public accommodation and commercial facilities; standards

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. 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. [1995, c. 393, §27 (new).]

C. [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. [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. [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. [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. [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. [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. [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. [1995, c. 393, §27 (new).]

[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 or to any alterations of an existing place of public accommodation or place of employment when the alteration is begun after January 1, 1996.

[1995, c. 393, §27 (new).]

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, must meet the standards of construction, including, but not limited to, the 5 parts of construction in paragraph B, subparagraph (2). [1995, c. 393, §27 (new).]

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 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 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. [1995, c. 393, §27 (new).]

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. [1995, c. 393, §27 (new).]

[1995, c. 393, §27 (new).]

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. [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. [1995, c. 393, §27 (new).]

[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.

[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.

[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.

[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. [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. [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. [1995, c. 393, §27 (new).]

[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.

[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.

[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.

[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.

[1995, c. 393, §27 (new).]

Section History:

1995, c. 393, § 27 (NEW).

1997, c. 630, § 1-4 (AMD).

SUBCHAPTER V-A

A FAIR CREDIT EXTENSION (HEADING: PL 1973, c. 668 (new))

5 § 4595. Right to freedom from discrimination solely on the basis of age, race, color, sex, marital status, ancestry, religion or national origin in any credit transaction (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21)

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; marital status; ancestry; religion or national origin is recognized as and declared to be a civil right. [1975, c. 770, §40 (rpr).]

05 §04595

Right to freedom from discrimination solely on the basis of age, race, color, sex, sexual orientation, marital status, ancestry, religion or national origin

in any credit transaction

(WHOLE SECTION TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21)

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. [1999, c. 629, §18 (amd); §21 (aff).]

Section History:
1975, c. 355, § 15 (AMD).
1975, c. 770, § 40 (RPR).
1999, c. 629, § 18 (AMD).
1973, c. 668 (NEW).
1975, c. 370, § 1 (AMD).
1999, c. 629, § 21 (AFF).

5 § 4596. Unlawful credit extension discrimination (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21)

It shall be 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; marital status; ancestry; religion or national origin in any credit transaction. It shall not be 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. [1975, c. 770, §41 (rpt).]

05 §04596

Unlawful credit extension discrimination

(WHOLE SECTION TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21)

It shall be 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. [1999, c. 629, §19 (amd); §21 (aff).]

Section History:
1973, c. 788, § 26 (AMD).
1975, c. 370, § 2 (AMD).
1975, c. 770, § 41 (AMD).
1973, c. 668 (NEW).
1975, c. 355, § 16 (AMD).
1999, c. 629, § 19 (AMD).
1999, c. 629, § 21 (AFF).

5 § 4597. Definitions

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

Section History:
1973, c. 668 (NEW).

5 § 4598. Enforcement

The Superintendent of Banking and the Superintendent of Consumer Credit Protection shall cooperate with the Maine Human Rights Commission in its enforcement of this subchapter. [1995, c. 17, §1 (amd).]

Section History:
1979, c. 541, § A39 (AMD).
1973, c. 668 (NEW).
1975, c. 355, § 17 (AMD).
1995, c. 17, § 1 (AMD).

SUBCHAPTER V-B

EDUCATIONAL OPPORTUNITY (HEADING: PL 1983, c. 578, §3 (new))

5 § 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, a physical or mental disability, national origin or race is recognized and declared to be a civil right. [1991, c. 824, Pt. A, §4 (rpr).]

Section History:

1991, c. 100, § 1 (AMD).

1991, c. 99, § 27 (AMD).

1983, c. 578, § 3 (NEW).

1987, c. 478, § 3 (AMD).

1989, c. 725, § 1 (AMD).

1991, c. 824, § A4 (RPR).

5 § 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; [1985, c. 797, § 1 (amd).]

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

E. Deny financial assistance availability and opportunity. [1983, c. 578, § 3 (new).]

[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; [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; [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 [1987, c. 478, § 4 (new).]

D. Deny financial assistance availability and opportunity. [1987, c. 478, § 4 (new).]

Nothing in this subsection may be construed to cover the rights of exceptional students to special education programs under state or federal law.

[1991, c. 99, §28 (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; [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 [1989, c. 725, §2 (new).]

C. Deny financial assistance availability and opportunity. [1989, c. 725, §2 (new).]

[1991, c. 100, §2 (amd).]

Section History:

1985, c. 797, § 1 (AMD).

1987, c. 478, § 4 (AMD).

1989, c. 725, § 2 (AMD).

1991, c. 99, § 28 (AMD).

1983, c. 578, § 3 (NEW).

1991, c. 100, § 2 (AMD).

5 § 4603. Rulemaking

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

Section History:

1983, c. 578, § 3 (NEW).

1989, c. 700, § A18 (AMD).

5 § 4604. Enforcement

The Commissioner of Education, or a designee, may participate in predetermination resolution and conciliation efforts of the commission as follows:

[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.

[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.

[1989, c. 700, Pt. A, §18 (amd).]

Section History:

1983, c. 578, § 3 (NEW).

1989, c. 700, § A18 (AMD).

SUBCHAPTER VI

COMMISSION ACTION (HEADING: PL 1971, c. 501, §1 (new))

5 § 4611. Complaint

Any person who believes that the person has been subject to unlawful discrimination, or any employee of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination, provided that such complaints must be filed with the commission not more than 6 months after the alleged act of unlawful discrimination. In addition, any person may file a complaint pursuant to section 4632. [1995, c. 393, §28 (amd).]

Section History:
1975, c. 355, § 18 (AMD).
1975, c. 357, § 1 (AMD).
1977, c. 259, § 2 (AMD).
1995, c. 393, § 28 (AMD).
1971, c. 501, § 1 (NEW).
1975, c. 770, § 42 (RPR).

5 § 4612. Procedure on complaints (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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 may not be made public 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. 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. [1993, c. 578, §1 (amd).]

B. The commission or its delegated commissioner or investigator shall conduct such preliminary investigation as it deems 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, shall 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, shall become 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. 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. [1985, c. 585, §1 (new).]

[1993, c. 578, §1 (amd).]

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.

[1971, c. 501, §1 (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. Nothing said or done as part of such endeavors may be made

public 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. 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.

[1985, c. 585, §2 (amd).]

4. Civil action by commission.

A. (TEXT EFFECTIVE UNTIL REFERENDUM: See PL 1999, c. 629, §21) 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, physical or mental disability, religious, 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. [1993, c. 303, §2 (amd).]

A. (TEXT EFFECTIVE UPON REFERENDUM: See PL 1999, c. 629, §21) 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, 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. [1999, c. 629, §20 (amd); §21 (aff).]

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. [1991, c. 99, §30 (amd).]

[1993, c. 303, §2 (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 person accused of discrimination have a right to privacy. Any records of the commission which are open to the public under Title 1, chapter 13, shall 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.

[1983, c. 281, §2 (new).]

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.

[1995, c. 462, Pt. A, §7 (amd).]

Section History:

1973, c. 347, § 13 (AMD).

1973, c. 788, § 28 (AMD).

1981, c. 6 (AMD).

1993, c. 303, § 2 (AMD).

1993, c. 327, § 2 (AMD).

1993, c. 578, § 1 (AMD).

1995, c. 462, § A7 (AMD).

1999, c. 629, § 21 (AFF).

1971, c. 501, § 1 (NEW).

1973, c. 415, § 2 (AMD).

1973, c. 625, § 37 (AMD).

1973, c. 705, § 11 (AMD).

1975, c. 358, § 15 (AMD).

1977, c. 648, § 2 (AMD).

1983, c. 281, § 1,2 (AMD).

1985, c. 585, § 1,2 (AMD).

1991, c. 99, § 29,30 (AMD).

1999, c. 629, § 20 (AMD).

5 § 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.

[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.

[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 assure 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 \$10,000 in the case of the first order under this Act against the respondent, not in excess of \$25,000 in the case of a 2nd order against the respondent arising under the same subchapter of this Act and not in excess of \$50,000 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, 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, \$200,000; 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, \$300,000.

(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 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. [1997, c. 400, §1 (amd).]

C. The action shall be commenced not more than 2 years after the act of unlawful discrimination complained of. [1975, c. 357, §2 (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. [1995, c. 393, §29 (new).]

[1997, c. 400, §1 (amd).]

Section History:

1975, c. 357, § 2 (AMD).

1981, c. 470, § A7 (AMD).

1987, c. 38 (AMD).

1991, c. 474, § 1 (AMD).

1991, c. 474, § 3 (AFF).

1997, c. 400, § 1 (AMD).
1971, c. 501, § 1 (NEW).
1979, c. 541, § A40 (AMD).
1981, c. 255, § 1,2 (AMD).
1989, c. 99 (AMD).
1995, c. 393, § 29 (AMD).

5 § 4614. Attorneys' fees and costs

In any civil action under this Act, the court, in its discretion, may allow the prevailing party, other than the commission, reasonable attorneys' fees and costs, and the commission shall be liable for attorneys' fees and costs the same as a private person. [1981, c. 255, § 3 (new).]

Section History:
1981, c. 255, § 3 (NEW).

SUBCHAPTER VII

**CIVIL ACTIONS BY AGGRIEVED PERSONS (HEADING: PL
1971, c. 501, §1 (new))**

5 § 4621. Civil action

Within the time limited, a person who has been subject to unlawful discrimination may file a civil action in the Superior Court against the person or persons who committed the unlawful discrimination. [1979, c. 541, Pt. A, § 41 (amd).]

Section History:
1979, c. 541, § A41 (AMD).
1971, c. 501, § 1 (NEW).

5 § 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; [1993, c. 327, §3 (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; or [1993, c. 327, §3 (amd).]
- C. Issued a right-to-sue letter under section 4612, subsection 6 and the action was brought by the aggrieved person not more than 2 years after the act of unlawful discrimination of which the complaint was made as provided in section 4613, subsection 2, paragraph C. [1993, c. 327, §4 (new).]

This subsection does not apply to or limit any remedies for civil actions filed under subchapter V if one or more additional causes of action are alleged in the same civil action that do not require exhaustion of administrative remedies.

[1997, c. 400, §2 (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.

[1981, c. 255, §4 (new).]

Section History:

1971, c. 501, § 1 (NEW).

1973, c. 347, § 14 (AMD).

1993, c. 327, § 3,4 (AMD).

1997, c. 400, § 2 (AMD).

1981, c. 255, § 4 (RPR).

1995, c. 393, § 30 (AMD).

5 § 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. [1971, c. 501, § 1 (new).]

Section History:

1971, c. 501, § 1 (NEW).

SUBCHAPTER VIII

MISCELLANEOUS (HEADING: PL 1971, c. 501, §1 (new))

5 § 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. [1971, c. 501, § 1 (new).]

Section History:

1971, c. 501, § 1 (NEW).

5 § 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. [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. [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. [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. [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. [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. [1977, c. 259, § 3 (new).]
- B. Any such action shall be brought in the name of the commission. [1977, c. 259, § 3 (new).]
- C. Any person aggrieved by the alleged offensive name may intervene in such an action. [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. [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. [1977, c. 259, § 3 (new).]

[1977, c. 259, § 3 (new).]

Section History:
1977, c. 259, § 3 (NEW).

5 § 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.

[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.

[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.

[1993, c. 303, § 3 (new).]

Section History:
1993, c. 303, § 3 (NEW).

5 § 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.



B. PROGRAM DESCRIPTION

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PROGRAM DESCRIPTION

PROGRAM: Maine Human Rights Commission – Regulation

Approp./Alloc: 01094H015001, 01394H015001, 01494H015001, 01494H015002

MISSION: To ensure equality of opportunity for all citizens by vigorously enforcing laws prohibiting discrimination in employment, housing, education, public accommodations and credit.

GOAL: To ensure that all citizens in the State of Maine have a right to equal opportunity in employment, housing, education, public accommodations and credit.

OBJECTIVE: To resolve complaints of discrimination to the mutual satisfaction of those who are involved.

STRATEGY: Administer a statewide program consisting of mediation, investigation, conciliation, litigation, training and education for the purpose of enforcing the Maine Human Rights Act.

DESCRIPTION OF PROGRAM ACTIVITIES: Provides a process of reviewing/investigating charges of unlawful discrimination; resolves complaints by informal methods of persuasion, conciliation, and negotiations prior to a determination of whether or not reasonable grounds exist to believe discrimination occurred; pursues court remedy when alternative solutions fail; provides speakers, and educational materials to teach Maine's citizens about provisions/remedies under the Maine Human Rights Act.

PERFORMANCE MEASURES	BASELINE	FY 2000	FY 2001
# OF COMPLAINTS RESOLVED AS A TOTAL OF CHARGES ACTIVE IN ONE YEAR	825	723	771
% OF CASES RESOLVED ADMINISTRATIVELY IN PLACE OF COURT ACTION	92%	99.8%	99.4%
% OF CASES COMPLETED WITHIN 270 DAYS OF FILING	57.6%	55.6%	48.3%
% REDUCTION OF THE PENDING INVENTORY OF CASES	18.5%	1%	<6.9%>

INTERNAL/EXTERNAL ASSESSMENT – PRIORITY POLICY ISSUES:

The number and complexity of complaints received is not controlled by the agency and more staff time and agency resources are needed to resolve them.

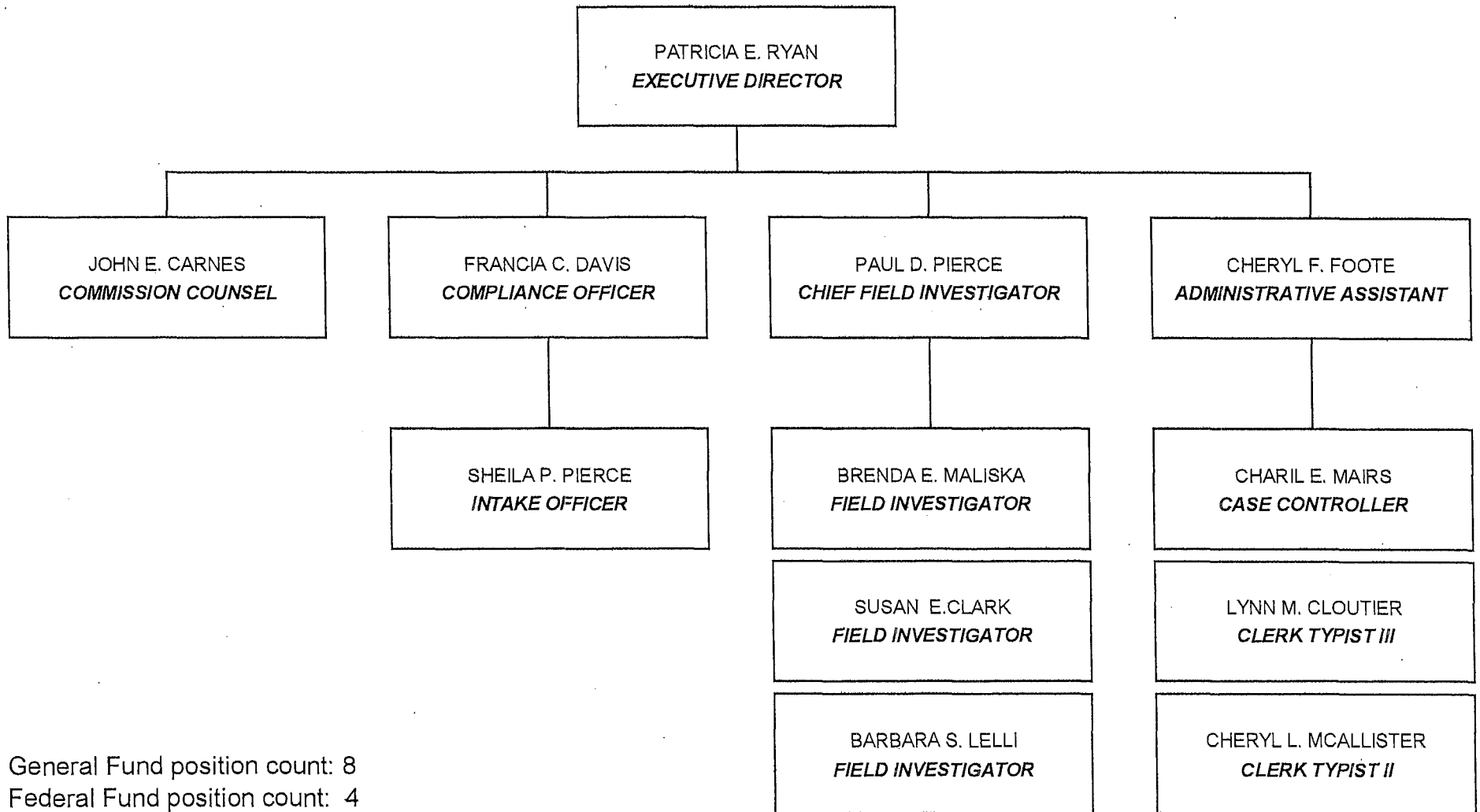
- Resources available to resolve complaints do not meet needs and expectations of stakeholders.
- There are fewer complaints being resolved without full investigation and/or litigation.

- There is greater frustration internally and externally because of longer processing times.

See Exhibit A for further analysis. (2/12/01 memo to Commissioners from Executive Director, entitled 'Case Processing Time').

C. ORGANIZATIONAL CHART

MAINE HUMAN RIGHTS COMMISSION ORGANIZATIONAL CHART



General Fund position count: 8

Federal Fund position count: 4

D. COMPLIANCE WITH

- **FEDERAL AND STATE HEALTH AND SAFETY LAWS**
- **THE AMERICANS WITH DISABILITIES ACT**
- **OCCUPATIONAL HEALTH & SAFETY ACT**
- **AFFIRMATIVE ACTION REQUIREMENTS**
- **WORKER'S COMPENSATION**

The Maine Human Rights Commission complies with all state and federal mandates regarding health and safety, including the Occupational Health & Safety Act and Worker's Compensation Statutes. The Commission's Administrative Aide Cheryl Foote, is responsible for agency reporting in these areas.

The Maine Human Rights Commission strongly supports the federal Americans with Disabilities Act, and enforces the employment and public accommodation provisions of that statute for the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice, respectively. (See Section G for further discussion.)

The Commission strongly supports affirmative action requirements, and attaches its Affirmative Action Plan as Exhibit B.

E. FINANCIAL SUMMARY

**MAINE HUMAN RIGHTS COMMISSION
EXPENDITURES 1992 - 2001**

FISCAL YEAR	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
General Funds - Personal Services	363,684	349,233	321,995	349,757	362,702	372,967	370,913	379,584	391,372	419,618
General Funds - All Other	27,830	35,269	36,110	36,013	36,544	38,993	64,697	45,117	46,185	47,784
TOTAL GENERAL FUNDS	391,514	384,502	358,105	385,770	399,246	411,960	435,610	424,701	437,557	467,402
Federal Funds - Personal Services	147,009	145,746	127,493	139,007	151,860	154,455	171,140	176,197	180,281	198,128
Federal Funds - All Other	7,960	27,820	24,908	31,377	33,308	33,680	66,860	36,474	42,344	34,374
TOTAL FEDERAL FUNDS	154,969	173,566	152,401	170,384	185,168	188,135	238,000	212,671	222,625	232,502
Special Revenues - All Other	4	0	867	1,076	1,182	985	34,228	2,131	1,352	42
TOTAL SPECIAL REVENUES	4	0	867	1,076	1,182	985	34,228	2,131	1,352	42
TOTAL ANNUAL EXPENDITURES	546,487	558,068	511,373	557,230	585,596	601,080	707,838	639,503	661,534	699,946

**F. REGULATORY AGENDA
AND
SUMMARY OF RULES ADOPTED**

MAINE HUMAN RIGHTS COMMISSION

SUMMARY OF RULE ADOPTIONS AND AMENDMENTS (Fiscal Years 1997 – 2001)

Chapter 2: Procedural Rule

Action: Repealed & Replaced – July 17, 1999

Summary: These amendments were adopted to provide a process for amending complaints of discrimination. They added requirements for giving notice to parties of emergency Commission meetings and fact-finding conferences. Also, a requirement for keeping a written record of witness interviews was added.

Chapter 3: Employment Regulations of the Maine Human Rights Commission

Action: Repealed & Replaced – July 17, 1999

Summary: These amendments changed the word “handicap” to “disability” to reflect current statutory language. The amendments also clarified the potential liability of employers for harassment of employees by supervisors, following recent U. S. Supreme Court interpretation of analogous federal law.

Chapter 4: Equal Educational Opportunity

Action: Repealed & Replaced: September 19, 2000

Summary: This amendment eliminated the requirement of filing an affirmative action plan to establish single sex teams. The rule was adopted jointly by the Maine Human Rights Commission and Department of Education.

Chapter 7: Accessibility Regulations of the Maine Human Rights Commission

Action: New rule - effective July 6, 1997

Summary: This regulation specifies the Maine Human Rights Commission’s interpretation of the provisions of the Maine Human Rights Act related to accessibility of public accommodations and commercial facilities designed and constructed or altered after January 1, 1996. This regulation reflects amendments to the Maine Human Rights Act to equate its provisions with the federal Americans With Disabilities Act.

Chapter 8: Housing Regulations of the Maine Human Rights Commission

Action: New rule - effective July 17, 1999

Summary: These regulations were adopted to inform the citizens of the State of Maine of the Maine Human Rights Commission’s interpretation of the provisions of the Maine Human Rights Act related to housing.

Chapter 9: Housing Procedural Rule

Action: New rule - effective July 17, 1999

Summary: This rule established procedures for processing charges of unlawful housing discrimination.

2000-2001 REGULATORY AGENDA

August 10, 2000

removed

AGENCY UMBRELLA-UNIT-NUMBER: 94-348

AGENCY NAME: Maine Human Rights Commission

CONTACT PERSON: John E. Carnes, Esq., 51 State House Station, Augusta, ME 04333-0051

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

EXPECTED 2000-2001 RULE-MAKING ACTIVITY:

CHAPTER 2: Procedural Rule

STATUTORY AUTHORITY: 5 M.R.S.A., §4566(7)

PURPOSE: To provide confidentiality for medical records contained in the investigative files of the Commission.

ANTICIPATED SCHEDULE: January 2001

AFFECTED PARTIES: All parties (complainants, respondents, attorneys and/or other representatives), members of the public and the press.

1999 – 2000 REGULATORY AGENDA

September 7, 1999

AGENCY UMBRELLA-UNIT NUMBER: 94-348

AGENCY NAME: Maine Human Rights Commission

CONTACT PERSON: John E. Carnes, Commission Counsel
51 State House Station
Augusta, ME 04333-0051
Tel: (207) 624-6050

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

EXPECTED 1999 – 2000 RULE-MAKING ACTIVITY: None

1998 Regulatory Agenda
AMENDED July 18, 1998

AGENCY UMBRELLA - UNIT NUMBER: 94-348
AGENCY NAME: Maine Human Rights Commission
CONTACT PERSON: John E. Carnes, Commission Counsel
51 State House Station
Augusta, ME 04333-0051
Tel: (207) 624-6050

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

EXPECTED 1998-99 RULE-MAKING ACTIVITY:

CHAPTER 8: Housing Regulations of the Maine Human Rights Commission
STATUTORY AUTHORITY: 5 M.R.S.A. §4566(7)
PURPOSE: To effectuate the housing discrimination provisions of the Maine Human Rights Act.

ANTICIPATED SCHEDULE: January 1999

AFFECTED PARTIES: Owners, buyers, renters of housing accommodations, real estate agencies and lending institutions.

CHAPTER 9: Housing Procedural Rule

STATUTORY AUTHORITY: 5 M.R.S.A. §4566(7)

PURPOSE: To establish procedures for processing charges of unlawful housing discrimination.

ANTICIPATED SCHEDULE: January 1999

AFFECTED PARTIES: Owners, buyers, renters of housing accommodations, real estate agencies and lending institutions.

CHAPTER 2: Procedural Rule

STATUTORY AUTHORITY: 5 M.R.S.A. §4566(7)

PURPOSE: Amends current procedure for processing emergency investigations.

ANTICIPATED SCHEDULE: January 1999

AFFECTED PARTIES: All parties (complainants, respondents, attorneys and/or other representatives) associated with a charge of unlawful discrimination that must be handled under the Commission's emergency procedures.

Maine Administrative Procedure Act
1997 Regulatory Agenda

94-348

Maine Human Rights Commission
John E. Carnes, Commission Counsel
51 State House Station
Augusta, ME 04333-0051
(207) 624-6050

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA: None

CHAPTER 8: Housing Regulations of the Maine Human Rights Commission

STATUTORY AUTHORITY: 5 M.R.S.A. §4566(7)

PURPOSE: To effectuate the housing discrimination provisions of the Maine Human Rights Act.

SCHEDULE FOR ADOPTION: January 1998

AFFECTED PARTIES: Owners, buyers, renters of housing accommodations, real estate agencies and lending institutions.

**G. COORDINATION WITH FEDERAL AND STATE AGENCIES
TO ACHIEVE PROGRAM OBJECTIVES AND
AVOID DUPLICATION OF EFFORT**

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

MAINE HUMAN RIGHTS COMMISSION'S FEDERAL PARTNERS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The Maine Human Rights Commission and the Equal Employment Opportunity Commission have enjoyed a partnership since 1975, and operate together under a Worksharing Agreement which is revised and updated annually. The Agreement delineates how charges that are jurisdictional under both state and federal laws administered by each agency are processed and reviewed. Generally, the Agreement insures that there is not duplication of effort in enforcing civil rights statutes, and the findings of each agency are given 'substantial weight.'

The EEOC is the federal agency which enforces the principal federal statutes prohibiting employment discrimination.

(See attached Exhibit C)

DEPARTMENT OF JUSTICE/CIVIL RIGHTS DIVISION/DISABILITY RIGHTS SECTION

In December 1997, The U. S. Department of Justice certified that the Maine Human Rights Act, as implemented by the Accessibility Regulations, was compatible with the federal requirements under the new construction and alterations provisions of Title III of the Americans with Disabilities Act. Title III of the ADA requires newly built public accommodations and commercial facilities, including those that are altered, to be built in accordance with the ADA's Standards for Accessible Design. To better coordinate the ADA construction requirements with established state and local building inspection procedures, the Justice Department may certify that a building code is equivalent to the ADA requirements.

Maine was only the third state in the country to have a certified building code. Certification means that if builders of covered buildings in Maine meet the requirements of the Maine Human Rights Act and Regulations, they will have a rebuttable presumption in any subsequent legal proceeding for evidence of ADA compliance because of this certification.

(See attached Exhibit D)

DEPARTMENT OF JUSTICE/CIVIL RIGHTS DIVISION/OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED UNFAIR EMPLOYMENT PRACTICES

The office of Special Counsel for Immigration (OSC) is charged with 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 MHRC and the OSC entered into a Worksharing Agreement in 1994 to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

(See attached Exhibit E)

DEPARTMENT OF LABOR/OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

The Maine Human Rights Commission entered into its most recent partnership through an agreement signed by both the Commission and the United States Department of Labor, Occupational Safety and Health Administration (OSHA) in 2000. The purpose of this agreement is to coordinate investigations arising from the same fact situations from the Commission's investigation of charges under the Maine Whistleblower's Protection Act and OSHA's investigation of charges under the federal discrimination and/or whistleblower statutes it enforces to the greatest extent practicable. The agencies have agreed to share information with each other to minimize duplication of effort while maintaining confidentiality provisions applicable to each agency.

(See attached Exhibit E)

The Maine Human Rights Commission has also established cooperative working relationships with state agencies referenced in the Maine Human Rights Act, and required to share enforcement of the following specific provisions.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT/OFFICE OF FAIR HOUSING

In April 1999, HUD made a preliminary determination that the Maine Human Rights Act was substantially equivalent to the federal Fair Housing Act, so long as the law was clarified to make clear that there was no limitation on a court from awarding actual damages to the prevailing party in a housing discrimination case whether or not the plaintiff, prior to filing a civil action, first filed a complaint with the Commission. [A similar provision is currently included in the Maine Human Rights Act with regard to public accommodation cases to satisfy a concern of equivalency with the ADA and Justice Department.] The Judiciary Committee did not support this amendment to the Act, and the Commission and HUD continue to each investigate charges of housing discrimination separately.

Superintendent of Banking and the Superintendent of Consumer Credit Protection

Statutory requirement to cooperate with the Maine Human Rights Commission in enforcing the provisions of the Maine Human Rights Act relating

to Fair Credit Extension (Sub-chapter 5-A). Inquiries are referred from that office to the Commission.

Department of Education

Statutory requirement of participation in the investigation of complaints filed against educational institutions in enforcing the provisions of the Maine Human Rights Act relating to Educational Opportunity (Sub-chapter 5-B).

- Commission and Department jointly promulgate Rules (substantive and procedural (1984 and ongoing))
- Commissioner notified of complaints and given two week opportunity to take any action
- Commissioner notified of results of investigations
- Commissioner invited to participate in conciliation efforts

Statutory requirement to cooperate with the Commission of Education to promote gender equity in the hiring of public school administrators [§4576].

Office of the State Fire Marshal

Mandatory plan review and approval for meeting access standards developed by the Maine Human Rights Commission to enforce provisions of the Maine Human Rights Act. Since 1991, the Office and the Commission have worked together to enforce access provisions of the statute. Office of the State Fire Marshal also performs voluntary plan review on buildings not subject to mandatory review [§4594-D et seq].

**H. IDENTIFICATION OF CONSTITUENCIES
SERVED BY THE
MAINE HUMAN RIGHTS COMMISSION**

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Following is a listing of constituencies identified by the Maine Human Rights Commission, along with a summary of bases covered by the Maine Human Rights Act, from the passage of the Act in 1972 to the present, 2001, denoting years when amendments were made which changed the constituent base.

1. ADVOCACY GROUPS
2. ATTORNEYS
3. BANKS AND LENDING INSTITUTIONS
4. CIVIC GROUPS
5. CONSUMERS
6. CREDIT UNIONS
7. EDUCATORS
8. ELDER ORGANIZATIONS
9. EMPLOYEES
10. EMPLOYER ORGANIZATIONS
11. EMPLOYERS
12. EMPLOYMENT APPLICANTS
13. ETHNIC ORGANIZATIONS
14. HOUSING CONSUMERS
15. LABOR ORGANIZATIONS
16. LANDLORD ASSOCIATIONS
17. PEOPLE WITH DISABILITIES
18. PUBLIC ACCOMMODATIONS
19. REALTORS
20. SOCIAL SERVICE AGENCIES
21. STUDENTS
22. WOMEN'S GROUPS

EMPLOYMENT

RACE
 COLOR
 RELIGION
 ANCESTRY
 NATIONAL ORIGIN
 AGE
 RETALIATION

 SEX (73)
 PREGNANCY (79)
 DELETE 25 E'EES (85)

 PHYSICAL DISAB. (74)

 MENTAL DISAB. (75)

 WORKER'S COMP (87)

 WHISTLE-BLOWER'S (88)

 GENETIC PREDIS. (98)

 BREASTFEED. MOTHERS (01)

HOUSING

RACE
 COLOR
 RELIGION
 ANCESTRY
 NATIONAL ORIGIN

 RETALIATION

 SEX (73)

 PHYSICAL DISAB. (74)

 MENTAL DISAB. (75)

 SOURCE OF INCOME (75)

 FAMILIAL STATUS (81)
 DELETE 25% ADULT ONLY EXEMPTION (88)

ACCOMMOD.

RACE
 COLOR
 RELIGION
 ANCESTRY
 NATIONAL ORIGIN

 RETALIATION

 SEX (73)

 PHYSICAL DISAB. (74)

 MENTAL DISAB. (75)

 CHILDREN (86)

CREDIT

RACE
 COLOR
 RELIGION
 ANCESTRY
 NATIONAL ORIGIN
 AGE
 RETALIATION

 SEX (73)

 MARITAL STATUS (73)

EDUCATION

SEX (83)
 PHYSICAL DISAB. (87)
 MENTAL DISAB. (87)
 NATIONAL ORIGIN (90)
 RACE (91)

I. USE OF ALTERNATIVE DELIVERY SYSTEMS

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Since 1992, when the Commission's resources were reduced dramatically, the Commission has attempted various programs utilizing outside assistance, to help with the processing and resolution of cases filed with it.

We have utilized three major approaches:

- Volunteer mediators
- Law school and college interns
- Contract investigations

Volunteer Mediators

By far the most extensive efforts have gone toward utilizing outside mediation services to assist the Commission with the resolution of cases filed with it. Three major initiatives have been undertaken beginning in 1994.

1. Volunteer Project I: In 1994 the Commission utilized the services of 50 volunteer lawyers and mediators throughout the State who agreed to help the Commission explore resolution of some of our pending cases. Each of the attorneys had practiced before the Commission and was knowledgeable about discrimination law. Each of the mediators was certified. Each agreed to mediate one case referred to them over a six month period of time. Training on Commission process, the law, and remedies was provided by the Commission

The project was coordinated by one of the Commission's Investigators. Although the evaluations of the project were successful, and persons who participated agreed that it was a useful attempt, there was a fairly low successful resolution rate, and the Investigator/Administrator worked full time for over four months – in lieu of investigative duties.

2. Volunteer Project, Phase II: This project utilized many of the individuals previously used in Phase I during the Fall of 1995 and winter of 1996. This project was coordinated by a full time volunteer. Newer cases were referred to mediation. A report was prepared, and it is attached as Exhibit G. Again, the participants felt that regardless of the outcome mediation was a good approach. Having a full time administrator removed that burden from existing Commission staff.
2. Summer and Specific Period Mediation Projects: During the summers of 1996, 1998, and 1999, and during the fall/winter of 1998-99, the Commission utilized the services of interns to administer mediation projects, utilizing volunteer mediators from the Kennebec Dispute Resolution Project, now Community Mediation Services. Two law school interns and two college interns interested in mediation provided liaison services, enabling the Commission to refer cases to mediation.

Because of each project's short duration, the successful resolution rate was not high. Satisfaction with the process was again, however, unanimously supportive.

Law School and College Interns

As noted above, law school and college interns were invaluable to the Commission in administering the mediation projects referenced.

In addition, the Commission utilized law school interns during the winter of 1999 to assist the Commission in the drafting of major substantive and procedural housing rules to correspond to existing federal rules in these areas.

Contract Investigations

The Commission has utilized the services of contractors to conduct investigations twice: in 1994 and in 1996.

Both projects utilized the services of former human rights investigators, thoroughly familiar with investigations of cases pending at the Human Rights Commission. At each time, federal monies that became available were used to fund these projects.

The Commission currently does not have funds to contract for these investigations.

J. IDENTIFICATION OF EMERGING ISSUES

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The Commission notes the following areas in its discussion of emerging issues:

Sexual Orientation

While not a new issue, the inclusion of protection in the Maine Human Rights Act for persons discriminated against because of sexual orientation is of continuing concern to the Commission, and remains an area that the Commission follows closely. Maine is alone in New England with no statutory prohibition against discrimination in this area.

Genetic Predisposition

In 1998, the Maine Legislature amended the Maine Human Rights Act to prohibit discrimination on the basis of genetic predisposition. Maine was one of the first states to outlaw the use of genetic tests as a term or condition of employment. The amendment underlines the basic premise of the Maine Human Rights Act that one should be judged on their current ability to perform a job and not on the possibility that they might, at some time in the future, develop a disease or condition. No complaints have been filed on this basis to date, but the issue is gaining momentum nationwide, as well as on the federal level, and the Commission views this area as an emerging one.

Individual Supervisor Liability

In the first regular session, the Legislature considered amending the Maine Human Rights Act to make clear that supervisors could not be held liable as individuals under the Act for discrimination. This followed a Maine Supreme Court decision and withdrawal of that opinion in 2000. The Judiciary Committee issued three reports, and the Legislature ultimately voted all ought not to pass. The Act remains as it did prior to this consideration.

The Commission was concerned that more time was needed for consideration of this issue, and warned of unintended consequences. The Commission continues to accept complaints against supervisors as individuals. [see further analysis as Exhibit H]

National Origin Discrimination

The recent events related to the bombing of the World Trade Center, along with a growing number of origin-related complaints nationwide, causes the Commission

to consider this area of our jurisdiction as one to anticipate. As the immigrant population continues to rise, there is an on-going balance with regard to language barriers, and requirements of some federal statutes to specific entities regarding accommodations that must be made. Harassment continues to be of concern to the Commission in this area.

Confidentiality of Medical Records

During the investigation of a charge of disability discrimination, the Maine Human Rights Commission may need to obtain medical records from either the Complainant or from his or her health care provider, or from the Respondent employer or educational institution. The Commission has ongoing concerns regarding the availability of such records in its files, once a case file becomes a matter of public record. Significant, ongoing discussions have been held in the last six months, and the Commission anticipates that refinement of a policy, including possible regulation and/or legislation may be necessary.

Binding Arbitration Clauses

An increasing number of employers are requiring as a condition of employment that applicants and employees give up their right to pursue employment discrimination claims in court, and through administrative agencies, and agree to resolve disputes through binding arbitration. The Equal Employment Opportunity Commission has taken the position that agreements that mandate binding arbitration of discrimination claims as a condition of employment are contrary to the fundamental principles in these laws, and therefore inconsistent with civil rights laws. The Maine Human Rights Commission has adopted that reasoning. EEOC has begun to review its position, and the Maine Human Rights Commission will be addressing this area in the upcoming near future.

Whistleblower's Coverage

The Whistleblower's Protection Act has been interpreted by the Law Court to protect only those employees who refuse to carry out a directive that would result in serious injury or death, not those who refuse to carry out a directive to break the law in situations not involving death or serious injury. Commissioners are continually concerned about this limitation and consider legislation as a remedy.

**K. SPECIFIC INFORMATION REQUESTED BY THE
JOINT STANDING COMMITTEE ON JUDICIARY**

RETALIATION COMPLAINTS

RETALIATION PROVISIONS OF THE MAINE HUMAN RIGHTS ACT

During the confirmation hearing for Commissioner James Varner on October 16, 2001, the Committee asked the Commission for information regarding the retaliation provisions of the Maine Human Rights Act, and specifically how many complaints had been filed by individuals who alleged that they had been discriminated against for filing a charge of discrimination with the Commission.

The Maine Human Rights Act has several provisions regarding prohibitions against retaliation, and coercion and intimidation.

The Maine Human Rights Act, 5 M.R.S.A. §4553(10), provides:

“Unlawful discrimination’ includes: (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.”

5 M.R.S.A. §4572(1)(E), provides:

“It is unlawful employment discrimination, in violation of this Act 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.”

5 M.R.S.A. §4633(2), provides:

“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.”

The Commission takes complaints of retaliation very seriously. In order for civil rights statutes to have any force or meaning a citizen must be free to file a charge of discrimination without fear of reprisal, recrimination, or attempts to punish, embarrass or hold the Complainant up to an unfavorable light.

A computer search was done of cases closed between 1/01/98 and 9/30/01 to identify complaints of retaliation filed by individuals who asserted that they had had actions taken against them because they had filed prior charges of discrimination with the Maine Human Rights Commission, or had participated in investigations of cases by the Maine Human Rights Commission.

Following is a summary of the findings:

Total cases closed 1/01/98 to 9/30/01	2886
Total retaliation cases filed on basis of filing prior discrimination charges	30

Issues identified in retaliation charges

- Discharge 8
- Discipline 1
- Harassment 4
- Hiring 1
- Layoff 1
- Medical leave 1
- Other 4
- Reasonable accom 2
- Recall 2
- Reference unfavor 1
- Terms of employm 4
- Wages 1

Disposition of closed retaliation charges

- Adm. Dismissal 1
- Right to sue request 3
- Reasonable grounds 5
- No reasonable grounds 16
- Withdrawal 2
- Withdrawal w/ settle 3

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**L. COMPARISON OF ENABLING OR AUTHORIZING LAW OR OTHER
RELEVANT MANDATE, INCLUDING ANY FEDERAL MANDATES.**

Maine Human Rights Act, 5 M.R.S.A. §4551 et. seq.

MHRC Regulations: Chapter 3, Employment Regulations;
Chapter 4, Education;
Chapter 5, Public Accommodations/Public Conveyances
Disability Regulations;
Chapter 6, Accessibility Requirements to January 1, 1996;
Chapter 7, Accessibility Regulation since Jan 1, 1996;
Chapter 8, Housing Regulations.

The Maine Human Rights Act is generally consistent with corresponding federal law and regulation:

Statutes –

The U. S. Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e (1964)

The Fair Housing Amendments Act, as amended, 42 U.S.C. §3601 et seq. (1988)

The Americans With Disabilities Act, as amended, 42 U.S.C. §12101, et seq.

Title IX of the Education Amendments of 1972, 20 U.S.C. §1681

Regulations – EEOC

Sex Discrimination Guidelines, 29 C FR1604

Religious Discrimination Guidelines, 29 CFR 1605

National Origin Discrimination Guidelines, 29 CFR 1606

Uniform Guidelines on Employee Selection, 29 CFR 1607

Rules on Handicap Bias, 29 CFR 1615

Interpretations of the Equal Pay Act, 29 CFR 1620

Interpretations of the Age Discrimination in Employment Act, 29 CFR 1625

Americans With Disabilities Act Employment Regulations, 29CFR 1630

HUD:

Fair Housing Rules, 24 CFR Part 14, et al

Education Regulations, Title IX:

45 CFR, Subtitle A, Part 106

M. EXHIBITS

Exhibits

- A Case Processing Time memo
- B Affirmative Action Plan
- C Worksharing Agreement with the U.S. Equal Employment Opportunity Commission
- D Notice of Certification by U.S. Department of Justice, Civil Rights Division, Disability Rights Section
- E Worksharing Agreement with the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices
- F Partnership Agreement between the Maine Human Rights Commission and the U.S. Department of Labor, Occupational Safety & Health Administration
- G Mediation Project Report
- H Individual Supervisor Liability Charge Analysis
- I Maine Human Rights Commission Annual Report for Fiscal Year 2001

MAINE HUMAN RIGHTS COMMISSION

MEMORANDUM

To: Commissioners
From: Patricia E. Ryan, Executive Director
Date: February 12, 2001
Subj: CASE PROCESSING TIME

At the last Commission meeting, Commissioner Millick asked us to look at the average time for processing a case over the last several years to see whether there had been any changes or trends.

We have collected data, which is represented on the attached chart. We selected the years 1990, 1995, and 1998, 1999, and 2000.

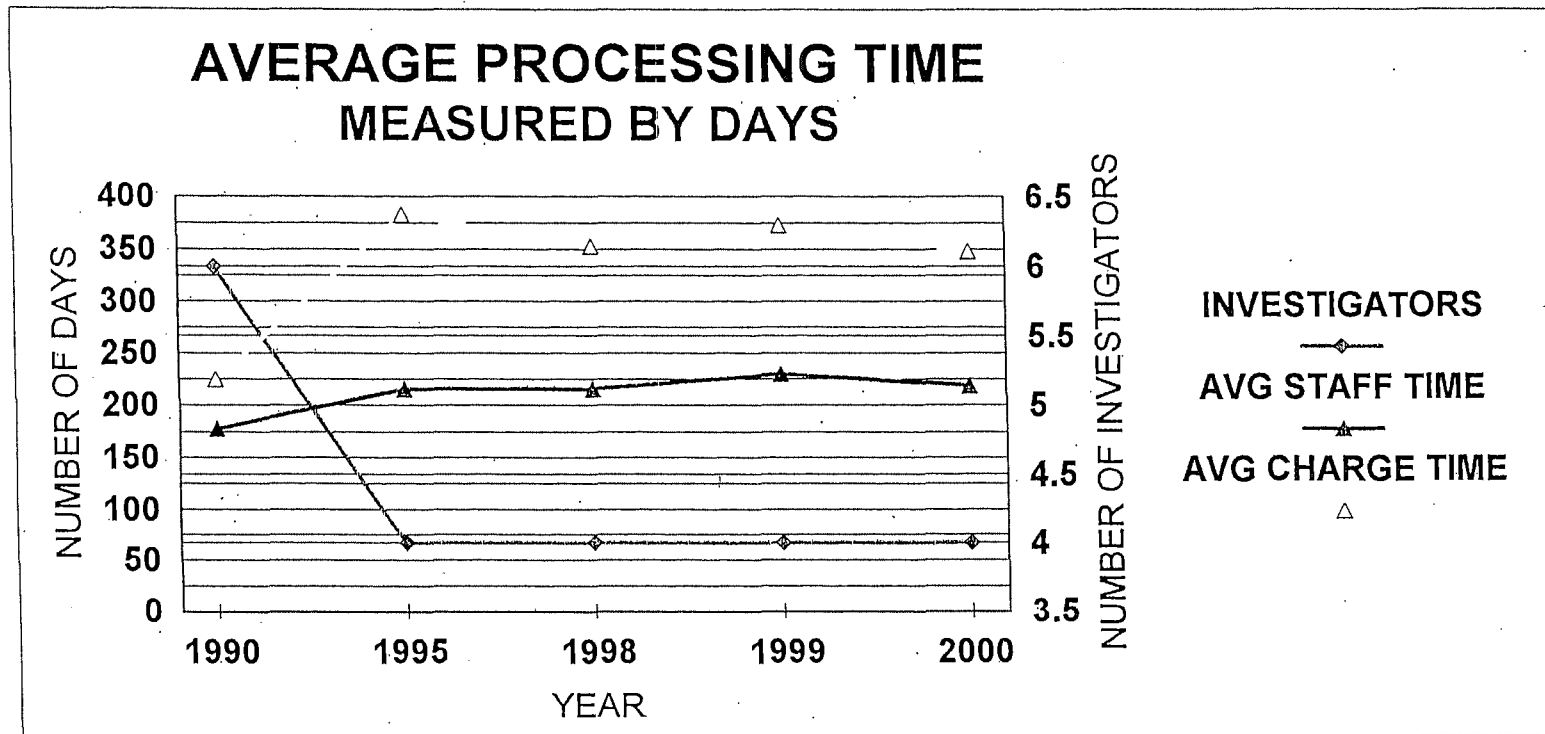
From 1990 to 1995, the average charge processing time jumped from 225 days to 383 days, and then remained somewhat constant (between 348 and 383) from 1995 to the present. In 1990, the Commission had 6 Investigators; in 1992 that number was reduced to 4, which remains current now. During the early 90s, there was also a significant increase in the number of charges filed. The result has been a higher pending inventory, and a longer average processing time.

You will note that the "average staff time" has remained fairly constant from 1990 to present. That is the time that a charge is actually assigned to a specific investigator. We limit the caseload for investigators at 130 open cases at any one time; the rest remain pending assignment until someone can take them.

The conclusion I draw is that Investigators can complete an investigation in about 211 days once they are assigned cases, even with an enormous caseload. The inventory of open, unassigned cases increases the total average processing time to 336 days, or an increase of 125 days per charge.

AVERAGE PROCESSING TIME

YEAR	1990	1995	1998	1999	2000
CHARGES CLOSED	619	856	746	825	723
INVESTIGATORS	6	4	4	4	4
AVG STAFF TIME	178	216	216	230	219
AVG CHARGE TIME	225	383	353	373	348



MAINE HUMAN RIGHTS COMMISSION

EQUAL EMPLOYMENT OPPORTUNITY /

AFFIRMATIVE ACTION PLAN

Updated 03-01-00

MAINE HUMAN RIGHTS COMMISSION

POLICY STATEMENT AGAINST SEXUAL HARASSMENT

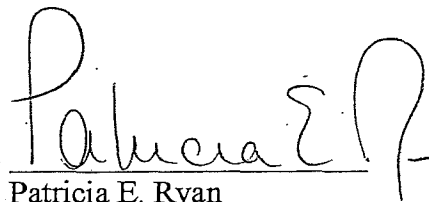
Employees of the Maine Human Rights Commission are entitled to work in an environment free of discrimination and intimidation, whether it is based on sex, race, color, religion, national origin, age, or disability, or sexual orientation. Sexual harassment destroys this environment. It undermines the integrity of the employment relationship, destroys morale, interferes with productivity and adversely affects the careers of employees. When it affects employment decisions or creates an offensive working environment, it is a violation of the Maine Human Rights Act and Title VII of the Civil Rights Act of 1964.

Sexual harassment may be defined as unwelcome, unsolicited, and deliberate behavior having a definite sexual component or content. Each employee should learn to recognize this form of discriminatory behavior and to distinguish it from purely social relationships which do not adversely affect the working environment.

Sexual harassment is unacceptable conduct and will not be condoned or tolerated by this agency. It is considered grounds for disciplinary action up to and including dismissal. Each one of us is personally responsible for compliance with this policy.

As a matter of State policy, any behavior of a sexual nature in the workplace is considered unprofessional regardless of whether it constitutes illegal sexual harassment. Public service demands of each of us the highest standards of honesty, impartiality, and conduct in the performance of our duties. Therefore, managers and supervisors are expected to plan an active role in the prevention and elimination of inappropriate, unprofessional workplace behavior of a sexual nature. Corrective action is required regardless of whether a formal complaint is made.

Francia Davis, the agency's EEO officer, is responsible for handling complaints and providing technical assistance to staff regarding these issues. Any employee may contact her directly to discuss this issue, with or without filing a formal complaint.



Patricia E. Ryan
Executive Director

March 1, 2000

MAINE HUMAN RIGHTS COMMISSION

EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION POLICY STATEMENT

The Maine Human Rights Commission's Affirmative Action Plan has been designed to continue to assure all employees of the agency equal employment opportunity regardless of race, color, sex, sexual orientation, age, religion, national origin, ancestry, and physical or mental disability. The Commission was created in 1972 to enforce the Maine Human Rights Act (5 M.R.S.A. §4551, et seq.). The Maine Human Rights Act prohibits discrimination in employment, housing, access to public accommodations, education and credit extension.

The Commission has and will keep continually in review all practices infringing on the basic human right to a life with dignity so that corrective measures may be promptly recommended and implemented. It is, therefore, mandatory that the agency responsible for the enforcement of the State anti-discrimination statute be a model of exemplary personnel practices. There should be no stronger commitment to affirmative action than within the agency that is responsible for ensuring compliance with the State's anti-discrimination laws.

The Maine Human Rights Commission will follow both the spirit and the letter of the law as it continues to pursue a policy of non-discrimination in all employment actions, practices, procedures, and conditions of employment.

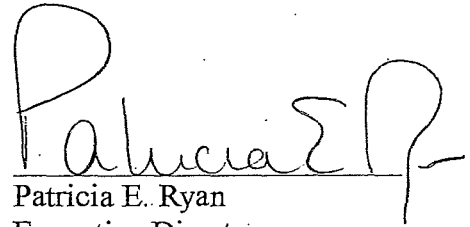
- ◆ Recruitment, testing, selection, and promotion will be administered without regard to discrimination. Further, personnel actions and conditions of employment, such as compensation, benefits, layoffs, job assignments, employee development opportunities and discipline will be administered with the same absence of bias.
- ◆ Employment decisions will be based on the principles of equal employment opportunity and affirmative action.
- ◆ Reasonable accommodations will be made for any otherwise qualified individual, applicant or employee, in accordance with the provisions of the Maine Human Rights Act and the Americans with Disabilities Act.
- ◆ All employees are responsible for awareness of and response to potential discriminatory situations. No manager or supervisor may act, or allow any employees to act, in a retaliatory or harassing manner toward any employee who has been involved in the filing, investigation, or resolution of a discrimination claim.

- ◆ The Commission will attempt to address and resolve employee complaints regarding discrimination and harassment as expeditiously as possible.

I have assigned responsibility for the implementation, monitoring, and record keeping of the equal employment opportunity/affirmative action programs to Francia Davis, the Commission's EEO Officer.

Laurel Shippee, the State EEO Coordinator in the Bureau of Human Resources is also available as a resource to any employee or supervisor. She may be reached at 287-4425.

This policy statement is a reaffirmation of this agency's recognition of its accountability to the State as well as to itself for ensuring fair and equal treatment to all persons.

A handwritten signature in black ink, appearing to read "Patricia E. Ryan". The signature is written in a cursive style with a large initial "P" and a long, sweeping tail.

Patricia E. Ryan
Executive Director

March 1, 2000

INTRODUCTION

The Maine Human Rights Commission's mission is to ensure that every person in the State have a right to equal opportunity in employment, housing, education, access to public accommodations, and credit. Affirmative action programs are incorporated into this equal employment opportunity/affirmative action plan.

The foundation for Equal Employment Opportunity Policy and Affirmative Action is derived from State and Federal laws and regulations as well as a moral and professional commitment. The legal mandates include: Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; the Rehabilitation Act of 1973; the Age Discrimination in Employment Act of 1967; the Equal Pay Act; the Americans with Disabilities Act; the Maine Human Rights Act (5 M.R.S.A., Ch.337); the State Personnel Law (5 M.R.S.A., Ch.51, Sect. 553 – Non-discrimination) and the Code of Fair Practices and Affirmative Action (5 M.R.S.A., Ch.65).

The Maine Human Rights Commission is firmly committed to the principles of equal employment opportunity and affirmative action. As a public agency, the Commission is an instrument of the taxpayers of Maine and has an obligation to provide fair and effective service to the public. This service requires insuring all individuals the right to work and advance based on merit, ability, and potential, free from unlawful discrimination.

RESPONSIBILITY FOR PLAN

EXECUTIVE DIRECTOR

The Executive Director of the Maine Human Rights Commission has overall responsibility for the agency's compliance with equal employment opportunity policy and provides support and direction in the implementation of the Affirmative Action Plan. She is responsible for assuring that all employees are meeting their responsibilities and for setting a tone of cooperation and support for Affirmative Action.

The Executive Director has appointed Francina Davis as the Agency's EEO Officer. Ms. Davis has overall responsibility for insuring that the agency implements its Plan. The EEO Officer has direct access to the Executive Director. Her duties include, but are not limited to the following:

- ◆ Develops and implements audit/reporting systems which will measure the effectiveness of the agency's EEO/AA efforts and provide for early identification of problem areas.

- ◆ Develops, implements and monitors an EEO/AA training plan to insure that employees of the agency received the necessary training for compliance with law and policy.
- ◆ Advises the Executive Director of problem areas and recommends corrective action.
- ◆ Serves as a liaison between the Commission and federal enforcement agencies, as well as advocacy organizations and community groups.
- ◆ Provides technical assistance to management and staff in EEO/AA matters.
- ◆ Reviews selection/promotion criteria to assure job-relatedness.
- ◆ Periodically monitors selection process to assure compliance, especially in areas of underutilization.
- ◆ Investigates employees' complaints alleging discrimination; makes recommendations for resolution.
- ◆ Monitors compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
- ◆ Makes all employees aware of existence of Plan and provides copies for all employees to review.

PERSONNEL OFFICER

The Commission's Personnel Officer is responsible for ensuring that personnel actions are administered fairly and in accordance with state and federal EEO laws and departmental EEO/AA policy. Duties include:

- ◆ Assures that staff responsible for hiring in underutilized job groups are informed of such underutilization and specific affirmative action goals.
- ◆ Requires written justification of hiring decisions based on job-related criteria when requested by EEO Officer.
- ◆ Assures that records of personnel actions such as selection procedures are maintained for a period of two years.
- ◆ Advises the EEO Officer of potential problems in EEO/AA areas.

POLICY DISSEMINATION

The Commission will provide for internal and external communication of its EEO/AA policy. Through this dissemination, the Commission becomes publicly accountable for the successful implementation of this Plan.

Internal Dissemination

The Executive Director will formally announce this affirmation of equal employment opportunity and affirmative action and distribute copies of the Affirmative Action Plan to all employees.

Action Date: Within one month of signing of the plan
Responsible Party: Patricia E. Ryan, Executive Director

Briefings will be held for all employees regarding EEO/AA principles and practices, with particular emphasis on accountability for assuring a workplace free from discrimination.

Action Date: Within two months of signing of plan, and ongoing
Responsible Party: EEO Officer

External Dissemination

The labor organizations representing Department employees will be provided with a copy of the Equal Employment Opportunity/Affirmative Action Plan.

Action Date: Within one month of signing of plan
Responsible Party: Personnel Officer

Copies of the Plan will be sent to the Equal Employment Opportunity Commission, Maine State Library, and Bureau of Human Resources.

Action Date: Within one month of signing of plan
Responsible Party: EEO Officer

Advertisements for job vacancies will continue to include the following phrase (or comparable): "An Equal Opportunity/Affirmative Action Employer."

Action Plan: Ongoing
Responsible Party: EEO Officer/Personnel Officer

The Commission will continue to incorporate an equal opportunity clause, as required by the Code of Fair Practices and Affirmative Action, in all purchase orders, contracts, leases, and other legal documents as appropriate.

Action Date: Ongoing
Responsible Party: Personnel Officer

Recruitment sources will be sent a letter informing them of the updated plan and offering to provide copies upon request.

Action Date: Within one month of signing of plan
Responsible Party: EEO Officer/Personnel Officer

UTILIZATION ANALYSIS
SECTION 1

- ◆ Workforce Analysis by Job Class Title
- ◆ Workforce Analysis by Salary Grade
- ◆ Workforce Analysis by EEO Category (see Appendix for codes)
- ◆ Comparison of Current Workforce to Civilian Labor Force

October 1999 EEO Planning Document Human Rights

M.H.R.C.
MAR 09 2000
RECEIVED

Current Workforce Oct 1999

	PERCENT		PERCENT		PERCENT		TOTAL
	MALE	MALE	FEMALE	FEMALE	MINORITY	MINORITY	
Crafts	0	0.00%	0	0.00%	0	0.00%	0
Office and Clerical	0	0.00%	1	100.00%	1	100.00%	1
Officials and Managers	1	50.00%	1	50.00%	1	50.00%	2
Paraprofessionals	0	0.00%	2	100.00%	0	0.00%	2
Professionals	0	0.00%	6	100.00%	0	0.00%	6
Protective Service Workers	0	0.00%	0	0.00%	0	0.00%	0
Service and Maintenance	0	0.00%	0	0.00%	0	0.00%	0
Technicians	0	0.00%	0	0.00%	0	0.00%	0
	1	9.09%	10	90.91%	2	18.18%	11

Civilian Labor Force Availability

	PERCENT		PERCENT		PERCENT		TOTAL
	MALE	MALE	FEMALE	FEMALE	MINORITY	MINORITY	
Crafts	75,411	90.50%	7,916	9.50%	1,220	1.46%	83,327
Office and Clerical	18,176	20.95%	68,596	79.05%	1,236	1.42%	86,772
Officials and Managers	35,098	55.60%	28,023	44.40%	926	1.47%	63,121
Paraprofessionals	18,176	20.95%	68,596	79.05%	1,236	1.42%	86,772
Professionals	35,031	43.47%	45,564	56.53%	1,329	1.65%	80,595
Protective Service Workers	7,248	88.29%	961	11.71%	194	2.36%	8,209
Service and Maintenance	21,801	76.15%	6,829	23.85%	594	2.07%	28,630
Technicians	9,232	48.17%	9,932	51.83%	370	1.93%	19,164
	220,173	48.22%	236,417	51.78%	7,105	1.56%	456,590

Current Utilization %

	PERCENT		PERCENT		PERCENT	
	MALE	MALE	FEMALE	FEMALE	MINORITY	MINORITY
Crafts	-90.50%		-9.50%		-1.46%	
Office and Clerical	-20.95%		20.95%		98.58%	
Officials and Managers	-5.60%		5.60%		48.53%	
Paraprofessionals	-20.95%		20.95%		-1.42%	
Professionals	-43.47%		43.47%		-1.65%	
Protective Service Workers	-88.29%		-11.71%		-2.36%	
Service and Maintenance	-76.15%		-23.85%		-2.07%	
Technicians	-48.17%		-51.83%		-1.93%	
	-39.13%		39.13%		16.63%	

EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION

PROGRAM GOALS & OBJECTIVES

Affirmative action refers to specific, results-oriented action by an employer to promote and achieve equal employment opportunity. Such action exceeds the parameters of a policy of non-discrimination, because it is designed and utilized to eliminate the present effects of historic discrimination and stereotypical employment patterns. A successful program requires a good faith effort to identify and remove artificial employment barriers and take appropriate remedial action to ensure equal employment opportunity.

Following an analysis of the workplace environment and employment procedures, relevant program goals and objectives have been established to assure non-discrimination in the workplace and to appropriately use affirmative action principles.

RECRUITMENT

Outreach and recruitment to women, minorities and people with disabilities is an integral part of any Affirmative Action program.

GOAL/OBJECTIVE

Contact recruitment sources for minorities, women and people with disabilities each time a position is available for referrals of candidates to the Bureau of Human Resources.

RESPONSIBILITY

Personnel Officer

TIMETABLE

Immediate and ongoing.

GOAL: AMERICANS WITH DISABILITIES ACT

ANALYSIS

Under the Americans with Disabilities Act, the Commission has an obligation to re-evaluate its employment processes on an ongoing basis to ensure that these do not adversely affect persons with disabilities by limiting, segregating, or classifying applicants or employees. The Bureau of Human Resources administers a Supported Employment Special Appointment Program that allows rehabilitation clients with severe disabilities to by-pass normal testing procedures when appropriate job matches can be made.

GOALS/OBJECTIVES

1. As vacancies occur, or as reasonable accommodations are requested:
 - a) review job descriptions to ensure that requirements reflect current functions actually performed on the job and that selection criteria is job validated;
 - b) distinguish between the essential and the marginal functions of the job.
2. Provide information regarding disabilities laws to Commission staff, as necessary and appropriate, relative to respective responsibilities.

RESPONSIBILITY

Personnel Officer
EEO Coordinator

TIMETABLE

Immediate and ongoing.

Please note that the fully signed copy of the FY 2002 Worksharing Agreement Extension has been lost in the tragedy of the World Trade Center bombings on September 11th. The EEOC offices at 7 World Trade Center were destroyed, along with files in their possession.

Through agreement, we continue to abide by the principles of Worksharing Agreements entered into in prior years, and will, in the near future, attempt to secure a newly signed copy.

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FY 1999 WORKSHARING AGREEMENT

WORKSHARING AGREEMENT
BETWEEN

STATE OF MAINE HUMAN RIGHTS COMMISSION

and

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FOR FISCAL YEAR 1999

I. INTRODUCTION

A. The State of Maine Human Rights Commission, hereinafter referred to as the FEPA, has jurisdiction over allegations of employment discrimination filed against employers of (1) or more employees occurring within the State of Maine based on race, color, religion or creed, sex, physical and mental handicaps, national origin, and age pursuant to Title 5, Part 10, Chapter 317.

The Equal Employment Opportunity Commission, hereinafter referred to as 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). EEOC has jurisdiction to investigate and determine charges of discrimination based on age (40 or older) under the Age Discrimination in Employment Act (ADEA) of 1967, as amended (29 U.S.C. § 621 et. seq.), for unequal wages based on sex under the Equal Pay Act of 1963 (29 U.S.C. § 206), and over allegations of employment discrimination based on disability pursuant to Title I of the Americans with Disabilities Act of 1991, (42 U.S.C. § 12101).

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 State 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. EEOC's receipt of charges on the FEPA's behalf will automatically initiate the proceedings of both EEOC and the FEPA for the purposes of Section 706 [©] and (e) (1) of Title VII, including ADEA, EPA and ADA. 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.
- B. The FEPA shall take all charges alleging a violation of Title VII, ADEA, EPA, or the ADA where both the FEPA and EEOC have mutual jurisdiction, or where EEOC only has jurisdiction, so long as the allegations meet the minimum requirement 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 with the other Agency and or assist any person alleging employment discrimination to draft a charge in a manner which will satisfy the requirements of both agencies to the extent of their common jurisdiction.

Once an agency begins an investigation, it resolves the charge. Charges may only be transferred between the EEOC and Maine Human Rights Commission, if the Charging Party provide written and compelling reasons for such a

transfer. EEOC will approve or disapprove such a transfer. 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.

Charges that are received by the Maine Human Rights Commission whether in person or by mail and jurisdictional with the EEOC and timely filed by the Charging Party or his/her representative will be automatically dual filed with the EEOC. The date of receipt will be the date of filing.

- 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 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, unless the applicable state statute requires such disclosures.
- E. Within ten calendar days of receipt, each Agency agrees that it will notify both the Charging Party and 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 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 © 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 dual-filed charges between the FEPA and the EEOC will be divided as follows:

- A. EEOC and the FEPA will process all Title VII, ADA,

and ADEA charges that they originally received.

In addition, the EEOC will initially process the following charges:

- 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 EEOC by the Department of Justice, Office of Federal Contract Compliance Programs, or Federal fund-granting agencies under 29 CFR § 1640, 1641, and 1691.
 - Any charge where EEOC is a party to a Conciliation Agreement or a Consent Decree which, 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 which have features relevant to the disposition of subsequent charges;
 - Any charge alleging retaliation for filing a charge with EEOC or for cooperating with EEOC; and
 - All charges against Respondent which 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 which, 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 which have features relevant to the disposition of subsequent charges;

-- All charges which allege more than one basis of discrimination where at least one basis is not covered by the laws administered by EEOC but is covered by the FEPA Ordinance, or where EEOC is mandated by federal court decision or by internal administrative EEOC policy to dismiss the charge, but FEPA can process that charge;

-- All charges against Respondents which are designated for initial processing by FEPA in a supplementary memorandum to this Agreement; and

-- All disability-based charges against Respondents over which 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. Such variations shall not be inconsistent with the objectives of this Worksharing Agreement of 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 5 working days.

IV. EXCHANGE OF INFORMATION

- A. Both the FEPA and EEOC shall make available for inspection and copying to appropriate officials from the other Agency any information which 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 EEOC, the FEPA agrees to observe the confidentiality provisions of Title VII, ADEA, EPA and ADA.

- B. In order to expedite the resolution of charges or facilitate the working of this Agreement, either Agency may request or permit personnel of the other Agency to accompany or to observe its personnel when processing a charge.

V. RESOLUTION OF CHARGES

- A. Both agencies will adhere to the procedures set out in EEOC's Order 916, Substantial Weight Review Manual, and the State and Local Handbook as revised.
- B. For the purpose of according substantial weight to the FEPA final finding and order, the FEPA must submit to the EEOC copies of all documents pertinent to substantial weight review; the evaluation will be designed to determine whether the following items have been addressed in a manner sufficient to satisfy EEOC requirements; including, but not limited to:
 - 1. jurisdictional requirements,
 - 2. investigation and resolution of all relevant issues alleging personal harm with appropriate documentation and using proper theory,

3. relief, if appropriate,
 4. mechanisms for monitoring and enforcing compliance with all terms of conciliation agreements, orders after public hearing or consent orders to which the FEPA is a party.
- C. In order to be eligible for contract credit and/or payment, submissions must meet all the substantive and administrative requirements as stipulated in the 1995 Contracting Principles.
- D. For the purposes of determining eligibility for contract payment, a final action is defined as the point after which the Charging Party has no administrative recourse, appeal, or other avenue of redress available under applicable State and Local statutes.

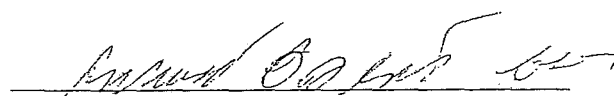
VI. IMPLEMENTATION OF THE WORKSHARING AGREEMENT

- A. Each agency will designate a person as liaison official for the other agency to contact concerning the day-to-day implementation for the Agreement. The liaison for the FEPA will be Patricia Ryan, Director. The liaison official for the EEOC will be Joseph Alvarado, State & Local Program Manager.
- B. The agencies will monitor the allocation of charge-processing responsibilities as set forth in the Agreement. Where it appears that the overall projection appears inappropriate, the appropriate portions of this Agreement will be modified to ensure full utilization of the investigation and resolution capacities of the FEPA and rapid redress for allegations of unlawful employment discrimination.

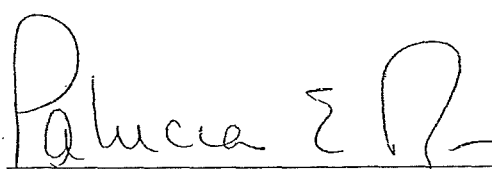
- C. EEOC will provide original forms to be copied by the FEPA, in accordance with the Regulations and the Compliance Manual to be used by the FEPAs in correspondence with Charging Parties and Respondents.
- D. If a dispute regarding the implementation or application of this agreement cannot be resolved 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 Program Operations for resolution.
- E. This Agreement shall operate from the first (1st) day of October 1998 the thirtieth (30th) day of September 1998 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 9/28/98


Spencer H. Lewis Jr.
District Director
Equal Employment Opportunity
Commission
New York District Office

Date 9-14-98


Patricia Ryan, Executive Director
Maine Human Rights Commission

GOAL: REASONABLE ACCOMMODATIONS

ANALYSIS

The Commission is committed to providing reasonable accommodations to qualified applicants and employees with disabilities in accordance with state and federal law. It is imperative that each request for accommodation be considered on a case-by-case basis.

GOALS/OBJECTIVES

The State of Maine Policy and Procedure for Processing Requests from Employees and Applicants for Reasonable Accommodations will be adhered to throughout the Department. The Department will also follow Civil Service Bulletin 8.19 – Policy for Reassignment of Employees as a Reasonable Accommodation under the Americans with Disabilities Act.

The above requirements will be communicated to all employees, and supervisors and managers will be advised of their specific responsibilities to assure compliance.

RESPONSIBILITY

Personnel Officer
EEO Coordinator

TIMETABLE

Immediate and ongoing.

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EXHIBIT C

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

7 World Trade Center, 18th Floor
New York, New York 10048-1102
Telephone: (212) 748-8500
TDD: (212) 748-8399
General FAX: (212) 748-8464
Legal FAX: (212) 748-8465

August 21, 2001

MEMORANDUM

TO : Patricia Ryan, Executive Director
Maine Human Rights Commission

FROM : Spencer H. Lewis, Jr. District Director
New York District Office

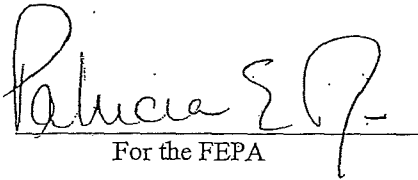
SUBJECT : Fiscal Year 2002 Extension of the Worksharing Agreement

M.H.R.C.
AUG 24 2001
RECEIVED

Enclosed please find your office's extension of the worksharing agreement for fiscal year 2002. Please sign the original and return to this office no later than September 5, 2001. Thank you for your assistance in this matter.

FY 2002 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 worksharing arrangement between the (New York District Office) 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 worksharing agreement that was executed on 08-25-00 through the FY 2002 Charge Resolution Contract Option Period. This agreement, as well as the attendant Worksharing Agreement may be reopened and amended by mutual consent of the parties.



For the FEPA

8-29-01

Date

For the EEOC District Office

Date



U.S. Department of Justice

Civil Rights Division

EXHIBIT D

Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 12 1997

M.H.R.C.
DEC 13 1997
RECEIVED

Ms. Patricia Ryan
Executive Director
Maine Human Rights Commission
51 State House Station
Augusta, Maine 04333-0051

Dear Ms. Ryan:

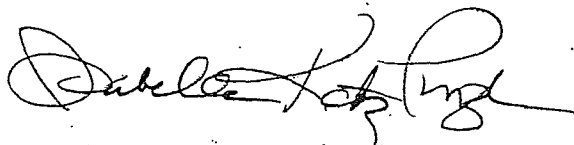
This is to inform you that the Department of Justice, pursuant to 42 U.S.C. § 12188(b)(1)(A)(ii) and 28 C.F.R. § 36.605(b), has certified that the Maine Human Rights Act, 5 MRSA § 4553, and the Maine Accessibility Regulations (together referred to herein as the "Maine law"), adopted on April 14, 1997, 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', written in a cursive style.

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Lawrence Roffee
Executive Director
U.S. Architectural and Transportation
Barriers Compliance Board



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
Patricia E. Ryan
Executive Director
Maine Human Rights Commission

5-16-94
Date

William Ho-Gonzalez
William Ho-Gonzalez
Special Counsel for Immigration
Related Unfair Employment Practices
Civil Rights Division
U.S. Department of Justice

5-9-94
Date

AGREEMENT

between

MAINE HUMAN RIGHTS COMMISSION

and

UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

MAINE
JUN 02 2000
RECEIVED

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 retaliation. The Occupational Safety and Health Administration is charged with the enforcement of the provisions of the following discrimination and/or whistleblower statutes: Section 11(c) of the OSHA Act, Public Law 91-956; Section 322(a)(1-3) of the Clean Air Act, 42 U.S.C. 7622; Section 110(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9610; Section 507(a) of the Federal Water Pollution Control Act, 42 U.S.C. 1367; Section 1450(i)(1)(a-c) of the Safe Drinking Water Act, 33 U.S.C. 300J-9; Section 7001(a) of the Solid Waste Disposal Act, 42 U.S.C. 6971; Section 23(a)(1-3) of the Toxic Substances Control Act, 15 U.S.C. 2622; Surface Transportation and Assistance Act of 1982, 49 U.S.C. 31101; Section 211, Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; Section 7, International Safe Container

Act, 46 U.S.C. 1506; and Section 211, Asbestos Hazard Emergency Response Act, 15 U.S.C. 2641.

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 the Occupational Safety and Health Administration hereby agree that 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(s). This Agreement shall expire five

(5) years from the date of signing unless the parties agree, in writing, to extend or renew the Agreement.

Patricia E. Ryan

Patricia E. Ryan
Executive Director
Maine Human Rights Commission

3-10-00

Date

Ruth McCully

Ruth McCully
Regional Administrator, Region I
U. S. Department of Labor
Occupational Safety & Health Administration

4/27/00

Date

What Happens at a Mediation Session?

You and the other side will have an equal opportunity to say what's on your mind about the dispute.

The mediator will ask questions to clarify the issues and understand the problem from your perspective, and the other side's point of view.

You will discuss the problem and possible solutions with the other side face-to-face. The mediator may also decide to meet separately with you and the other side at times during the mediation session.

The mediator may help you identify new options for solving the problem. The mediator will not pressure you or the other side into accepting a settlement.

A typical mediation session lasts for several hours. Much depends on how complex the issues are and how well prepared you and the other side are to discuss settlement.

When you agree on a solution to the problem, the mediator will assist you in writing up a settlement agreement.

Either you, the other side, or the mediator may terminate the mediation session at any time.

The mediator **WILL NOT** take sides and **WILL NOT** give legal advice to you or the other side.

Maine Human Rights Commission
51 State House Station
Augusta, Maine 04333-0051

Maine Human Rights Commission

Mediation Project

Maine Human Rights Commission
51 State House Station
Augusta, Maine 04333-0051

Phone: (207) 624-6050
FAX: (207) 624-6063
TDD: (207) 624-6064

What is the Mediation Project?

The Maine Human Rights Commission wants to assist you in reaching a satisfactory resolution to the charge of discrimination filed with us. Mediation is an option that might be right for you.

Mediation is an informal, non-adversarial way to resolve disputes. A neutral person - a mediator - will assist you and the other side in discussing solutions to the problem that led to the discrimination complaint. If you and the other side agree to settle your dispute, the investigation of the charge by the Human Rights Commission will be terminated. There will be no need for you to appear at a Commission meeting or go to court. The goal of mediation is to find a solution to a problem - not to lay blame on either side.

**MEDIATION IS THE
SEARCH FOR A
“WIN-WIN” SOLUTION
TO A PROBLEM**

Why Would I Want to Mediate?

- ▶ Mediation works because you create your own solutions. A mediator will help you tell the facts from your perspective and say how you feel about the problem. You and the other side will be able to determine what needs to be done to resolve your dispute. Neither side is blamed.
- ▶ Mediation can save you time and money
If a settlement is reached, there is no need to go through the Commission's investigative process or go to court. There is no cost to you for the mediation itself.
- ▶ Mediation protects your privacy
Everything said and done in mediation is strictly confidential. The agreement you reach will not be open to the public.

What if Mediation Fails?

If you are unable to find a satisfactory solution, you may withdraw from mediation. Your complaint will be placed back in the Commission's pending case file to be assigned for investigation. There is no penalty or advantage from having tried mediation.

How Does the Mediation Project Work?

The Commission will screen your case to see if it is suitable for mediation.

Both you and the other side will be asked if you want to try mediation.

If you say yes, you will be asked to sign an agreement to mediate.

The mediation project coordinator will inform you of the date and location of your mediation session.

You will be given the name of your mediator and provided with other information to help you at the mediation session.

How Do I Sign Up For Mediation?

Call the Maine Human Rights Commission Mediation Project Coordinator at (207) 624-6050.

MEDIATION PROJECT REPORT

MAY 1996

**Barbara Lelli
Mediation Project Coordinator
Maine Human Rights Commission**

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SUMMARY

This project demonstrated that mediation is a valuable alternative method of resolving disputes in a portion of the cases filed with the Maine Human Rights Commission. Mediation involves complex interactions between many people, including the parties, their attorneys, mediators, the mediation coordinator and the MHRC staff. It is hard to predict when mediation will be successful. It is clear, however, that mediation will not succeed unless (1) the parties involved are fully informed of the risks and benefits of mediation and, (2) the parties make a commitment to working toward a resolution of their disputes.

The participants and their attorneys were invited to evaluate the mediation project. Those who responded offered valuable feedback and suggestions. Most of the participants felt that mediation saved them time (8 out of 11) and money (6 out of 11). They also felt that they actively participated in the mediation process (8 out of 11). One of the distinguishing characteristics of mediation is the degree to which the parties participate in resolving their own disputes.

The settlements reached through mediation appear to be fair. Terms of settlement include creative (e.g., better channels of employer/employee communication) as well as traditional (i.e., money) forms of relief.

Mediation provides some case management benefit to MHRC. The parties in 117 cases were offered mediation. Twenty cases were referred to mediators. The parties in ten cases reached successful settlements without any further investigation by the MHRC.

The use of volunteers to coordinate the project and to serve as mediators also saves time and money for the MHRC.

Mediation services would be provided in a more efficient manner if it was offered to all parties as an option at an early stage of the MHRC's investigative process. A mediation coordinator will still be needed to communicate with the parties and make referrals to mediators.

Some mediators strongly recommend that the MHRC use professionals, not employment lawyers, to mediate cases. They point out that mediation is complex and that the skills are very specialized. There was also some concern that employment lawyers are perceived by some participants as either "pro-employer" or "pro-complainant", undermining confidence in their neutrality.

In practice, however, the participants in this project were very enthusiastic about their experiences with our panel of volunteer employment lawyers. Participants gave all of the mediators -- the employment lawyers as well as the professional mediators -- high marks for being impartiality, fair, helpful, and courteous. As for me, I found all of the volunteer mediators unfailingly generous with their time. They provided an invaluable service the

Maine Human Rights Commission.

Finally, some of the mediators recommended that the participants pay for mediation, perhaps on a sliding scale, even if it is only a token payment. I think this suggestions is worth further consideration as I believe it might increase the parties' commitment to the process.

CASE SELECTION

There were two phases of the project. During both phases of the project, both old and new cases were selected (i.e., some were in the pending file; some were new and no response had yet been filed by the Respondent). Changes in procedure that occurred during project include:

a) In Phase I, except in a few cases, mediation was first offered to the Complainant. If the Complainant agreed, mediation was offered to the Respondent. Thus, even though only 10 Respondents agreed to mediation during the first phase of the project, only about 32 Respondents were offered this option. Thus, 32 out of 70 Complainants said "yes" (46%), and 10 out of 32 Respondents said "yes" (31%).

b) In Phase II, both parties were offered mediation. If one party accepted, I made personal contact with the other side to see if they, too, would accept. 9 out of 54 Complainants said "yes" (2%); 20 out of 45 Respondents said "yes" (45%).

c) At the beginning of the project, the parties were asked to complete a two page Worksheet and return it to the Mediation Project before their cases were referred to a mediator. The purpose of the Worksheet was (1) to help the parties think through the strengths and weaknesses of their cases and about what solutions would be satisfactory; and (2) to help the mediation project identify cases where mediation probably wasn't appropriate (e.g., a party very motivated to have a third party decide who's right and wrong). When very few parties responded to mediation, we decided to continue providing Worksheets to the parties, but made the use of Worksheets optional.

d) In some cases, parties were referred to mediators based on their word that they wanted to participate. In the future, I recommend that parties be required to sign and return the Agreement to Mediate and to Maintain Confidentiality before making a referral. This helps ensure the parties' commitment to participate in mediation.

e) Eighteen cases were referred to mediators as a result of the selections in Phase I and Phase II. Two additional cases were identified/selected by MHRC staff and referred.

SUMMARY OF CASES SCREENED BY MEDIATION PROJECT

Number of cases offered mediation:	117
Charges withdrawn by complainant:	1
Right to sue letter issued to complainant:	2
Administratively dismissed by MHRC:	4
Neither side accepted offer:	45
Complainant accepted:	41
Respondent accepted:	31
Cases screened out by Mediation Project:	2
Cases referred to mediators:	20

CHARACTERISTICS OF CASES REFERRED TO MEDIATORS

Complainants

1. Female 10
 Male 10

2. Protected category (more than one may apply):
 - a. Disability -- 10
 - b. Sex -- 6 [includes harassment (3) and pregnancy (1)]
 - c. Whistleblower -- 2
 - d. Age -- 3
 - e. Retaliation -- 2
 - f. Color -- 1
 - g. National Origin -- 1

3. Type of adverse action (more than one may apply):
 - a. Termination -- 9
 - b. Terms & conditions -- 3
 - c. Harassment -- 4
 - d. Constructive discharge -- 2
 - e. Failure to hire -- 2
 - f. Failure to provide reasonable accommodations -- 1
 - g. Access to public accommodations -- 1
 - h. Retaliation -- 1

Respondents

4. Type of employment:
 - a. Manufacturing -- 7
 - b. Services (health) -- 4
 - c. Retail -- 2
 - d. Education -- 2
 - e. State government -- 1
 - f. Services (housing) -- 1
 - g. Construction -- 1
- Type of public accommodation:
- a. Recreation -- 1

5. Size of employer:
 - a. 500+ -- 4
 - b. 200+ -- 1
 - c. 100+ -- 1
 - d. 50-100 -- 6
 - e. 1-50 -- 3
 - f. Unknown -- 4

6. Representation by counsel
 - a. Both sides had attorneys -- 9
 - b. Only Respondent had attorney -- 5
 - c. Only Complainant had attorney -- 2
 - d. Neither side had attorney -- 3

7. Ongoing relationship existed between the parties -- 5

8. Length of time between the date the charge was filed and the date mediation was offered:
 - a. Average time -- 4.23 months
 - b. Range -- 1 month to 8 months
 - c. Distribution:
 - 1 month -- 4
 - 2 months -- 2
 - 3 months -- 2
 - 4 months -- 1
 - 5 months -- 1
 - 6 months -- 3
 - 7 months -- 1
 - 8 months -- 3

9. Length of time between the date mediation was offered and the date a mediator was assigned:
 - a. Where neither side filled out a Worksheet (10 cases), it normally took less than a month to refer the case to a mediator. (In one unusual case, it took over 10 attempts to find a mediator who did not have a conflict of interest.)
 - b. Where one or both sides filled out Worksheets (7 cases), it took 2 to 4 months between the date mediation was offered and the date a mediator was assigned.

10. Reasons given by Complainants for not accepting mediation (sampling):
 - a. No reason given or no response
 - b. Because the Respondent didn't provide complete answers to HRC's document

- c. request, therefore Complainant felt Respondent was not acting in good faith
 - d. Complainant wanted to go to court
 - e. Complainant said that the HRC charge is only "tip of the iceberg"; Respondent's corruption and scandal must be exposed
 - f. Complainant emotionally unprepared to deal face to face with Respondent
 - g. Complainant was negotiating directly with the Respondent without assistance from mediation
 - h. Complainant wanted to know more about Respondent's position and the strength of their case before agreeing to mediate
 - i. Complainant wanted remedies that aren't available under MHRA
11. Reasons given by Respondents for not accepting mediation (sampling)
- a. No reason given or no response
 - b. R couldn't think of any remedies it was willing to offer
 - c. R thinks the charge is groundless

RESULTS OF MEDIATION (5/4/96)

Total number of cases referred to mediators: 20

Settled: 10

Returned for investigation: 7

Pending: 3

EXAMPLES OF SETTLEMENT TERMS

1. Respondent agreed to review policies to ensure no disparate impact on protected group
2. Respondents paid money to complainants (many settlements contained no monetary relief, others ranged from a few hundred to tens of thousands of dollars)
3. Complainant agreed to make contribution to nonprofit organization
4. Parties agreed to improve channels of communication
5. Parties agreed to treat one another with respect
6. Respondents offered reinstatement to complainants
7. Parties agreed on temporary relief, with full settlement to occur in the future if temporary agreement succeeds

8. Respondent agreed to pay for job counseling for complainant

CHARACTERISTICS OF CASES THAT SETTLED

Complainants

12. Female 4
Male 6
13. Protected category (more than one may apply):
- a. Disability -- 6
 - b. Sex -- 3 [includes harassment (1)]
 - c. Whistleblower -- 1
 - d. Age -- 1
 - e. Retaliation -- 1
 - f. Race -- 1
 - g. Color -- 1
14. Type of adverse action (more than one may apply):
- a. Termination -- 4
 - b. Terms & conditions -- 3
 - c. Harassment -- 2
 - d. Constructive discharge -- 1
 - e. Failure to hire -- 1
 - f. Failure to provide reasonable accommodations -- 1

Respondents

15. Type of employment:
- a. Manufacturing -- 4
 - b. Services -- 2
 - c. Retail -- 1
 - d. Education -- 2
 - e. Construction -- 1

- 16. Size of employer:
 - a. 500+ -- 2
 - b. 200+ -- 1
 - c. 100+ -- 1
 - d. 50-100 -- 3
 - e. 1-50 -- 1
 - f. Unknown -- 2

- 17. Representation by counsel
 - a. Both sides had attorneys -- 6
 - b. Only Respondent had attorney -- 2
 - c. Only Complainant had attorney -- 1
 - d. Neither side had attorney -- 1

- 18. Ongoing relationship existed between the parties -- 4

SUMMARY OF EVALUATIONS BY PARTICIPANTS

Evaluation forms were received from eleven participants, including 5 from complainants or their attorneys, and 6 from respondents or their attorneys.

	<u>Compl.</u>	<u>Resp.</u>	<u>Total</u>
It saved time	3	5	8
It saved money	2	4	6
I felt like I was in control	2	2	4
I actively participated	4	4	8
I learned about the strengths and weaknesses of my case	1	3	4
I felt safe	2	-	2
I felt intimidated	1	-	1

Expectations:

What were your expectations of mediation before you participated?	<u>Were your expectations met?</u>
1) Resolving case.	Yes.
2) That I would receive terms agreeable to both parties to resolve the issues.	Yes.
3) That the complainant would realize we had done nothing wrong.	I kept being told how much time, money & personal frustration it would cost to prove myself innocent.
4) I expected exactly what took place.	Yes.
5) Cautious optimism.	More than met.

What the participants liked and didn't like about mediation:

- 1) It wasn't hostile - like I thought a court case would've been like.
 - 2) Since the employer had never responded to the complaint or document request, it was constantly asking me for details of my investigation to prove my case. Obviously trying to obtain "free discovery" or find out what holes to plug before the investigative hearing. The other lawyer (employer) was not prepared to truly mediate. Use it as a delay tactic and laughed about it.
-

What the participants thought of the mediators:

All participants who returned evaluations said that their mediator was impartial, fair, skillful, helpful and informative.

Comments from complainants:

- 1) [Mediator] was very professional, knowledgeable and courteous to all parties...
[Mediator] was very fair and completely understanding and the two parties were able to separate therefore making the process less intimidating.
- 2) [Mediator] had a very intuitive sense.
- 3) Very impartial. Steered participants into revolving issues.
- 4) He does not represent enough employees. He is employer oriented but I think tries hard to see the employee's side.

Comments from respondents:

- 1) Very impartial. No indication of culpability on either part.
 - 2) I was very impressed by [mediator's] handling of the entire mediation process.
-

Comments about settlements reached:

The agreement allowed the parties to save face	3
It was better for me than going to court	3
Mediator suggested most terms	-
Parties suggested most terms	7

Comments on why settlement wasn't reached:

- 1) I had to reschedule the meeting 3 different times because of unplanned problems and I felt the lawyer's office was upset - so I felt intimidated and withdrew my claim. I'm sorry.
 - 2) Complainant withdrew the day before scheduled mediation.
 - 3) The employer would not move from their initial offer.
-

Suggestions for improvements:

- 1) The Human Rights Commission could have forced the employer to comply with its information requests and not suspended the investigative process. It was my understanding that mediation did not interfere with the investigation. I was wrongly informed. If mediation is to be successful it can not interfere with the investigation. Otherwise it will be a tool used to delay the investigation.
 - 2) Change the law so a complainant has to post a bond to pay legal expenses if they lose.
 - 3) Why aren't there limits on claims? An employee seems able to really harm an employer financially. Insurance for such charges is very costly. To be accused, it feels to be guilty.
-

Would you recommend mediation to others?

7 people said "yes".

No one said "no".

1 person said "yes" and added this comment: "Only if the parties truly want to mediate and not use the mediation for delay or free discovery."

SUMMARY OF EVALUATIONS BY MEDIATORS

Time spent by mediators on cases that settled:

Pre-session	Session	Post-session	Total
2.0	4.0	0.5	6.5
3.0	8.0	-	11.0
0.5	6.0	0.5	7.0
0.75	4.0	0.25	5.0
0.5	3.5	0.25	4.25
2.0	7.0	-	9.0

Time spent by mediators on cases that didn't settled:

Pre-session	Session	Post-session	Total
1.5	2.0	0.5	4.0
1.25	0	0	1.25
1.0	0	0	1.0

Suggestions offered by Mediators

- 1) Use only neutrals as mediators. If "mediators" are inexperienced, provide training or mentoring. Mediation is much too complex and difficult a skill to leave to lawyers whose practices are not neutral in employment matters and who have little training or experience in mediation.
- 2) Seemed pretty well organized to me - I would have preferred a Case Preparation Worksheet from both parties - otherwise seemed fine.
- 3) For this specific case everything was fine except that the parties clearly had the ability to pay (plaintiff out of the settlement) for mediation services. Value of mediation services @ \$125.00 per hour = \$875.
- 4) Somehow weed out cases where there is a lack of commitment to the mediation process.

INDIVIDUALS AS RESPONDENTS

OPEN CASES BY MONTH

<u>Month</u>	<u>Total</u>	<u>Individuals</u>
May 2000	72	14
June	76	10
July	106	5
August	91	14
September	46	1
October	69	6
November	59	7
December	79	8
January 2001	57	5
February	57	3
March	73	12
April	60	5
May	51	3
June	69	6
July	67	4
August	60	3
September	61	0
TOTAL	1153	106

CLOSED CASES 5/01/00 to 9/30/01

<u>Case</u>	<u>Closure Type</u>
1. E00-0280A	WWS
2. B	WWS
3. E00-0444A	WWS
4. E00-0234A	WWS
5. B	WWS
6. E00-0259A	WWS
7. E00-0502A	WWS
8. PA00-0237A	NRG
9. B	NRG
10. E00-0218A	RTS
11. E00-0286A	WWS

12.	B	WWS
13.	E00-0411A	WWS
14.	E00-0453A	RTS
15.	E00-0408A	NRG
16.	E00-0556A	WWS
17.	E00-0481A	RTS
18.	E00-0273A	NRG
19.	E00-0346A	NRG
20.	B	WWS
21.	E00-0539A	W/D
22.	E00-0254A	FTC – AD
23.	E00-0311A	NRG
24.	E00-0687A	W/D
25.	E00-0489A	FTC – AD
26.	E00-0680A	WWS
27.	ED00-0244A	NRG
28.	H00-0738A	RTS
29.	ED/PA00-0483A ¹	WWS
30.	E01-0141A	WWS
31.	E00-0306A	WWS
32.	E00-0321A	WWS
33.	PA00-0465A	WWS
34.	466A	“
35.	467A	“
36.	468A	“
37.	471A	“
38.	472A	“
39.	473A	“
40.	474A	“
41.	475A	“
42.	476A ²	“
43.	E00-0633A	NRG
44.	E00-0074A	NRG
45.	E00-0676A	NRG
46.	E01-0014A	NRG
47.	B	NRG
48.	E00-0320A	RG
49.	E00-0438A	RG
50.	E01-0098A	RTS
51.	E01-0148A	FTC – AD
52.	B	W/D
53.	ED/PA00-0656A	WWS
54.	B	WWS
55.	E00-0494A	WWS

¹ Primary Respondent was individual, not entity in this case. Each party represented by Counsel

² Individual Respondent in these case [PA00-0465 to 0476] was same person.

56.	B	WWS
57.	E00-0603A	NRG
58.	B	NRG
59.	E00-0645A	NRG
60.	E00-0743A	NRG
61.	E01-0160A	RTS
62.	E01-0161A	RTS

KEY

WWS – Withdrawal with Settlement [31]
W/D – Withdrawal without Settlement [3]
NRG – Finding of No Reasonable Grounds [16]
RG – Finding of Reasonable Grounds [2]
RTS – Rights to Sue Letter [issued upon request after 180 days from filing] [7]
FTC – Failure to Cooperate / Administrative Dismissal [3]

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MAINE HUMAN RIGHTS COMMISSION
ANNUAL REPORT FOR FISCAL YEAR 2001

**MAINE
HUMAN RIGHTS
COMMISSION**

Annual Report

**Fiscal Year 2001
July 1, 2000 - June 30, 2001**

PRINTED UNDER APPROPRIATION
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August 20, 2001

The Honorable Angus S. King, Jr. Governor
The Honorable Michael H. Michaud, Senate President
The Honorable Michael V. Saxl, Speaker
State House
Augusta ME 04333

**MAINE-
HUMAN
RIGHTS
COMMISSION**

51 STATE HOUSE STATION
AUGUSTA, ME 04333-0051
www.state.me.us/mhrc

Executive Director
PATRICIA E. RYAN

Commission Counsel
JOHN E. CARNES

Dear Governor King, President Michaud and Speaker Saxl:

On behalf of the Commissioners and staff, I am pleased to present you with the fiscal year 2001 Annual Report of the Maine Human Rights Commission. The report describes the efforts, achievements, and challenges of the Commission during the last fiscal year to affirmatively enforce Maine's anti-discrimination laws.

The Commission is entering its 30th year of enforcing the Maine Human Rights Act. In reviewing our progress, there are several areas to which we would call your attention:

- There was an increase again in the number of new charges filed from the previous year (103).
- 75% of charges filed were employment charges. 17.6 % were public accommodation charges; 8.5% were housing and 2.8% were education. This is a noticeable difference from past years when employment charges totaled 83% or higher of the Commission's caseload.
- Disability, sex, and whistleblower's allegations were named in 71.2% of the new charges filed. Age and retaliation comprised 17% of the total. The number of retaliation charges more than doubled from last fiscal year (43 to 95).
- There was a continued increase in the number of sexual harassment charges filed in FY 2001 from the previous year, and sexual harassment charges comprised 54% of all sex discrimination charges filed.
- The average staff time for investigating charges is 211 days. However, due to the high inventory of cases, and less than 4 full time investigators, the average time a case is open at the Commission is 336 days. The Commission continues to be concerned about the lack of resources available to more quickly handle complaints filed with it.

PHONE: (207) 624-6050

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- There was an increase in the number of charges closed from the previous year (48).
- Commissioners found reasonable grounds in 15.7% of the cases considered.
- Monetary relief provided to Complainants in FY'01 was \$1,583,828.

We pledge our continued commitment to the promotion of tolerance and to ensuring basic human rights for all Maine citizens. We look forward to a continuing partnership with the Executive and Legislative branches to assure Maine citizens the basic protections afforded under Maine law.

Sincerely,

A handwritten signature in cursive script, appearing to read "K. Millick".

Kim Millick
Chair

THE COMMISSION

The Maine Human Rights Commission is the State agency charged with the responsibility of enforcing Maine's anti-discrimination laws. The Commission investigates complaints of unlawful discrimination in employment, housing, education, access to public accommodations, extension of credit, and offensive names. The Commission attempts to resolve complaints of discrimination to the mutual satisfaction of those who are involved. The Maine Human Rights Act authorizes the Commission to pursue remedies for unlawful discrimination in Court when necessary to enforce the Act.

The Commission was established in 1971 and has jurisdiction over allegations of discrimination in the following areas:

EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION
Race	Race	Race	Race	Race
Color	Color	Color	Color	--
Sex	Sex	Sex	Sex	Sex
Physical disability	Physical disability	Physical disability	--	Physical disability
Mental disability	Mental disability	Mental disability	--	Mental disability
National Origin	National Origin	National Origin	National Origin	National Origin
Ancestry	Ancestry	Ancestry	Ancestry	--
Religion	Religion	Religion	Religion	--
Age	--	--	Age	--
Worker's Comp Retaliation	Source of Income	Children (lodging only)	Marital Status	--
Whistleblower's Retaliation	Familial Status	--	--	--
Genetic Predisposition	--	--	--	--

Below is a timeline of some of the most significant additions to the Maine Human Rights Act.

1972	Race, Color, National Origin, Ancestry, Religion, Age
1973	Sex, Marital Status (Credit)
1974	Physical Disability
1975	Mental Disability, Source of Income (Housing)
1979	Pregnancy
1981	Familial Status (Housing)
1987	Worker's Comp Retaliation (Employment)
1988	Whistleblower's Retaliation (Employment)
1998	Genetic Pre-Disposition

Commission policy is formulated by five Commissioners appointed by the Governor for staggered five year terms. Commissioners make the final finding on all charges of discrimination investigated by the Commission staff and not settled or administratively dismissed. The Governor designates the Chair of the Commission from among its members.

Section 4566 of the Maine Human Rights Act outlines the powers and duties of the Commission. These are summarized as follows:

- 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;
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

STAFFING AND BUDGET

The Commission appoints an Executive Director. The Executive Director in turn has the authority to appoint and supervise the Commission's staff.

The Commission has four major divisions.

Investigation

The Investigation Division is responsible for all aspects of case processing from determining whether or not allegations are legally sufficient to constitute a charge of discrimination within the jurisdiction of the Maine Human Rights Act, to issuing Investigator's Reports which analyze facts and apply the law of discrimination and relevant Court decisions and recommending specific findings to the Commission.

Compliance

The Compliance Division is responsible for all settlement efforts of the agency. The Division has direct responsibility for negotiating conciliation agreements after findings of reasonable grounds and conducting both written and on site monitoring of such agreements to insure that terms are met. The Compliance Officer sets overall negotiation strategy and reviews and monitors pre-determination settlement agreements. This Division also provides technical assistance to employers in reviewing Affirmative Action Plans and personnel policies and is involved in the public education efforts of the Commission.

Legal

This division is responsible for litigation activity as well as providing legal advice to the staff and Commission. The Commission Counsel assures Investigator's Reports are litigation worthy, provides legal opinions, drafts legislation and proposed regulations, litigates cases and advises the Executive Director on contract matters involving governmental agencies and private parties.

Administration

The Administration Division is the division responsible for the effective operation of the office. Responsibilities include all personnel functions along with budget and other fiscal duties. Support is provided to other divisions.

Budget

The Maine Human Rights Commission's fiscal year 2001 budget appropriation was \$699,945 , including \$232,502 in federal funds from the Equal Employment Opportunity Commission.

Approximately 88.25% of the agency's budget was allocated to fixed 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 charges. That means that only 11.75% of the agency's budget was available for such important functions as litigation support, technology, training and education.

CASE ACTIVITY

During the last fiscal year, 819 new charges were filed. This is a 14.38% increase from the previous year.

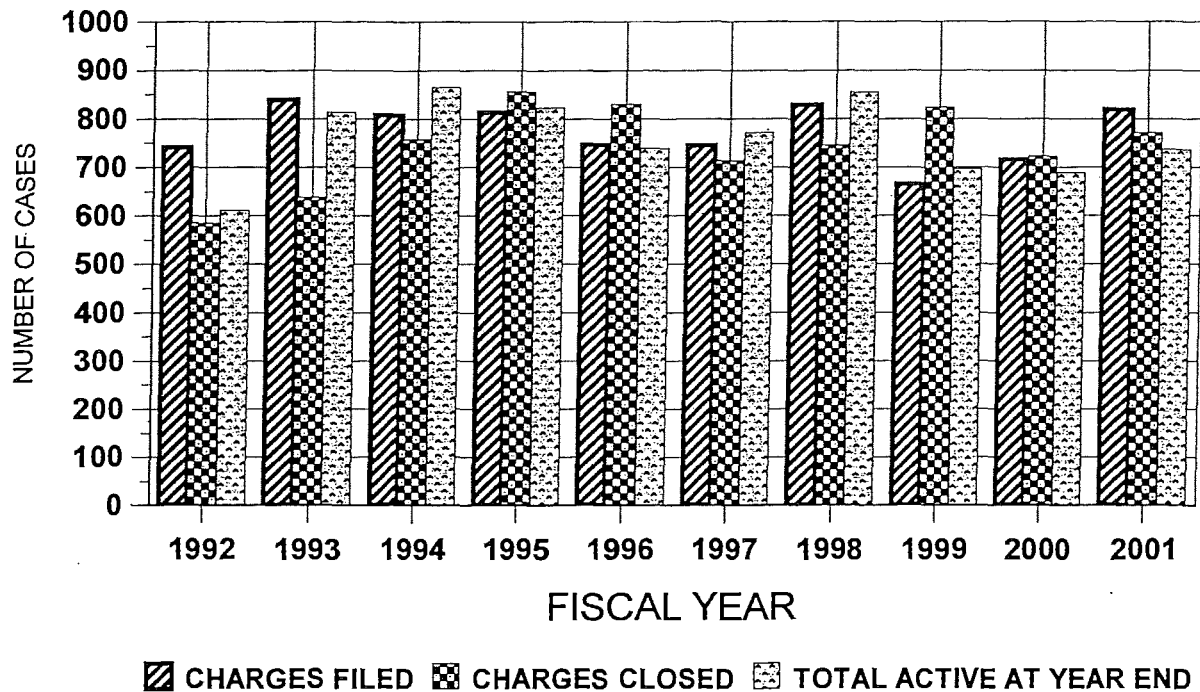
Seven hundred and seventy-one cases were closed during the same time period.

The number of cases remaining open increased by 6.96% at the end of the fiscal year.

CASE ACTIVITY FY 1992 - 2001

FISCAL YEAR	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
PREVIOUS YEAR TOTAL	455	611	814	865	823	739	771	855	696	689
CHARGES FILED	742	841	809	814	747	746	830	666	716	819
CHARGES CLOSED	586	638	758	856	831	714	746	825	723	771
TOTAL ACTIVE AT YEAR END	611	814	865	823	739	771	855	696	689	737

CASE ACTIVITY FY 1992 - 2001

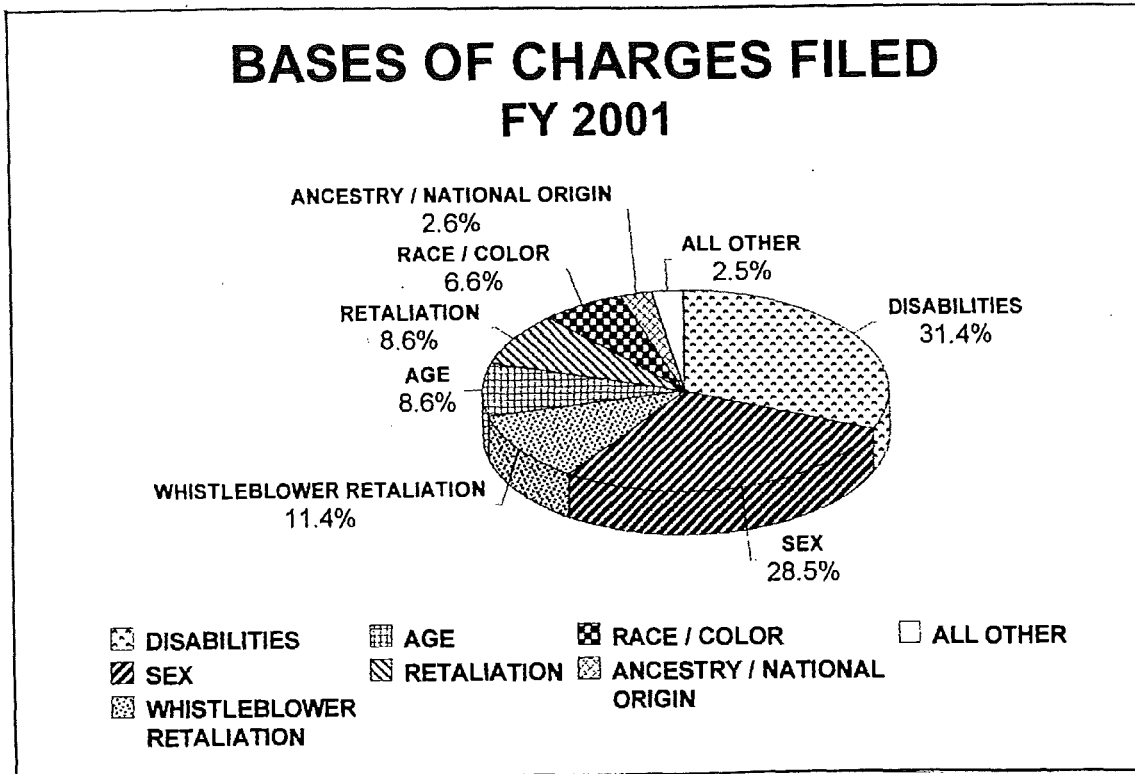


CHARGES FILED

As in past years, the Commission continued to devote the majority of its resources during the past fiscal year to the processing of charges of discrimination filed with it. Eight hundred and nineteen new charges were filed with the Commission. Over 75% of the new charges alleged discrimination in employment. The largest number of complaints were filed on the basis of disability (31.4%). The second largest number of complaints were filed on the basis of sex (28.5%), and the third on the basis of Whistleblower Retaliation (11.3%). These three bases were alleged in 71.2% of the complaints filed with the Commission. Age and Retaliation tied for the fourth largest category of complaints (8.6% each), followed by race / color (6.6%) and ancestry / national origin (2.6%). More than half (53.8%) of the sex discrimination complaints filed alleged discrimination because of sexual harassment. The number of sexual harassment complaints filed (170) was higher than the previous year by 16.4%.

BASIS OF CHARGES FILED FY 2001

BASIS	Fiscal Year 2001
DISABILITIES	348
SEX	316
WHISTLEBLOWER RETALIATION	126
AGE	95
RETALIATION	95
RACE / COLOR	73
ANCESTRY / NATIONAL ORIGIN	29
ALL OTHER	28
TOTAL ALLEGATIONS	1110



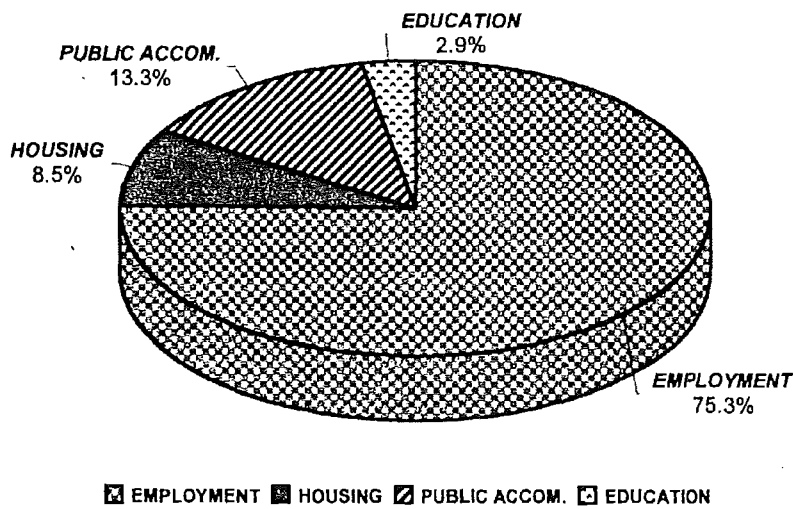
BASES OF CHARGES FILED FY 1992 - 2001

BASES	FY:	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
RACE / COLOR		46	49	76	61	56	68	65	71	68	73
SEX		263	276	240	279	285	291	301 31	258	263	316
PHYSICAL DISABILITY		246	297	298	275	241	216	307	213	221	267
MENTAL DISABILITY		53	28	40	62	66	68	75	72	88	81
RELIGION		7	14	10	10	9	15	10	10	14	14
AGE		125	140	113	165	107	109	108	79	99	95
ANCESTRY / NATIONAL ORIGIN		24	1	25	26	32	24	19	33	49	29
MARITAL STATUS (Credit only)		1	2	0	3	0	0	0	0	1	0
SOURCE OF INCOME (Housing)		12	6	5	6	3	5	3	4	2	4
FAMILIAL STATUS (Housing)		11	10	7	5	5	3	13	9	7	5
WHISTLEBLOWER RETALIATION		77	95	69	72	98	108	119	94	119	126
WORKER'S COMP RETALIATION		10	17	7	16	10	8	11	7	8	5
RETALIATION		40	86	38	69	51	43	33	20	43	95
TOTAL ALLEGATIONS		915	1021	928	1049	963	958	1064	870	982	1110

SUMMARY OF CHARGES FILED BY AREA OF JURISDICTION: FY 1992 - 2001

FISCAL YEAR	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
EMPLOYMENT	640.0	764.0	716.0	725.0	676.0	673.0	742.5	550.5	605.0	617.0
HOUSING	41.5	28.0	38.0	30.0	22.0	26.0	30.5	33.5	35.5	69.5
PUBLIC ACCOM.	51.5	25.5	42.0	46.0	36.0	31.0	45.5	68.0	65.5	109.0
EDUCATION	6.0	21.5	13.0	10.0	11.0	13.0	10.5	14.0	10.0	23.5
CREDIT EXTENSION	3.0	2.0	3.0	3.0	2.0	3.0	1.0	0.0	1.0	0.0
OFFENSIVE NAMES	0.0	0.0	3.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTALS	742.0	841.0	809.0	814.0	747.0	746.0	830.0	666.0	716.0	819.0

TYPES OF CHARGES BY JURISDICTION FISCAL YEAR 2001



CHARGES CLOSED

Seven hundred and seventy-one charges of discrimination were investigated and closed during the last fiscal year. This number represents an increase in case closures from the previous year (6.6%).

MERIT CLOSURES

Merit closures are cases closed in which there is some benefit to the complainant. Merit closures can be settlements, withdrawals with settlement, or successful conciliations.

During the last fiscal year, there were 200 cases closed which provided benefits to complainants.

The Commission encourages voluntary settlement and is willing to work with the parties to achieve a resolution that is acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement. Settlements can take two forms: 1) **a negotiated settlement agreement**, and 2) **a withdrawal with settlement**. Settlement agreements are formal documents prepared by the Commission, signed by both parties and a

representative of the Commission. Terms are monitored by the Commission's Compliance Division.

Some parties reach settlements independent of the Commission, and the Complainant chooses to withdraw his or her charge. A withdrawal with settlement may contain all of the terms found in a settlement agreement, but there is no agreement to which the Commission is a party. The Commission does not monitor a withdrawal with settlement.

During the last fiscal year, 188 cases were settled prior to a finding by the Commission. The monetary value of these settlements amounted to \$1,463,088.58 for Complainants. It should be noted that in addition to monetary awards, settlements typically include provisions that may include the offer of a job or housing unit, modifications providing accessibility, reinstatement, attorney's fees, cleared personnel records, policy modifications, letters of recommendation, and non-retaliation provisions.

Also during this time period there were 12 successful conciliations. The Maine Human Rights Act requires the Commission to undertake formal conciliation efforts in all cases in which it is determined that reasonable grounds exist to believe that unlawful discrimination has occurred.

The monetary value of these conciliations was \$120,750. Total monetary relief for merit closures was \$1,583,828.58.

ADMINISTRATIVE DISMISSALS

Cases can be administratively dismissed for several reasons prior to a Commission determination. Complainants may choose to **withdraw** their charge of discrimination. Withdrawals most often occur when the Complainant, after hearing the facts presented by a Respondent at a fact finding conference, or reviewing the Respondent's written answers to the charge, decides that they do not wish the Commission to continue processing their case any longer. Forty-one charges were withdrawn during the last year.

Complainants may also obtain Right To Sue letters from the Commission after 180 days from the filing of a charge. If the Commission issues a Right To Sue letter, the case is closed and the Complainant can file a lawsuit in court. Forty-two Right To Sue letters were issued in the last fiscal year.

Other cases are **administratively dismissed** by the Executive Director for such reasons as lack of jurisdiction, failure by the Complainant to cooperate with the investigation, or failure by the Complainant to substantiate a complaint. Ninety-four cases were closed during the last year for such reasons.

**WITHDRAWALS AND DISMISSALS
FISCAL YEAR 2001**

TYPE	NUMBER
CHARGE WITHDRAWN	41
RIGHT TO SUE	42
FAILURE TO COOPERATE/PROCEED	34
FAILURE TO SUBSTANTIATE A COMPLAINT	21
NO JURISDICTION	17
NOT TIMELY FILED	2
OTHER	20
TOTALS	177

NON MERIT CLOSURES

In addition to cases closed providing some remedy to the Complainant, and cases administratively dismissed, 361 cases were dismissed after a finding that no reasonable grounds existed to believe that unlawful discrimination had occurred.

COMMISSIONER DETERMINATIONS

If a case cannot be settled, the Complainant does not withdraw, or the matter is not administratively dismissed, a report is prepared by the Investigator assigned to the complaint and a recommendation is made to the Commission as to whether reasonable grounds exist to believe that unlawful discrimination occurred. Four hundred and thirty-four cases came before the Commission in fiscal year 2001 for a determination. Two hundred and fifty-three cases had no written objection to the Investigator's recommendation, and were placed on the Commission's Consent Agenda. In those cases, Commissioners adopted the recommendation of the Investigator without argument. The Commission found reasonable grounds to believe that unlawful discrimination had occurred in 68 cases, which was 15.7% of the cases they considered. The Commission found no reasonable grounds to believe that unlawful discrimination occurred in 366 cases. Not all cases in which the Commission makes determinations are closed within the same fiscal year. Cases in which the Commissioners find reasonable grounds continue through a conciliation process. The above figures represent cases considered by the Commission in fiscal year 2001. The figures following represent cases actually closed during fiscal year 2001.

TYPES OF CASE CLOSURES

A summary of types of case closures in fiscal year 2001 follows:

CASES CLOSED	SETTLEMENTS		DETERMINATIONS				ADMINISTRATIVE	
	#	%	<u>RG</u>		<u>NRG</u>		DISMISSALS	
#	#	%	#	%	#	%	#	%
771	188	24.4	45	5.8	361	46.8	177	23.0

LITIGATION

The Maine Human Rights Act authorizes the Commission to file a lawsuit in Superior Court in the name of the Commission, for the use of the Complainant, in cases where reasonable grounds are found to believe that unlawful discrimination has occurred, and where conciliation has failed. The Commission Counsel directs the legal efforts and represents the Commission.

As of the end of Fiscal Year 2001, there were 3 cases in which the Commission is involved pending in the Courts.