

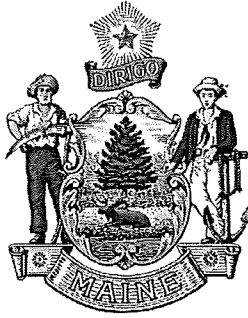
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Maine Human Rights Commission Program Evaluation Report

*State Government Evaluation Act
Second Regular Session of the 124th Maine Legislature*

JUN 22 2010



Patricia E. Ryan
Executive Director

Maine Human Rights Commission

51 State House Station - Augusta, ME 04333

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Commission Counsel

October 26, 2009

Senator Lawrence Bliss, Chair
Representative Charles R. Priest, Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta ME 04333

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

Dear Senator Bliss and Representative Priest:

The Maine Human Rights Commission is pleased to submit its program evaluation report, pursuant to your letter to the Commission of April 30, 2009.

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

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

Sincerely,

Patricia E. Ryan
Executive Director

cc: Commissioners

enc.

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MHRC Program Evaluation Report

Government Evaluation Act, 3 M.R.S.A. Chapter 35

PART A

Enabling Law

Maine Revised Statute Title 5, Chapter 337:

HUMAN RIGHTS ACT

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Subchapter 1: 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

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

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

5 §4553. DEFINITIONS

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 [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) .]

[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 may not be construed to require the mandatory retirement of a member or to deny employment to any person based solely on that person's normal retirement age.

[2005, c. 10, §2 (AMD) .]

7. Person. "Person" includes one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, 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" has the meaning set forth in section 4553-A.

[2007, c. 385, §1 (RPR) .]

7-B. Person with physical or mental disability.

[2007, c. 385, §2 (RP) .]

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. Sexual orientation. "Sexual orientation" means a person's actual or perceived heterosexuality,

bisexuality, homosexuality or gender identity or expression.

[2005, c. 10, §3 (NEW) .]

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

A. Any animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician's assistant, nurse practitioner or licensed social worker; or [2007, c. 664, §1 (NEW) .]

B. Any animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or fetching dropped items. [2007, c. 664, §1 (NEW) .]

[2007, c. 664, §1 (NEW) .]

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

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

G. Discrimination in employment, housing, public accommodation, credit and educational opportunity on the basis of sexual orientation, except that a religious corporation, association or organization that does not receive public funds is exempt from this provision with respect to:

- (1) Employment, as is more fully set forth in section 4553, subsection 4 and section 4573-A;
- (2) Housing, as is more fully set forth in section 4553, subsection 6, paragraph C; and
- (3) Educational opportunity, as is more fully set forth in section 4602, subsection 4.

Any for-profit organization owned, controlled or operated by a religious association or corporation and subject to the provisions of the Internal Revenue Code, 26 United States Code, Section 511(a) is not covered by the exemptions set forth in this paragraph. [2005, c. 10, §6 (NEW) .]

[2005, c. 10, §§4-6 (AMD) .]

SECTION HISTORY

1971, c. 501, §1 (NEW). 1973, c. 415, §1 (AMD). 1975, c. 182, §1 (AMD).
1975, c. 358, §2 (AMD). 1979, c. 350, §1 (AMD). 1983, c. 437, §1 (AMD).

1983, c. 578, §§1,2 (AMD). 1987, c. 478, §2 (AMD). 1989, c. 245, §2 (AMD). 1991, c. 99, §2 (AMD). 1991, c. 109, (AMD). 1995, c. 393, §§1-8 (AMD). RR 1999, c. 2, §2 (COR). 2005, c. 10, §§2-6 (AMD). 2007, c. 385, §§1, 2 (AMD). 2007, c. 664, §1 (AMD).

5 §4553-A. PHYSICAL OR MENTAL DISABILITY

1. Physical or mental disability, defined. "Physical or mental disability" means:

A. A physical or mental impairment that:

- (1) Substantially limits one or more of a person's major life activities;
- (2) Significantly impairs physical or mental health; or
- (3) Requires special education, vocational rehabilitation or related services; [2007, c. 385, §3 (NEW) .]

B. Without regard to severity unless otherwise indicated: absent, artificial or replacement limbs, hands, feet or vital organs; alcoholism; amyotrophic lateral sclerosis; bipolar disorder; blindness or abnormal vision loss; cancer; cerebral palsy; chronic obstructive pulmonary disease; Crohn's disease; cystic fibrosis; deafness or abnormal hearing loss; diabetes; substantial disfigurement; epilepsy; heart disease; HIV or AIDS; kidney or renal diseases; lupus; major depressive disorder; mastectomy; mental retardation; multiple sclerosis; muscular dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; and acquired brain injury; [2007, c. 385, §3 (NEW) .]

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

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

[2007, c. 385, §3 (NEW) .]

2. Additional terms. For purposes of this section:

A. The existence of a physical or mental disability is determined without regard to the ameliorative effects of mitigating measures such as medication, auxiliary aids or prosthetic devices; and [2007, c. 385, §3 (NEW) .]

B. "Significantly impairs physical or mental health" means having an actual or expected duration of more than 6 months and impairing health to a significant extent as compared to what is ordinarily experienced in the general population. [2007, c. 385, §3 (NEW) .]

[2007, c. 385, §3 (NEW) .]

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

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

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

C. Psychoactive substance use disorders resulting from current illegal use of drugs, although this may not be construed to exclude an individual who:

- (1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use;

- (2) Is participating in a supervised rehabilitation program and is no longer engaging in such use;
- (3) Is erroneously regarded as engaging in such use, but is not engaging in such use; or
- (4) In the context of a reasonable accommodation in employment, is seeking treatment or has successfully completed treatment. [2007, c. 385, §3 (NEW) .]

[2007, c. 385, §3 (NEW) .]

SECTION HISTORY

2007, c. 385, §3 (NEW) .

5 §4554. CONSTRUCTION

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

[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. Physical or mental disability. The definition of "physical or mental disability" in section 4553-A is intended to be interpreted broadly to create greater coverage than under the federal Americans with Disabilities Act of 1990.

[2007, c. 385, §4 (NEW) .]

SECTION HISTORY

1995, c. 393, §9 (NEW). 2007, c. 385, §4 (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 2: 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. [1989, c. 503, Pt. B, §21 (AMD).]

SECTION HISTORY

1971, c. 501, §1 (NEW). 1975, c. 771, §88 (AMD). 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. [1987, c. 709, §2

(AMD) .]

SECTION HISTORY

1971, c. 501, §1 (NEW). 1983, c. 812, §33 (AMD). 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, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, and foster good will among the groups and elements of the population of the State. Agencies and councils may make recommendations to the commission for the development of policies and procedures. Advisory agencies and conciliation councils created by the commission must be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses;

[2005, c. 10, §7 (AMD) .]

7. Rules and regulations. To adopt, amend and rescind rules and regulations to effectuate this Act, such adoption, amendment and rescission to be made in the manner provided by chapter 375, subchapter 2. Rules adopted to implement section 4553-A are major substantive rules as defined in chapter 375, subchapter 2-A;

[2007, c. 385, §5 (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, sexual orientation, physical or mental disability, religion, age, ancestry or national origin;

[2005, c. 10, §8 (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, sexual orientation, physical or mental

disability, religion, age, ancestry or national origin, or other infringements on human rights or personal dignity; and

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

5 §4571. RIGHT TO FREEDOM FROM DISCRIMINATION IN EMPLOYMENT

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

SECTION HISTORY

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

5 §4572. UNLAWFUL EMPLOYMENT DISCRIMINATION

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

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

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

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

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

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

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

- (1) Elicit or attempt to elicit information directly or indirectly pertaining to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B;
- (2) Make or keep a record of race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B, except under physical or mental disability when an employer requires a physical or mental examination prior to employment, a privileged record of that examination is permissible if made and kept in compliance with this Act;
- (3) Use any form of application for employment, or personnel or membership blank containing questions or entries directly or indirectly pertaining to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B. This section does not prohibit any officially recognized government agency from keeping records permitted to be kept under this Act in order to provide free services to individuals requesting rehabilitation or employment assistance;
- (4) Print, publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under former Title 39 or Title 39-A or any previous actions that are protected under Title 26, chapter 7, subchapter 5-B; or
- (5) Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, the previous assertion of a claim or right under former Title 39 or Title 39-A or because of previous actions that are protected under Title 26, chapter 7, subchapter 5-B, of that group; or [2005, c. 10, §12 (AMD) .]

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

[2005, c. 10, §§11, 12 (AMD) .]

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

A. The prohibition of this subsection against discrimination includes medical examinations and inquiries. [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). 1973, c. 705, §6 (AMD).

1975, c. 358, §§7-10 (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). 1989, c. 251, §1 (AMD). 1991, c. 99, §7 (AMD). 1991, c. 885, §E7 (AMD). 1991, c. 885, §E47 (AFF). 1995, c. 393, §§12,13 (AMD). 2005, c. 10, §§11,12 (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). 1985, c. 119, (AMD). 1995, c. 393, §14 (AMD).

5 §4573. NOT UNLAWFUL EMPLOYMENT DISCRIMINATION

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) .]

SECTION HISTORY

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

5 §4573-A. DEFENSES

1. General provisions. It is a defense to a charge of discrimination under this subchapter that an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual 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); 1995, c. 511, §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); 1995, c. 511, §3 (AFF) .]

2. Religious entities. This subchapter does not prohibit a religious corporation, association, educational institution or society from giving preference in employment to individuals of its same religion to perform work connected with the carrying on by the corporation, association, educational institution or society of its activities. Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of that organization.

[1995, c. 393, §21 (NEW) .]

SECTION HISTORY

1995, c. 393, §21 (NEW). 1995, c. 511, §1 (AMD). 1995, c. 511, §3 (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. 541, §B4 (AMD). 1979, c. 350, §4 (RPR) .

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 4: FAIR HOUSING HEADING: PL 1971, C. 501, §1 (NEW)

5 §4581. DECENT HOUSING

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. [2005, c. 10, §13 (AMD) .]

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

[2007, c. 243, §1 (AMD) .]

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

A. Provided under any state or federal program that 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

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

5 §4582. UNLAWFUL HOUSING DISCRIMINATION

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

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; [2005, c. 10, §14 (AMD) .]

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; [2005, c. 10, §14 (AMD) .]

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; [2005, c. 10, §14 (AMD) .]

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; 4.23 doors; 4.34.5 adaptable bathrooms; and 4.29.3 tactile warnings on doors to hazardous areas. [1991, c. 99, §17 (AMD) .]

SECTION HISTORY

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

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 a person with physical or mental disability, reasonable modifications of existing premises occupied or to be occupied by that person if the modifications may be necessary to give that person full enjoyment of the premises, except that, with a rental, the landlord, when it is reasonable to do so, may condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

[2007, c. 664, §2 (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 a person with physical or mental disability equal opportunity to use and enjoy the housing ; or

[2007, c. 664, §3 (AMD) .]

3. Service animals. 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 the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the housing accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of a service animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal.

[2007, c. 664, §4 (NEW) .]

SECTION HISTORY

1989, c. 779, (NEW). 1991, c. 99, §18 (AMD). 2007, c. 243, §§2, 3 (AMD). 2007, c. 664, §§2-4 (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

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

SECTION HISTORY

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

Subchapter 5: PUBLIC ACCOMMODATIONS HEADING: PL 1971, C. 501, §1
(NEW)

5 §4591. EQUAL ACCESS TO PUBLIC ACCOMMODATIONS

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

SECTION HISTORY

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

5 §4592. UNLAWFUL PUBLIC ACCOMMODATIONS

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

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

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

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

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

[2005, c. 10, §17 (AMD) .]

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

[2005, c. 10, §17 (AMD) .]

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

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

A. That serves breakfast; [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;

[2007, c. 664, §5 (AMD) .]

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

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

B. That perpetuate the discrimination of others who are subject to common administrative control ; and [2007, c. 664, §6 (AMD) .]

[2007, c. 664, §6 (AMD) .]

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

[2007, c. 664, §7 (NEW) .]

SECTION HISTORY

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

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

1973, c. 705, §12 (NEW). 1975, c. 355, §§12-14 (AMD). 1977, c. 80, §1 (AMD). 1981, c. 334, §§1,2 (AMD). 1983, c. 437, §4 (AMD). 1987, c. 390, §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

1981, c. 334, §3 (NEW) . 1987, c. 390, §§2,3 (AMD) . 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

1983, c. 437, §5 (NEW). 1987, c. 390, §4 (AMD). 1991, c. 99, §25 (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. 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. 112, (NEW). 1987, c. 402, Pt. B, §5 (AMD).

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. [1987, c. 686, §1 (NEW) .]

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

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

[1987, c. 686, §1 (NEW) .]

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation on or after September 1, 1988, 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.

[1987, 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). [1987, 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. [1987, c. 686, §1 (NEW) .]

[1987, 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 [1987, c. 686, §1 (NEW) .]

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

If municipal officials of the municipality where the facility will be constructed inspect buildings for compliance with construction standards, that inspection 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. 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) .]

[1991, 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). 1991, c. 99, §26 (AMD). 1993, c. 349, §10 (AMD).
1993, c. 410, §§2,3 (AMD). 1993, c. 450, §1 (AMD).

5 §4594-E. WAIVERS FOR EXISTING BUILDINGS

(REPEALED)

SECTION HISTORY

1993, c. 450, §2 (NEW). RR 1993, 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 5-A: A FAIR CREDIT EXTENSION HEADING: PL 1973, C. 668 (NEW)

5 §4595. RIGHT TO FREEDOM FROM DISCRIMINATION SOLELY ON BASIS OF AGE, RACE, COLOR, SEX, SEXUAL ORIENTATION, MARITAL STATUS, ANCESTRY, RELIGION OR NATIONAL ORIGIN IN ANY CREDIT TRANSACTION

The opportunity for every individual to be extended credit without discrimination solely because of any one or more of the following factors: age; race; color; sex; sexual orientation; marital status; ancestry; religion or national origin is recognized as and declared to be a civil right. [2005, c. 10, §18 (AMD).]

SECTION HISTORY

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

5 §4596. UNLAWFUL CREDIT EXTENSION DISCRIMINATION

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

SECTION HISTORY

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

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 Financial Institutions 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); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF).]

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

Subchapter 5-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, sexual orientation, a physical or mental disability, national origin or race is recognized and declared to be a civil right. [2005, c. 10, §20 (AMD) .]

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

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 children with disabilities to special education programs under state or federal law.

[2005, c. 662, Pt. A, §1 (AMD) .]

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

- A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity; [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) .]

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

- A. Exclude a person from participation in, deny a person the benefits of or subject a person to discrimination in any academic, extracurricular, research, occupational training or other program or activity; [2005, c. 10, §21 (NEW) .]

B. Deny a person equal opportunity in athletic programs; [2005, c. 10, §21 (NEW).]

C. Apply any rule concerning the actual or potential family or marital status of a person or to exclude any person from any program or activity because of their sexual orientation; [2005, c. 10, §21 (NEW).]

D. Deny admission to the institution or program or to fail to provide equal access to any information about an institution or program through recruitment; or [2005, c. 10, §21 (NEW).]

E. Deny financial assistance availability and opportunity. [2005, c. 10, §21 (NEW).]

The provisions in this subsection relating to sexual orientation do not apply to any education facility owned, controlled or operated by a bona fide religious corporation, association or society.

[2005, c. 10, §21 (NEW) .]

SECTION HISTORY

1983, c. 578, §3 (NEW). 1985, c. 797, §1 (AMD). 1987, c. 478, §4 (AMD).
1989, c. 725, §2 (AMD). 1991, c. 99, §28 (AMD). 1991, c. 100, §2 (AMD).
2005, c. 10, §21 (AMD). 2005, c. 662, §A1 (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 6: 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

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

5 §4612. PROCEDURE ON COMPLAINTS

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

A. The commission or its delegated single commissioner or investigator shall provide an opportunity for the complainant and respondent to resolve the matter by settlement agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. Evidence of conduct or statements made in compromise settlement negotiations, offers of settlement and any final agreement are confidential and may not be disclosed without the written consent of the parties to the proceeding nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this paragraph, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement. The commission may adopt rules providing for a 3rd-party neutral mediation program. The rules may permit one or more parties to a proceeding to agree to pay the costs of mediation. The commission may receive funds from any source for the purposes of implementing a 3rd-party neutral mediation program. [2007, c. 243, §5 (AMD).]

B. The commission or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred. In conducting an investigation, the commission, or its designated representative, must have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy those materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The commission may issue subpoenas to compel access to or production of those materials or the appearance of those persons, subject to section 4566, subsections 4-A and 4-B, and may serve interrogatories on a respondent to the same extent as interrogatories served in aid of a civil action in the Superior Court. The commission may administer oaths. The complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint, is a matter of public record at the conclusion of the investigation of the complaint prior to a determination by the commission. An investigation is concluded upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs. Prior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. Notwithstanding any other provision of this section, the complaint and evidence collected during the investigation of the complaint may be used as evidence in any subsequent proceeding, civil or criminal. [2007, c. 243, §6 (AMD).]

[2007, c. 243, §§5, 6 (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. Everything said or done as part of such endeavors is confidential and may not be disclosed without the written consent of the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the commission or a party. Notwithstanding this subsection, the commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. If the case is disposed of by such informal means in a manner satisfactory to a majority of the commission, it shall dismiss the proceeding.

[2007, c. 243, §7 (AMD) .]

4. Civil action by commission.

A. If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination or to members of a racial, color, sex, sexual orientation, physical or mental disability, religious or nationality group or age group if relief is not immediately granted, or if conciliation efforts under subsection 3 have not succeeded, the commission may file in the Superior Court a civil action seeking such relief as is appropriate, including temporary restraining orders. [2005, c. 10, §22 (AMD) .]

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

- (1) In unlawful housing discrimination, that the housing accommodation sought is likely to be sold or rented to another during the pendency of proceedings, or that an unlawful eviction is about to occur;
- (2) In unlawful employment discrimination, that the victim of the discrimination has lost or is threatened with the loss of job and income as a result of such discrimination;
- (3) In unlawful public accommodations discrimination, that such discrimination is causing inconvenience to many persons;
- (4) In any unlawful discrimination, that the victim of the discrimination is suffering or is in danger of suffering severe financial loss in relation to circumstances, severe hardship or personal danger as a result of such discrimination. [1991, c. 99, §30 (AMD) .]

[2005, c. 10, §22 (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

1971, c. 501, §1 (NEW). 1973, c. 347, §13 (AMD). 1973, c. 415, §2 (AMD). 1973, c. 625, §37 (AMD). 1973, c. 705, §11 (AMD). 1973, c. 788,

§28 (AMD). 1975, c. 358, §15 (AMD). 1977, c. 648, §2 (AMD). 1981, c. 6, (AMD). 1983, c. 281, §§1,2 (AMD). 1985, c. 585, §§1,2 (AMD). 1991, c. 99, §§29,30 (AMD). 1993, c. 303, §2 (AMD). 1993, c. 327, §2 (AMD). 1993, c. 578, §1 (AMD). 1995, c. 462, §A7 (AMD). 2005, c. 10, §22 (AMD). 2007, c. 243, §§5-7 (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 ensure compliance with any order entered against the violator and with all provisions of this Act. An order may continue the court's jurisdiction until the violator has demonstrated compliance and may defer decision on some or all relief until after a probationary period and a further hearing on the violator's conduct during that period;
- (6) An order to pay the victim, in cases of unlawful price discrimination, 3 times the amount of any excessive price demanded and paid by reason of that unlawful discrimination;
- (7) An order to pay to the victim of unlawful discrimination, other than employment discrimination in the case of a respondent who has more than 14 employees, or, if the commission brings action on behalf of the victim, an order to pay to the victim, the commission or both, civil penal damages not in excess of \$20,000 in the case of the first order under this Act against the respondent, not in excess of \$50,000 in the case of a 2nd order against the respondent arising under the same subchapter of this Act and not in excess of \$100,000 in the case of a 3rd or subsequent order against

the respondent arising under the same subchapter of this Act, except that the total amount of civil penal damages awarded in any action filed under this Act may not exceed the limits contained in this subparagraph;

(8) In cases of intentional employment discrimination with respondents who have more than 14 employees, compensatory and punitive damages as provided in this subparagraph.

(a) In an action brought by a complaining party under section 4612 and this section against a respondent who engaged in unlawful intentional discrimination prohibited under sections 4571 to 4575, if the complaining party can not recover under 42 United States Code, Section 1981 (1994), the complaining party may recover compensatory and punitive damages as allowed in this subparagraph in addition to any relief authorized elsewhere in this subsection from the respondent.

(b) When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded under this subparagraph when the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

(c) A complaining party may recover punitive damages under this subparagraph against a respondent if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the rights of an aggrieved individual protected by this Act.

(d) Compensatory damages awarded under this subparagraph do not include back pay, interest on back pay or any other type of relief authorized elsewhere under this subsection.

(e) The sum of compensatory damages awarded under this subparagraph for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed for each complaining party:

(i) In the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;

(ii) In the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000;

(iii) In the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000; and

(iv) In the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$500,000.

(f) Nothing in this subparagraph may be construed to limit the scope of, or the relief available under, 42 United States Code, Section 1981 (1994).

(g) If a complaining party seeks compensatory or punitive damages under this subparagraph, any party may demand a trial by jury, and the court may not inform the jury of the limitations described in division (e).

(h) This subparagraph does not apply to recoveries for a practice that is unlawful only because of its disparate impact.

(i) Punitive damages may not be included in a judgment or award against a governmental entity, as defined in Title 14, section 8102, subsection 2, or against an employee of a governmental entity based on a claim that arises out of an act or omission occurring within the course or scope of that employee's employment; and

(9) In addition to other remedies in subparagraphs (1) to (8), an order to pay actual 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; [2007, c. 695, Pt. A, §7 (RPR) .]

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); 2007, c. 695, Pt. A, §7 (AMD) .]

SECTION HISTORY

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

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

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; [2003, c. 279, §1 (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; or [2003, c. 279, §2 (AMD) .]

D. Dismissed the case in error. [2003, c. 279, §3 (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.

[2003, c. 279, §§1-3 (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). 1981, c. 255, §4 (RPR). 1993, c. 327, §§3,4 (AMD). 1995, c. 393, §30 (AMD). 1997, c. 400, §2 (AMD). 2003, c. 279, §§1-3 (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 8: 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: [1977, c. 259, §3 (NEW) .]

(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. [2001, c. 206, §1 (NEW) .]

SECTION HISTORY

2001, c. 206, §1 (NEW) .

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MHRC Program Evaluation Report

PART B

Program Description

MAINE HUMAN RIGHTS COMMISSION PROGRAM DESCRIPTION

The Maine Human Rights Commission has one single program.

PRIORITY: to promote equality of opportunity for all citizens by 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 investigation, conciliation, mediation, litigation, training and education for the purpose of enforcing the Maine Human Rights Act, and other areas of jurisdiction.

DESCRIPTION OF PROGRAM ACTIVITIES:

- investigating charges of unlawful discrimination;
- resolving charges of discrimination by informal methods of persuasion, conciliation, and negotiations;
- litigating complaints of discrimination after a finding of reasonable grounds;
- educating respondents and complainants about their rights and responsibilities under the Maine Human Rights Act.

PERFORMANCE MEASURES

	FY '00	FY '08	FY '09
# of complaints resolved as a total of charges active in one year	723	639	782
% of cases resolved administratively in place of court action	99.8%	98.8%	97.7%
% of cases completed within 270 days of filing	55.6%	39%	34%
% reduction of the pending inventory of cases	1%	-27.9	-7.5

ASSESSMENT OF COMMISSION'S ACHIEVEMENT IN MEETING PRIORITIES

It is important to note that the number and complexity of complaints received is not controlled by the agency, and funding constraints can limit the agency's ability to achieve desirable results.

Commissioners have noted over the last several years that resources available to investigate and resolve complaints do not meet the needs and expectations of many of the parties to complaints filed with the Commission.

The Commission also notes, however, that the average age of the pending inventory of the Maine Human Rights Commission (320 days) is less than the average age of the pending inventory throughout the country (855 days).

The Commission has not been as successful as it wishes it were in reducing the inventory of open cases, and of resolving cases earlier in the process.

Over the last two years the number of complaints filed has increased by 17.8%, and the number of allegations on which these complaints are filed has increased by 8.3% (see See Exhibit F, 2009 Annual Report for further analysis. Over that same period, the Commission has lost one of three support positions through layoffs, and seen a long-term vacancy in a second support position due to retirement. It is nearly impossible for a single support position to do all of the administrative work the agency requires.

Investigators carry an open caseload of 100 cases at any one time, meaning that there are always 200-300 cases pending assignment. In June 2007 we launched a plan to eliminate the backlog of cases in the pending file. Our goal was to begin assigning cases to an Investigator as soon as the complainant's rebuttal was received, and schedule cases in which the issues were clear, for early, short meetings that would clarify those issues and attempt resolution. We did not achieved the desired result with the model we used, largely because of scheduling issues, lack of support staff availability, and a concern about a resulting short summary report and recommendation if resolution was not successful. Major portions of the plan continue to be utilized, however, resulting in an increased number of resolutions for cases selected for this approach. There are still more than 150 cases in the pending file and that number is growing. In addition, each month there is still a large number of cases on the Commission's agenda in which the statute of limitations is about to run.

MHRC Program Evaluation Report

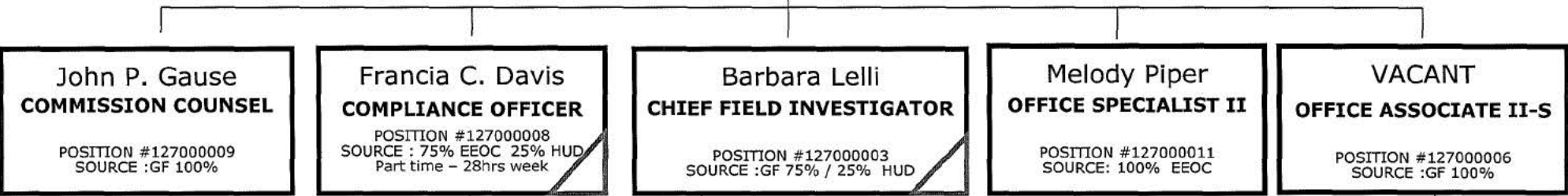
PART C

Organizational Structure

MAINE HUMAN RIGHTS COMMISSION

2009 ORGANIZATIONAL CHART

Patricia E. Ryan
EXECUTIVE DIRECTOR
 POSITION #127000001
 SOURCE :GF 100%



John P. Gause
COMMISSION COUNSEL
 POSITION #127000009
 SOURCE :GF 100%

Francina C. Davis
COMPLIANCE OFFICER
 POSITION #127000008
 SOURCE : 75% EEOC 25% HUD
 Part time - 28hrs week

Barbara Lelli
CHIEF FIELD INVESTIGATOR
 POSITION #127000003
 SOURCE :GF 75% / 25% HUD

Melody Piper
OFFICE SPECIALIST II
 POSITION #127000011
 SOURCE: 100% EEOC

VACANT
OFFICE ASSOCIATE II-S
 POSITION #127000006
 SOURCE :GF 100%

Cheryl McAllister
PARALEGAL ASST.
 POSITION #127000021
 SOURCE :HUD 100%

Bob Beauchesne
FIELD INVESTIGATOR
 POSITION #127000004
 SOURCE 100% EEOC

Cindy Rocque
OFFICE ASSOCIATE II
 POSITION #127000005
 SOURCE: 100% GF

Michele Dion
FIELD INVESTIGATOR
 POSITION #127000029
 SOURCE :GF 100%

Angela T'izon
FIELD INVESTIGATOR
 POSITION #127000028
 SOURCE 100% HUD

Sheila Pierce
FIELD INVESTIGATOR
 POSITION #127000012
 SOURCE : 75% GF 25% HUD

MAINE HUMAN RIGHTS COMMISSION
 MHRC - REGULATION
 Independent Agencies - Other

UMBRELLA: 94H
 UNIT: 348
 PROGRAM: 0150
 APPROPS: **010 94H 0150 01 - General Fund (GF)**
013 94H 0150 01 - Federal Fund (EEOC)
013 94H 0150 02 - Federal Fund (HUD)

MHRC Program Evaluation Report

PART D

***Compliance with
Federal & State Laws***

Compliance with Federal & State Laws

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 Office Specialist II / Financial Officer, Melody Piper, is responsible for agency reporting and monitoring 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 supports affirmative action requirements, and attaches its Affirmative Action Plan as Exhibit A.

MHRC Program Evaluation Report

PART E

Financial Summary

MHRC Financial Summary 2000 - 2009

FISCAL YEAR	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
General Funds - Personnel Services	391,372	419,618	444,258	465,019	431,826	441,237	449,205	508,064	498,071	536,493
General Funds - All Other	46,185	47,784	44,340	46,788	42,398	43,818	45,378	47,957	56,679	19,562
Total General Fund	437,557	467,402	488,598	511,808	474,224	485,055	494,583	556,021	554,750	556,055
Federal Funds - Personnel Services	180,281	198,128	202,020	207,727	250,621	269,607	279,721	250,215	281,828	297,590
Federal Funds - All Other	42,344	34,374	25,689	49,774	63,755	59,186	87,492	92,616	111,180	111,696
Total Federal Funds	222,625	232,502	227,709	257,501	314,376	328,793	367,212	342,831	393,008	409,286
Special Revenues - All Other	1,352	42	23,031	126	283	106	106	576	15,715	4,159
Total Special Revenues	1,352	42	23,031	126	283	106	106	576	15,715	4,159
TOTAL ANNUAL EXPENDITURES	661,534	699,946	739,338	769,434	788,883	813,954	861,901	899,428	963,473	969,500

MHRC Program Evaluation Report

PART F

***Regulatory Agenda & Summary
of Rules Adopted***

SUMMARY OF RULES ADOPTED OR AMENDED
(Fiscal Years 2002 – 2009)

Chapter 2: Procedural Rule

No Changes

Chapter 3: Employment Regulations of the Maine Human Rights Commission

Action: Amendment – July 20, 2005

Summary: This amendment added a provision to the then-existing definition of “physical or mental disability” that mitigating measures such as medication, auxiliary aids, and prosthetic devices were not to be taken into account when determining whether a physical or mental impairment constituted a “physical or mental disability.”

Action: Amendment – March 21, 2007

Summary: This amendment repealed the then-existing definition of “physical or mental disability” and adopted a new definition. Consistent with the statutory definition, the new regulatory definition eliminated the requirement of showing a “substantial limitation on a major life activity.” The definition separately defined particular statutory terms and provided a general exception for common or “transitory and minor” conditions, as well as a list of other excepted conditions.

Action: Amendment – September 15, 2007

Summary: This amendment implemented the addition of “sexual orientation” as a protected class to the Maine Human Rights Act. The amendment defined the term “sexual orientation” and adopted sexual orientation anti-discrimination provisions.

Action: Amendment – April 14, 2008

Summary: This amendment repealed the regulatory definition of “physical or mental disability” in light of the adoption of a new statutory definition.

Chapter 4: Equal Educational Opportunity

No Changes

Chapter 4-A: Procedural Rule: Equal Educational Opportunity

No Changes

Chapter 5: Public Accommodations Regulations Relating to Physical or Mental Disability Discrimination in Public Conveyances of the Maine Human Rights Commission

Action: Amendment – July 20, 2005

Summary: This amendment added a provision to the then-existing definition of “physical or mental disability” that mitigating measures such as medication, auxiliary aids, and prosthetic devices were not to be taken into account when determining whether a physical or mental impairment constituted a “physical or mental disability.” Technical changes were also made.

Action: Amendment – March 21, 2007

Summary: This amendment repealed the then-existing definition of “physical or mental disability” and adopted a new definition. Consistent with the statutory definition, the new regulatory definition eliminated the requirement of showing a “substantial limitation on a major life activity.” The definition separately defined particular statutory terms and provided a general exception for common or “transitory and minor” conditions, as well as a list of other excepted conditions. Additional wording changes were made.

Action: Amendment – April 14, 2008

Summary: This amendment repealed the regulatory definition of “physical or mental disability” in light of the adoption of a new statutory definition.

Chapter 6: Accessibility Requirements for Public Accommodations and Places of Employment

No substantive changes.

Chapter 7: Accessibility Regulations of the Maine Human Rights Commission

Action: Amendment – July 20, 2005

Summary: This amendment added a provision to the then-existing definition of “physical or mental disability” that mitigating measures such as medication, auxiliary aids, and prosthetic devices were not to be taken into account when determining whether a physical or mental impairment constituted a “physical or mental disability.”

Action: Amendment – March 21, 2007

Summary: This amendment repealed the then-existing definition of “physical or mental disability” and adopted a new definition. Consistent with the statutory definition, the new regulatory definition eliminated the requirement of showing a “substantial limitation on a major life activity.” The definition separately defined particular statutory terms and provided a general exception for common or “transitory and minor” conditions, as well as a list of other excepted conditions.

Action: Amendment – April 14, 2008

Summary: This amendment repealed the regulatory definition of “physical or mental disability” in light of the adoption of a new statutory definition.

Action: Amendment – November 19, 2008

Summary: This amendment implemented new statutory service animal provisions. The amendment incorporated the statutory definition of “service animal” and the statutory

rights of people with disabilities to use service animals in places of public accommodation. The former regulatory provisions relating to service animals were revised accordingly.

Chapter 8: Housing Regulations of the Maine Human Rights Commission

Action: Amendment – July 20, 2005

Summary: This amendment added a provision to the then-existing definition of “physical or mental disability” that mitigating measures such as medication, auxiliary aids, and prosthetic devices were not to be taken into account when determining whether a physical or mental impairment constituted a “physical or mental disability.”

Action: Amendment – March 21, 2007

Summary: This amendment repealed the then-existing definition of “physical or mental disability” and adopted a new definition. Consistent with the statutory definition, the new regulatory definition eliminated the requirement of showing a “substantial limitation on a major life activity.” The definition separately defined particular statutory terms and provided a general exception for common or “transitory and minor” conditions, as well as a list of other excepted conditions.

Action: Amendment – September 15, 2007

Summary: This amendment implemented the addition of “sexual orientation” as a protected class to the Maine Human Rights Act. The amendment defined the term “sexual orientation” and extended the anti-discrimination provisions to cover “sexual orientation” discrimination.

Action: Amendment – April 14, 2008

Summary: This amendment repealed the regulatory definition of “physical or mental disability” in light of the adoption of a new statutory definition.

Action: Amendment – November 19, 2008

Summary: This amendment implemented new statutory service animal provisions. The amendment incorporated the statutory definition of “service animal” and the statutory rights of people with disabilities to use service animals in housing.

Chapter 9: Housing Procedural Rule

No changes.

MHRC Program Evaluation Report

PART G

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

MAINE HUMAN RIGHTS COMMISSION'S FEDERAL PARTNERS

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

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The Maine Human Rights Commission and the U.S. Equal Employment Opportunity Commission (EEOC) have enjoyed a partnership since 1975, and operate together under a Worksharing Agreement which is revised and updated annually. (See attached Exhibit B for the current Worksharing Agreement). 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 by the other.

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

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT/OFFICE OF FAIR HOUSING

The Maine Human Rights Commission re-entered into a partnership with HUD's Office of Fair Housing 2002 completing capacity building requirements and formalizing its relationship in 2005. A Contributions Agreement delineates complaint filing procedures designed to address allegations of unlawful housing discrimination that are jurisdictional with both agencies. The Commission investigates housing complaints for HUD, avoiding duplicate investigations in Maine. (See attached Exhibit C for the current Contributions Agreement)

U.S. 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 Commission's Accessibility Regulations, was compatible with the federal requirements under the new construction and alteration

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 State's statute is equivalent to the ADA requirements.

Maine was the third state in the country to have a certified ADA-equivalent statute. 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)

U.S. 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 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 expeditiously. (See attached Exhibit E)

MAINE HUMAN RIGHTS COMMISSION'S STATE PARTNERS

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

Maine Department of Education

The Maine Human Rights Act allows participation by the Commissioner of Education in the investigation of complaints filed against educational institutions relating to equal educational opportunity (§4603; §4604). The Department has joint rulemaking authority with the Commission to effectuate provisions of the Maine Human Rights Act related to equal educational opportunity, and is provided with notification of every complaint filed against educational institutions. The Department is notified of results of investigations and invited to participate in predetermination resolution and post determination conciliation.

The Commission has a statutory requirement to cooperate with the Commissioner of Education to promote gender equity in the hiring of public school administrators (§4576).

Maine Department of Public Safety/Office of State Fire Marshal

Since 1993 the Maine Human Rights Act has required builders of newly constructed facilities to submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by the Maine Human Rights Act (§4594-D(7); §4594-F(8)). The Maine Human Rights Commission and the Office of the State Fire Marshal began working together in 1989 to insure compliance with access provisions of the statute. The Office of State Fire Marshal also performs voluntary plan review on buildings not subject to mandatory review.

Superintendent of Financial Institutions and the Superintendent of Consumer Credit Protection

The Maine Human Rights Act requires the Superintendent of Financial Institutions and the Superintendent of Consumer Credit Protection to cooperate with the Maine Human Rights Commission in enforcement of the Maine Human Rights Act in issues related to fair credit extension. This provision was first added to the Act in 1995.

MHRC Program Evaluation Report

PART H

Constituencies

CONSTITUENCIES SERVED BY THE MAINE HUMAN RIGHTS COMMISSION

Following is a list of constituencies served 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 (2009), 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, RACIAL & RELIGIOUS ORGANIZATIONS
14. GAY, LESBIAN, TRANSGENDER ADVOCATES
15. HOUSING CONSUMERS
16. LABOR ORGANIZATIONS
17. LANDLORD ASSOCIATIONS
18. NEWSPAPERS & OTHER ADVERTISERS
19. PEOPLE WITH DISABILITIES
20. PUBLIC ACCOMMODATIONS
21. REALTORS
22. SOCIAL SERVICE AGENCIES
23. STUDENTS
24. WOMEN'S GROUPS

BASES COVERED BY THE MAINE HUMAN RIGHTS ACT

EMPLOYMENT	HOUSING	ACCOMMODATION	CREDIT	EDUCATION
Race	Race	Race	Race	Race (91)
Color	Color	Color	Color	
Religion	Religion	Religion	Religion	
Ancestry	Ancestry	Ancestry	Ancestry	
National Origin	National Origin	National Origin	National Origin	National Origin (90)
Age		Age	Age	
Retaliation	Retaliation	Retaliation	Retaliation	
Sex (73)	Sex (73)	Sex (73)	Sex (73)	Sex (83)
Pregnancy (79)				
			Marital Status (73)	
Physical Disability (74)	Physical Disability (74)	Physical Disability (74)		Physical Disability (87)
Mental Disability (75)	Mental Disability (75)	Mental Disability (75)		Mental Disability (87)
Workers Comp (87)				
	Source of Income (75)			
		Children (86)		
Whistleblower's (88)				
	Familial Status (81)			
Genetic Predisposition (98)				
Breastfeed Mothers (01)				
Sexual Orientation (05)	Sexual Orientation (05)	Sexual Orientation (05)	Sexual Orientation (05)	Sexual Orientation (05)

MHRC Program Evaluation Report

PART I

Alternative Delivery Systems

ALTERNATIVE DELIVERY SYSTEMS

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.

Three major approaches have been undertaken:

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

Volunteer Mediators

Extensive efforts have gone towards utilizing outside mediation services to assist the Commission with the resolution of cases filed with it. Five major initiatives have been undertaken beginning in 1994.

The Commission has utilized volunteers, attorneys, a community mediation service, and skilled professionals. To set up and run the programs, the Commission has at various times utilized existing staff in lieu of performance of other duties; volunteer coordinators; interns, law school students, and a volunteer mediation service. The coordination responsibilities are time-consuming and without continuity of service, difficult to sustain.

1994: Volunteer Project 1 (attorneys)

1995-1996: Volunteer Project Phase II (attorneys)

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

2001-2006: Community Mediation Services

2009: individual volunteer mediator

Law School and College Interns

In an effort to assist it in completing some of the tasks in policy areas, as well as investigations, the Commission utilizes interns where feasible and practical.

The Commission has utilized law school and college interns in various projects over the last decade. The 2008 intern (college intern) focused on assisting the Commission in identifying the focus areas for sexual orientation regulations, researching barriers facing students in different educational settings, in a diverse range of schools from preschool through post-secondary.

The 2009 internship (law school intern) focused on completing investigations of cases filed with the Maine Human Rights Commission, providing legal research on issues assigned by Commission Counsel and assisting in the preparation of cases going to trial.

Contract Investigations

The Commission has utilized the services of contractors to conduct investigations during three periods: 1994, 1996, and 2008-2009.

All projects utilized the services of former human rights investigators, thoroughly familiar with investigations of cases pending at the Human Rights Commission.

MHRC Program Evaluation Report

PART J

Emerging Issues

EMERGING ISSUES

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

- **Lilly Ledbetter Decision**

Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007). This United States Supreme Court decision addressed the 180-day deadline for filing complaints with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964. The Court held that, in discriminatory pay cases, the filing deadline runs from the date of the initial decision to award unequal pay, not from the dates of the continued application of that decision in the form of discriminatory paychecks. In Lilly Ledbetter's case, that meant that her suit was barred because, although she continued to receive less pay than men into the 180-day filing period, the discriminatory decisions to award unequal pay were made long beforehand. In response to the Court's decision, the Lilly Ledbetter Fair Pay Act was enacted in 2009, which allows claims under federal anti-discrimination laws to be brought within 180 days of a discriminatory paycheck, even if the decision to award unequal pay was made earlier. In light of the risk that the Maine Law Court may follow the reasoning of the *Ledbetter* decision while interpreting the Maine Human Rights Act, the Commission may seek to introduce similar legislation to the Ledbetter Fair Pay Act in the 125th Legislature.

- **Gross v. FBL Decision**

Gross v. FBL Financial Services, Inc., 129 S.Ct. 2343 (2009). This United States Supreme Court decision addressed the burden of proof in claims brought under the Age Discrimination in Employment Act. In a previous Supreme Court decision interpreting Title VII, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), the Court had held that the existence of "direct evidence" of discrimination shifted the burden to the defendant to show that it would have taken the same action against plaintiff even in the absence of a discriminatory motive. Title VII has since been amended to allow injunctive relief and attorney's fees when protected class was "a motivating factor" in the employment decision, even if the same decision would have been made without the unlawful motive. In *Gross*, the Supreme Court held that neither *Price Waterhouse* nor the Title VII amendment applies to the ADEA. Plaintiff can only recover if she proves that she would not have suffered the adverse job action but for her protected class. This allows a respondent to escape all liability when an unlawful motive played a role in its decision but not the determining role. In light of the risk of the Maine Law Court following *Gross* in its interpretation of the Maine Human Rights Act, the Commission may seek to introduce legislation in the 125th Legislature to add an amendment similar to the Title VII amendment.

- **Gender Identity Discrimination**

The Maine Human Rights Act was amended in 2005 to include "sexual orientation" as a protected class. "Sexual orientation" is defined to include "gender identity or expression." The Commission has adopted a regulatory definition of the term "gender identity" to mean, "an individual's gender-related identity, whether or not that identity is different from that traditionally associated with that individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous." An area that has attracted attention in the recent past, and will likely continue to do, is access to facilities and

programs by people who are transgender. For example, the Commission recently found reasonable grounds in two cases in which transgender individuals were denied access to bathrooms that were consistent with their gender identities. The issue is particularly important in schools, where bathrooms, locker rooms, and sports teams are segregated by sex. The Commission is in the process of formulating written guidance for schools in this area.

- **New Filing Deadlines**

Pursuant to Public Law 235, the filing deadlines under the Maine Human Rights Act were amended, effective September 12, 2009. The Commission supported the changes. The time to file a complaint with the Commission has been enlarged from 6 months to 300 days after the alleged act of discrimination. The two-year statute of limitations for filing a court action has also been changed. Under the new law, a court complaint may be filed within the greater of either 2 years after the act of alleged discrimination or 90 days from a dismissal, right-to-sue letter, or failed conciliation. The Commission has two years to complete its investigation under section 4612(1)(B). The Commission will be amending its Procedural Rule in the near future to incorporate these changes.

- **Family Caregiver Protection**

An effort was made during the first session of the 124th Legislature to add “family caregiver” protection to the employment provisions of Maine Human Rights Act. LD 962 would have added a new protected class for persons who care for a child, parent, spouse, domestic partner or sibling. The bill died on adjournment. The Commission supported the bill, provided that it were not construed to create an obligation to make “reasonable accommodation” for family caregivers. A similar concern was expressed by several legislators. There is an ongoing problem of employers negatively stereotyping workers who are responsible for the care of family members. Although it is reasonable for employers to hold family caregivers to their attendance requirements, it is wrong to refuse to hire them based on the assumption that they will be less reliable. This issue is likely to receive more attention in the near future as baby boomers increasingly become dependent on their children for their care.

- **New ADAAG**

The federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) are the building design guidelines for accessible public accommodations and commercial facilities under the Maine Human Rights Act, as well as the federal Americans with Disabilities Act. They are written by the United States Access Board and are only binding to the extent they are incorporated into another law such as the MHRA or the ADA. Pursuant to the MHRA, ADAAG requirements must be met whenever a building to be used as a place of public accommodation or employment is constructed or altered. The initial version of ADAAG was released in 1991. Substantial revisions were made in 2004, and the United States Department of Justice is in the process of considering the extent to which the new ADAAG will be incorporated into its regulations interpreting the ADA. In order to maximize the potential for consistency between the MHRA and the ADA, the Commission will monitor the DOJ’s approach prior to deciding what portions of the new ADAAG it will seek to implement.

MHRC Program Evaluation Report

PART K

***Specific Info
Requested by Committee***

N/A

MHRC Program Evaluation Report

PART L

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

COMPARISON OF RELATED FEDERAL LAWS AND REGULATIONS

The Maine Human Rights Commission's areas of jurisdiction and the Commission's regulations are generally consistent with the following federal statutes and regulations, broken down by subject area as follows:

I. PROCEDURAL PROVISIONS

Maine Statutory Provisions

- Maine Human Rights Act, 5 M.R.S.A. Chapter 337, Subchapters 2 & 6.

Maine Regulations

Maine Human Rights Commission Regulations, Chapters 2 (Procedural Rule), 4A (Education Procedural Rule), 9 (Housing Procedural Rule).

Corresponding Federal Statutory Provisions

- Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-4 – 2000e-8.
- Fair Housing Act, 42 U.S.C. §§ 3610 to 3616.
- Title IX, 20 U.S.C. § 1682 (education – sex).
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (programs receiving federal financial assistance – race, color, national origin).

Corresponding Federal Regulations

- EEOC Procedural Regulations, 29 C.F.R. Part 1601.
- HUD Complaint Processing Regulations, 24 C.F.R. §§ 103.1 – 103.515.
- Title IX Procedures, 34 C.F.R. § 106.71.
- Title VI Procedures, 28 C.F.R. §§ 42.105 – 42.111 (DOJ); 34 C.F.R. §§ 101.1 – 101.131 (DOE).

II. EMPLOYMENT

Maine Statutory Provisions

- Maine Human Rights Act, 5 M.R.S.A. Chapter 337, Subchapter 3 (race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, Whistleblowers' Protection Act, prior Workers' Compensation claims).
- 5 M.R.S.A. Chapter 503 (genetic information and testing).

Maine Regulations

- Maine Human Rights Commission Regulations, Chapter 3.

Corresponding Federal Statutory Provisions

- Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et. seq. (race, color, religion, sex, or national origin).
- The Americans with Disabilities Act, 42 U.S.C. Chapter 126, Subchapter I (physical or mental disability).
- The Age Discrimination in Employment Act, 29 U.S.C. Chapter 14 (age).
- The Rehabilitation Act of 1973, 29 U.S.C. § 794 (recipients of federal financial assistance – physical or mental disability).
- Genetic Information Nondiscrimination Act of 2008 (effective November 2009), 42 U.S.C. §§ 2000ff, et. seq. (genetic information and testing).

Corresponding Federal Regulations

- EEOC Employment Regulations, Parts 1600 to 1691.
- DOJ Rehabilitation Act Regulations, 28 C.F.R. Chapter I, Part 42.

III. HOUSING

Maine Statutory Provisions

- Maine Human Rights Act, 5 M.R.S.A. Chapter 337, Subchapter 4 (race or color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial).

Maine Regulations

- Maine Human Rights Commission Regulations, Chapter 8.

Corresponding Federal Statutory Provisions

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

Corresponding Federal Regulations

- HUD Housing Regulations, 24 C.F.R. §§ 100.1 – 100.400.

IV. PUBLIC ACCOMMODATIONS

Maine Statutory Provisions

- Maine Human Rights Act, 5 M.R.S.A. Chapter 337, Subchapter 5 (race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin).

Maine Regulations

- Maine Human Rights Commission Regulations, Chapter 7 (disability).

Corresponding Federal Statutory Provisions

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

Corresponding Federal Regulations

- DOJ Title III ADA Regulations, 28 C.F.R. Part 35.
- DOJ Title II ADA Regulations, 28 C.F.R. Part 36.

V. EDUCATIONAL OPPORTUNITY

Maine Statutory Provisions

- Maine Human Rights Act, 5 M.R.S.A. Chapter 337, Subchapter 5-B (sex, sexual orientation, a physical or mental disability, national origin or race).

Maine Regulations

- Maine Human Rights Commission Regulations, Chapter 4.

Corresponding Federal Statutory Provisions

- Title IX, 20 U.S.C. §§ 1681 – 1688 (sex).
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (programs receiving federal financial assistance – race, color, national origin).
- The Americans with Disabilities Act, 42 U.S.C. Chapter 126, Subchapters II (physical or mental disability).
- The Rehabilitation Act of 1973, 29 U.S.C. § 794 (recipients of federal financial assistance – physical or mental disability).

Corresponding Federal Regulations

- Title IX DOE Regulations, 34 C.F.R. §§ 106.1 – 106.71.
- DOJ Title II ADA Regulations, 28 C.F.R. Part 36.

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PART M

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

COLLECTING, MANAGING, AND USING PERSONAL INFORMATION

The Commission's policies on the collection and dissemination of personal information is governed by the Maine Human Rights Act. Pursuant to the Act, "[p]rior to the conclusion of an investigation, all information possessed by the commission relating to the investigation is confidential and may not be disclosed, except that the commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation." 5 M.R.S.A. § 4612(B). During the course of the investigation, the Commission staff share all information submitted by one party with the other parties to the same complaint.

After the conclusion of an investigation, "[t]he complaint and evidence collected during the investigation of the complaint, other than data identifying persons not parties to the complaint, is a matter of public record. . . ." 5 M.R.S.A. § 4612(1)(B). Settlement and conciliation materials also remain confidential pursuant to 5 M.R.S.A. § 4612(1)(A), (3). Accordingly, after its investigations are concluded, and unless there is a court order stating otherwise, the Commission releases the entire contents of its investigative files to the public upon request, with the exception of third-party identifying information and settlement/conciliation materials. This includes information that would otherwise be confidential by statute.

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

MHRC Program Evaluation Report

PART N

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

LIST OF REPORTS, APPLICATIONS AND OTHER REQUIRED FILINGS

During its complaint investigations, the Commission requires parties to submit responsive information to the Commission's requests for information relating to the complaints. The Commission is statutorily authorized to obtain this information pursuant to 5 M.R.S.A. §§ 4566(4) and 4612(1)(B). This authority has not changed since the last review. The Commission received 819 complaints in fiscal year 2008 and 849 complaints in fiscal year 2009. During the past ten years, the annual number of complaints received has varied from 628 to 849. In almost every case, at a minimum, there is a written complaint and a response filed with the Commission. Further written submissions are often received as the investigations progress. The Commission attempts to keep filings at a minimum by only requesting information that its staff determines is necessary to its investigations.

MHRC 2009 Program Evaluation Report

Exhibit A

Affirmative Action Plan

STATE OF MAINE
MAINE HUMAN RIGHTS COMMISSION



EQUAL EMPLOYMENT OPPORTUNITY/
AFFIRMATIVE ACTION PLAN

UPDATED: 10/15/09

This revised version of the Maine Human Rights Commission's Equal Employment Opportunity/Affirmative Action Plan is hereby adopted and shall become effective on this date.

Dated: 10-13, 2009

A handwritten signature in black ink, appearing to read "Patricia E Ryan".

Patricia E Ryan
Executive Director

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EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION
POLICY STATEMENT

The Maine Human Rights Commission shall continue to pursue a policy of non-discrimination in all employment actions, practices, procedures and conditions of employment. This Plan has been designed to continue to assure all employees of the agency equal employment opportunities regardless of race, color, sex, sexual orientation, age, religion, national origin, ancestry, and physical and/or mental disability, previous assertion of a claim or right under the Maine Worker's Compensation Act and protection against retaliation under the Maine Whistleblower's Protection Act.

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's 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 Maine Human Rights Act.

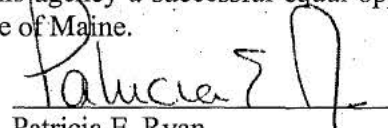
1. Employment decisions will be based on the principles of equal employment opportunity. Recruitment, testing, selection, and promotion will be administered without regard to the protected classes delineated above. Personnel actions and conditions of employment such as compensation, benefits, lay-offs, job assignments, personnel development opportunities and discipline will be administered with the same absence of bias.
2. 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.
3. All employees are responsible for awareness of and response to potential discriminatory situations. No employee may act, or allow other employees to act in a retaliatory or harassing manner toward any other employee who has been involved in the filing, investigation, or resolution of a discrimination claim.
4. The Commission will address and attempt to resolve employee complaints regarding discrimination and/or harassment as expeditiously as possible.

I have assigned responsibility for the implementation, monitoring and record keeping of these programs to Francia Davis, Compliance Officer and EEO Officer.

Laurel Shippee, the State EEO Coordinator in the Office of Employee Relations is also available as a resource for any employee. She may be reached at: 287-4651.

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 people. I sincerely appreciate the continued cooperation and support of all MHRC employees in making this agency a successful equal opportunity employer and a positive example for other employers in the State of Maine.

Dated: 10-13-2009



Patricia E. Ryan
Executive Director

POLICY STATEMENT AGAINST HARASSMENT

The Maine Human Rights Commission recognizes the dignity of the individual employee and the right of employees to work in an environment free of intimidation and harassment. Such intimidation or harassment based on race, sex, color, age, religion, national origin, ancestry, sexual orientation, physical/mental disability, retaliation for whistleblower activity or a previous assertion of a claim or right under the Worker's Compensation Act is a violation of State policy. Because such harassment seriously undermines the integrity of the workplace, adversely affects employee morale, interferes with work productivity and adversely affects the careers of employees, it is unacceptable and will not be tolerated. When it affects employment decisions or creates an offensive working environment, it is a violation of the Maine Human Rights Act and the Civil Rights Act of 1964.

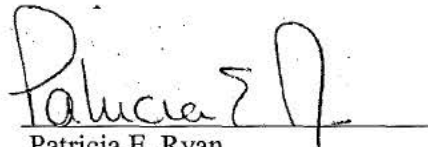
Examples of harassment related to the protected classes specified above include the following, which may be a series of incidents or a single occurrence:

- Unwelcome sexual advances, gestures, comments or contact;
- Threats;
- Offensive jokes;
- Subjecting employees to ridicule, slurs or derogatory actions;
- Basing employment decisions or practices on submission to such harassment;
- Refusal to cooperate with employees in performing work assignments;
- Inequitable disciplinary actions and work assignments.

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. Similarly, any conduct that degrades, ridicules or otherwise draws unwarranted attention to any employee or other person doing business with the Commission is considered unprofessional regardless of whether it constitutes illegal harassment. Such unprofessional conduct will not be tolerated in the workplace because it undermines morale, interferes with performance and demeans its victims. Public service demands of each of us the highest standards of honesty, impartiality and conduct in the performance of our duties. Each employee is personally responsible for compliance with this policy.

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.

Dated: 10-13-2009


Patricia E. Ryan
Executive Director

INTRODUCTION

The Maine Human Rights Commission's mission is to ensure that every person in the State has a right to equal opportunity in employment, housing, education, access to public accommodations and credit extension.

The foundation for Equal Employment Opportunity and Affirmative Action policies is derived from State and Federal laws and regulations as well as moral and professional commitment. The legal mandates include: The Maine Human Rights Act, 5 MRSA, Ch. 337; Title VII of the Civil Rights Act of 1964 as amended; the Rehabilitation Act of 1973; the Equal Pay Act; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1991; the State Personnel Law, 5 MRSA, ch. 51, section 553 (Non-Discrimination) and 5 MRSA, ch. 65 (Code of Fair Practices and Affirmative Action).

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. Professionally, the Commission must provide sound leadership in the administration of all personnel functions.

RESPONSIBILITY

EXECUTIVE DIRECTOR

The Executive Director, Patricia Ryan, has overall responsibility for the agency's compliance with equal opportunity employment 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 the principles of affirmative action.

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

- Monitors internal auditing and reporting systems to measure program effectiveness and to determine where progress has been made and where further action is needed;
- Develops, implements and monitors an EEO/AA training plan to ensure that employees of the agency receive 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 process to assure job relatedness, especially in areas of underutilization;
- Investigates employee complaints alleging discrimination and makes recommendations for resolution; and,
- Monitors compliance with applicable statutes.

PERSONNEL OFFICER

The Commission's Personnel Officer, Melody Piper, is responsible for ensuring that personnel actions are administered fairly and in accordance with State and Federal EEO laws and agency 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 or as otherwise required by law;
- Advises the EEO Officer of potential problems in EEO/ AA areas.

COMPLAINT PROCESS

The Maine Human Rights Commission is committed to preventing harassment and/or discrimination prohibited by this Plan through education and dissemination of information as well as employee accountability. Such harassment and/or discrimination may be reported by any employee, regardless of whether that employee is the recipient of the action, a witness or otherwise becomes aware of harassment or discrimination in the workplace.

Internal complaints may be filed by contacting either of the following individuals:

- Francia Davis, EEO Officer
- Laurel Shippee, State EEO Coordinator

Although every attempt will be made to resolve complaints at the lowest level possible, if an investigation is warranted, it will be conducted promptly and with as much confidentiality as possible. All employees are expected to cooperate in any investigation within this agency.

In addition to initiating the internal complaint procedure, employees covered by collective bargaining agreements may file a grievance through the applicable grievance procedure. A discrimination complaint may also be filed with this agency alleging a violation of the Maine Human Rights Act. It is not required that any internal procedure be exhausted before filing a formal complaint.

RETALIATION

Any form of retaliatory action or threat or suggestion of retaliation by employees or supervisors against any person filing a complaint under this policy or assisting in an investigation will not be tolerated by this agency. Any discriminatory action against any employee because the individual has opposed a practice that would be a violation of the Maine Human Rights Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act or the ADEA or because that person has made a charge, testified or assisted in any investigation, proceeding or hearing under the Maine Human Rights Act, etc., is illegal. Such retaliatory action will be grounds for disciplinary action up to and including termination.

Francia Davis, EEO Officer is responsible for handing complaints and providing technical assistance to staff regarding these issues.

Laurel Shippee, State EEO Coordinator in the Office of Employee Relations is also available as a resource to any state employee.

PLAN/POLICY DISSEMINATION

The Commission will provide for internal and external communication and dissemination of its EEO/Affirmative Action Plan. By way of such dissemination, the Commission becomes publicly accountable for the successful implementation of this Plan.

The Commission's policy statements are an integral part of the EEO/ Affirmative Action Plan. The EEO/AAP will be kept in the office of the Executive Director. Current and new employees will be given a copy of the agency's policies on affirmative action and harassment as well as the Plan itself.

INTERNAL DISSEMINATION

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

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

Briefings will be held for all employees regarding EEO/AAP principles and practices, with particular emphasis on accountability for assuring a workplace free from discrimination. The AA Officer will be available to provide technical assistance.

Action Date: Within one month of the signing of the Plan and ongoing.
Responsible Party: AA Officer

The Personnel Officer will be informed of her responsibilities under this EEO/AAP in writing and provided a copy of the Plan.

Action date: Within one month of the signing of the Plan.
Responsible Party: AA Officer

EXTERNAL DISSEMINATION

The labor organizations representing employees of the Commission will be provided with a copy of the EEO/AAP.

Action Date: Within one month of the signing of the Plan.
Responsible Party: AA Officer

Copies of the EEO/AAP will be sent to the Maine State Library and the Office of Employee Relations.

Action Date: Within one month of the signing of the Plan.
Responsible Party: AA Officer

Advertisements for job vacancies will include the following (or comparable) phrase: “An Equal Employment Opportunity/Affirmative Action Employer”.

Action date: ongoing
Responsible Parties: AA 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

WORKFORCE UTILIZATION

This section of the Plan is the statistical analysis of the Maine Human Rights Commission's workforce to determine the representation of women and minorities and is comprised of two parts. Part I includes the tables showing the agency's current workforce with regard to women and minorities, the civilian labor force availability in each of the EEO categories, and the comparison of these tables, which demonstrates whether there is underutilization. External labor force data was obtained from the US Census for 2000. Part II is the interpretation of the statistical analysis and explanation of objectives to address any underutilization.

In instances where underutilization has been determined, the Weber standard will apply and gender or race will be allowed as a consideration in a hiring decision following strict guidelines and under close monitoring by the agency's AA Officer. This standard, based on *United Steelworkers v. Weber*, 443 US 193 (1979) as applied in *Johnson v. Transportation Agency*, 480 US 616 (1987). This standard allows race or gender to be considered as a factor in an employment decision when done pursuant to a voluntary affirmative action plan directing that gender and race be considered for the purpose of remedying underutilization of women and minorities in job categories where there is a demonstrated imbalance and provided that (1) such preference does not unnecessarily infringe on the rights of other employees who are not in protected classes or create an absolute bar to their advancement and (2) such gender or racial preference is temporary in nature.

Program goals have been established in a separate section of this Plan that provide additional specificity with regard to actions to be taken to assist the Commission in reaching its affirmative action goals and assuring the provision of equal employment opportunities to all employees and applicants. The ultimate goal is to reach a point where affirmative action is no longer necessary – where the principles of equal employment opportunity and the practice of non discrimination will assure equality in employment.

TABLE 1

UTILIZATION ANALYSIS – PART I

WORKFORCE ANALYSIS BY SALARY GRADE

TITLE	EEO CODE	SAL GRADE	JOB CLASS CODE	SALARY	Female	Male	Total Minority	WH Male	WH Female	BL FEMALE	BL MALE	HIS FEMALE	HIS MALE	AMFEMALE	AMERMALE	ASIANMALE
COMMISSION COUNSEL MHRC	1	32	CU32	\$72,155.20	0	1	0	1	0	0	0	0	0	0	0	0
EX DIR HUMAN RIGHTS	1	32	EW32	\$72,883.20	1	0	0	0	1	0	0	0	0	0	0	0
FIELD INVESTIGATOR	2	22	67	\$42,744.00	0	1	0	1	0	0	0	0	0	0	0	0
FIELD INVESTIGATOR	2	22	67	\$37,190.40	1	0	1	0	0	0	0	1	0	0	0	0
FIELD INVESTIGATOR	2	22	67	\$39,062.40	1	0	0	0	1	0	0	0	0	0	0	0
FIELD INVESTIGATOR	2	22	67	\$44,449.60	1	0	0	0	1	0	0	0	0	0	0	0
CHIEF FIELD INVESTIGATOR	2	25	75	\$56,929.60	1	0	0	0	1	0	0	0	0	0	0	0
COMPLIANCE OFFICER	2	25	208	\$37,506.56	1	0	0	0	1	0	0	0	0	0	0	0
PARA LEGAL ASSIST	6	18	16	\$35,734.40	1	0	0	0	1	0	0	0	0	0	0	0
OFFICE ASSOCIATE II	6	13	6542	\$31,720.00	1	0	0	0	1	0	0	0	0	0	0	0
OFFICE ASSOCIATE II SUPV	6	15	6543	\$38,438.40	1	0	0	0	1	0	0	0	0	0	0	0
OFFICE SPECIALIST II	6	20	6592	\$34,340.80	1	0	0	0	1	0	0	0	0	0	0	0

WORKFORCE ANALYSIS OF PERSONNEL

TITLE	TOTAL EMPLOYED	EEO CODE	Female	Male	Total Minority	AVG SAL
COMMISSION COUNSEL MHRC	1	1	0	1	0	\$ 72,155.20
EX DIR HUMAN RIGHTS	1	1	1	0	0	\$ 72,883.20
FIELD INVESTIGATOR	4	4	3	1	1	\$ 40,862.00
CHIEF FIELD INVESTIGATOR	1	2	1	0	0	\$ 56,929.60
COMPLIANCE OFFICER	1	2	1	0	0	\$ 37,506.56
PARA LEGAL ASSIST	1	6	1	0	0	\$ 35,734.40
OFFICE ASSOCIATE II	1	6	1	0	0	\$ 31,720.00
OFFICE ASSOCIATE II SUPV	1	6	1	0	0	\$ 38,438.40
OFFICE SPECIALIST II	1	6	1	0	0	\$ 34,340.80

TABLE 2

U.S. Census Bureau

Occupational Category	ST & Local Job Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
Total Civilian Labor Force		Total	655175	636145	3920	2484	3138	3824	193	341	2846	73	715	1504
		Male	341300	331540	2117	1519	1598	1724	94	148	1337	33	410	780
		Female	313883	304605	1803	965	1540	2100	99	193	1509	40	305	724
Officials and Managers	1	Total	86330	84575	435	215	250	275	20	14	285	20	80	170
		Male	50825	49815	270	145	135	160	10	10	140	0	55	85
		Female	35514	34760	165	70	115	115	10	4	145	20	25	85
Professional	2	Total	115445	112040	795	430	380	910	19	55	460	14	65	280
		Male	48343	46635	395	245	180	465	4	30	175	4	25	185
		Female	67105	65405	400	185	200	445	15	25	285	10	40	95
Technicians	3	Total	15205	14845	69	45	75	85	20	0	29	0	10	30
		Male	5724	5565	40	20	50	15	10	0	4	0	10	10
		Female	9484	9280	29	25	25	70	10	0	25	0	0	20
Protective Service: Sworn	4	Total	8300	8110	39	25	65	0	0	0	15	10	10	25
		Male	7405	7250	35	10	65	0	0	0	15	10	10	10
		Female	894	860	4	15	0	0	0	0	0	0	0	15
Protective Service: Non-Sworn	5	Total	910	845	18	0	24	20	0	0	8	0	0	4
		Male	431	405	8	0	4	10	0	0	4	0	0	0
		Female	488	440	10	0	20	10	0	0	4	0	0	4
Administrative Support	6	Total	153130	149010	975	695	635	575	50	145	510	4	180	335
		Male	46774	45500	335	300	175	140	25	40	105	4	65	85
		Female	106340	103510	640	395	460	435	25	105	405	0	115	250
Skilled Craft	7	Total	74940	73220	255	210	325	220	14	8	390	0	140	165
		Male	70109	68610	235	195	300	160	10	4	355	0	130	110
		Female	4838	4610	20	15	25	60	4	4	35	0	10	55
Service Maintenance	8	Total	197940	190720	1290	795	1365	1715	70	115	1115	25	230	495
		Male	110420	106515	795	600	685	770	35	60	535	15	115	295
		Female	87515	84205	495	195	680	945	35	55	580	10	115	200

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<http://www.census.gov/eo2000/index.html>

NOTE: Estimates may not add to the total due to rounding. For information on confidentiality, protection, sampling error, nonsampling error, and accuracy of the data, see <http://www.census.gov/prod/cen2000/doc/sf3chap8.pdf>

U.S. Census Bureau

Geography

Maine Fips=23

Occupational Category	ST & Local Job Code	Sex	Total	White non-Hispanic	Hispanic	Black non-Hispanic	AIAN non-Hispanic	Asian non-Hispanic	NHOPI non-Hispanic	Black & White non-Hispanic	AIAN & White non-Hispanic	AIAN & Black non-Hispanic	Asian & White non-Hispanic	Balance 2+ Races, non-Hispanic
Total Civilian Labor Force		Total	100%	97.10%	0.60%	0.40%	0.50%	0.60%	0.00%	0.10%	0.40%	0.00%	0.10%	0.20%
		Male	52.10%	50.60%	0.30%	0.20%	0.20%	0.30%	0.00%	0.00%	0.20%	0.00%	0.10%	0.10%
		Female	47.90%	46.50%	0.30%	0.10%	0.20%	0.30%	0.00%	0.00%	0.20%	0.00%	0.00%	0.10%
Officials and Managers	1	Total	100%	98.00%	0.50%	0.20%	0.30%	0.30%	0.00%	0.00%	0.30%	0.00%	0.10%	0.20%
		Male	58.90%	57.70%	0.30%	0.20%	0.20%	0.20%	0.00%	0.00%	0.20%	0.00%	0.10%	0.10%
		Female	41.10%	40.30%	0.20%	0.10%	0.10%	0.10%	0.00%	0.00%	0.20%	0.00%	0.00%	0.10%
Professional	2	Total	100%	97.10%	0.70%	0.40%	0.30%	0.80%	0.00%	0.00%	0.40%	0.00%	0.10%	0.20%
		Male	41.90%	40.40%	0.30%	0.20%	0.20%	0.40%	0.00%	0.00%	0.20%	0.00%	0.00%	0.20%
		Female	58.10%	56.70%	0.30%	0.20%	0.20%	0.40%	0.00%	0.00%	0.20%	0.00%	0.00%	0.10%
Technicians	3	Total	100%	97.60%	0.50%	0.30%	0.50%	0.60%	0.10%	0.00%	0.20%	0.00%	0.10%	0.20%
		Male	37.60%	36.60%	0.30%	0.10%	0.30%	0.10%	0.10%	0.00%	0.00%	0.00%	0.10%	0.10%
		Female	62.40%	61.00%	0.20%	0.20%	0.20%	0.50%	0.10%	0.00%	0.20%	0.00%	0.00%	0.10%
Protective Service: Sworn	4	Total	100%	97.70%	0.50%	0.30%	0.80%	0.00%	0.00%	0.00%	0.20%	0.10%	0.10%	0.30%
		Male	89.20%	87.30%	0.40%	0.10%	0.80%	0.00%	0.00%	0.00%	0.00%	0.20%	0.10%	0.10%
		Female	10.80%	10.40%	0.00%	0.20%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.20%
Protective Service: Non-Sworn	5	Total	100%	92.90%	2.00%	0.00%	2.60%	2.20%	0.00%	0.00%	0.90%	0.00%	0.00%	0.40%
		Male	47.40%	44.50%	0.90%	0.00%	0.40%	1.10%	0.00%	0.00%	0.40%	0.00%	0.00%	0.00%
		Female	53.60%	48.40%	1.10%	0.00%	2.20%	1.10%	0.00%	0.00%	0.40%	0.00%	0.00%	0.40%
Administrative Support	6	Total	100%	97.30%	0.60%	0.50%	0.40%	0.40%	0.00%	0.10%	0.30%	0.00%	0.10%	0.20%
		Male	30.50%	29.70%	0.20%	0.20%	0.10%	0.10%	0.00%	0.00%	0.10%	0.00%	0.00%	0.10%
		Female	69.40%	67.60%	0.40%	0.30%	0.30%	0.30%	0.00%	0.10%	0.30%	0.00%	0.10%	0.20%
Skilled Craft	7	Total	100%	97.70%	0.30%	0.30%	0.40%	0.30%	0.00%	0.00%	0.50%	0.00%	0.20%	0.20%
		Male	93.60%	91.60%	0.30%	0.30%	0.40%	0.20%	0.00%	0.00%	0.50%	0.00%	0.20%	0.10%
		Female	6.50%	6.20%	0.00%	0.00%	0.00%	0.10%	0.00%	0.00%	0.00%	0.00%	0.00%	0.10%
Service Maintenance	8	Total	100%	96.40%	0.70%	0.40%	0.70%	0.90%	0.00%	0.10%	0.60%	0.00%	0.10%	0.30%
		Male	55.80%	53.80%	0.40%	0.30%	0.30%	0.40%	0.00%	0.00%	0.30%	0.00%	0.10%	0.10%
		Female	44.20%	42.50%	0.30%	0.10%	0.30%	0.50%	0.00%	0.00%	0.30%	0.00%	0.10%	0.10%

NOTE: Estimates may not add to the total due to rounding. For information on confidentiality, protection, sampling error, nonsampling error, and accuracy of the data, see <http://www.census.gov/prod/cen2000/doc/sf3chap8.pdf>

<http://www.census.gov/eo2000/index.html>

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TABLE 3

CIVILIAN WORKFORCE AVAILABILITY (BASED ON 2000 CENSUS FIGURES)*								
Job Category	EEO CODE	MALE		FEMALE		MINORITY		TOTAL
		#	%	#	%	#	%	#
Officials/Administrators	1	50,825	58.9%	35,514	41.1%	1,764	2.0%	86,339
Professionals	2	48,343	41.9%	67,105	58.1%	3,408	3.0%	115,448
Technicians	3	5,724	37.6%	9,484	62.4%	363	2.4%	15,208
Protective Service Workers	4	7,405	89.2%	894	10.8%	189	2.3%	8,300
Administrative Support	6	46,774	30.5%	106,340	69.5%	4,104	2.7%	153,114
Services/Maintenance	8	110,420	55.8%	87,515	44.2%	7,215	3.6%	197,940
Total		269,491	46.8%	306,852	53.2%	17,043	3.0%	576,349

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Total		269,491	46.8%	306,852	53.2%	17,043	3.0%	576,349

MHRC UTILIZATION CHART						
Job Category	EEO CODE	MALE	FEMALE	MINORITY		
		%	#	#		
Officials/Administrators	1	-8.9%	8.9%	-2.0%		
Professionals	2	-25.2%	25.2%	13.7%		
Technicians	3	0.0%	0	0		
Protective Service Workers	4	0.0%	0	0		
Administrative Support	6	-30.5%	30.5%	-2.7%		
Services/Maintenance	8	0.0%	0	0		
Total		-30.1%	30.1%	5.4%		

UTILIZATION ANALYSIS – PART II

Analysis of the Maine Human Rights Commission's utilization of women and minorities reveals no underutilization of either minorities or women considering the number of employees overall as well as the available workforce.

Following is a break-out of each of the EEO categories in which the MHRC has more than one employee.

Officials/Administrators: There are 2 employees. Fifty percent are male and 50 percent are female. Based on the available civilian workforce statistics (2000 census), the Commission has exceeded by 8.9 percent its utilization of females in this category. There are no minorities in this category. The available minority civilian workforce is 2 percent.

Professionals: There are 6 professionals. One male and 5 females. One of the female's status is minority. 16.7 percent of the professionals are male; 83.3 percent are female of which 16.7 percent are minority. Based on the available civilian workforce, the Commission has exceeded by 25.2 percent its utilization of females in this category. The Commission has also exceeded by 13.7 percent the number of minorities in this category. The available civilian minority workforce is 3.0 percent.

Administrative Support: There are 4 administrative support staff. All four are female. 100 percent of the support staff are female. 30.5 percent of the available civilian workforce are male and 69.5 percent are female. 2.7 percent are minority.

Based on the above statistical analysis, there is no underutilization of women or minorities in any of the 3 EEO categories described above.

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM GOALS, OBJECTIVES AND TIMETABLES

Affirmative Action refers to specific, results-oriented action by an employer to promote and achieve equal employment opportunity.

Such actions exceed 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, objectives and timetables have been established to assure non-discrimination in the workplace and to appropriately use affirmative action principles.

GOAL: RECRUITMENT

Since recruitment of women, minorities and people with disabilities through outreach is such an integral part of any Affirmative Action Plan, the Maine Human Rights Commission is committed to the following:

OBJECTIVE

Continue to expand the number of potential qualified applicants for all positions using the Maine Human Rights Commission website to post openings for vacancies and by encouraging applications from potential applicants who are women, minorities and people with disabilities. The MHRC also utilizes the Office of Employee Relations for potential employees when vacancies occur.

RESPONSIBILITY

EEO Officer and Personnel Officer

TIMETABLE

Immediate and on-going.

GOAL: EEO/AA HARASSMENT TRAINING

The Maine Human Rights Commission believes that all new and current employees must be informed, educated, and re-educated in the area of not only all aspects of discrimination, but harassment issues as well. The MHRC is committed to the following:

OBJECTIVE

All new supervisors and employees will receive training within one year of the start date of employment. Thereafter staff will receive refresher training every two years.

1. Develop and implement a training program for all employees in the areas of equal employment opportunity and affirmative action with an emphasis on the individual responsibilities of each employee to prevent illegal discrimination and harassment in the workplace.
2. Distribute the office EEO Policy and the Harassment Policy to all employees annually.

RESPONSIBILITY

EEO Officer

TIMETABLE

Within three (3) months of the signing of the EEO/AAPlan

GOAL: AMERICANS WITH DISABILITIES ACT

Pursuant to applicable disability laws, the Maine Human Rights Commission will continue to evaluate its employment processes to ensure that they do not adversely affect persons with disabilities by limiting, segregating or classifying applicants or employees. The Office of Employee Relations administers a Special Appointment Program that allows rehabilitation clients with severe disabilities to by-pass normal testing procedures when appropriate job matches can be made.

The Governor issued an Executive Order in 2006 recognizing Maine state government as a leader in hiring employees with disabilities and outlining a plan to promote additional placement of individuals with disabilities. The Maine Human Rights Commission applauds this Executive Order and is committed to the following:

OBJECTIVES

1. As vacancies occur, or as reasonable accommodations are requested or as part of performance management processes: review existing job descriptions to ensure that requirements reflect current functions actually performed on the job and that selection criteria are job-related;
2. Work cooperatively with rehabilitation counselors when contacted regarding a potential placement pursuant to the Special Appointment Program;
3. Develop and implement a training program for staff regarding the laws and policies governing employment of people with disabilities.

RESPONSIBILITY

EEO Officer

Personnel Officer

TIMETABLE

Immediate and on-going

GOAL: REASONABLE ACCOMMODATION

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

OBJECTIVE

The State of Maine Policy and Procedure for Processing Requests from Employees and Applicants for Reasonable Accommodations will be adhered to. The State's policy also contains provisions for Reassignment of Employees as a Reasonable Accommodation under the Americans with Disabilities Act which will also be adhered to.

The above requirements will be communicated to all employees and they will be advised of their specific responsibilities to ensure compliance.

RESPONSIBILITY

EEO Officer

Personnel Officer

TIMETABLE: Immediate and on-going.

**Title 5: Chapter 65: CODE OF FAIR PRACTICES AND AFFIRMATIVE ACTION
HEADING: PL 1975, C. 153, §1 (NEW)**

§781. Code of Fair Practices and Affirmative Action

The State of Maine is an equal opportunity employer and as such will require all its agencies to pursue in good faith affirmative action programs. [1975, c. 153, §1 (NEW).]

SECTION HISTORY

1975, c. 153, §1 (NEW).

§782. Definition of affirmative action

An affirmative action program includes procedures designed to increase the numbers of minorities, women and handicapped at all levels and in all segments of the work force where imbalances exist. Such a program should include an assessment of the existing situation, and the development of realistic goals for necessary action. These goals and related procedures and timetables should not require rigid quotas, but are commitments which an employer should make every good faith effort to achieve. [1985, c. 388, §1 (AMD).]

SECTION HISTORY

1975, c. 153, §1 (NEW). 1985, c. 388, §1 (AMD).

§783. Appointment, assignment and promotion of personnel

Officials and supervisory employees shall appoint, assign and promote personnel on the basis of merit and fitness, without regard to race, color, religious creed, national origin, sex, ancestry, age, physical handicap or mental handicap, unless related to a bona fide occupational qualification. Each appointing authority shall designate an affirmative action officer. The officer must be so placed within the agency's organizational structure that he or she shall have direct access to the appointing authority. Each department or agency shall prepare an affirmative action program for that department or agency in accordance with criteria set forth by the Bureau of Human Resources. [1985, c. 785, Pt. B, §22 (AMD).]

SECTION HISTORY

1975, c. 153, §1 (NEW). 1985, c. 388, §2 (AMD). 1985, c. 785, §22 (AMD).

§784. State action and contracts

1. State action. No agency or individual employee of the State or state related agencies will discriminate because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap while providing any function or service to the public, in enforcing any regulation, or in any education, counseling, vocational guidance, apprenticeship and on-the-job training programs. Similarly, no state or state related agency contractor, subcontractor, or labor union or representative of the workers with which the contractor has an agreement, will discriminate unless based on a bona fide occupational qualification. State agencies or related agencies may withhold financial assistance to any recipient found to be in violation of the Maine Human Rights Act or the Federal Civil Rights Act. Any state agency or related agency shall decline any job order carrying a specification or limitation as to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap, unless it is related to a bona fide job requirement.

[1985, c. 388, §2 (AMD) .]

2. Public contracts. Every state or state related agency contract for public works or for services shall incorporate by reference the following provisions: "During the performance of this contract, the contractor agrees as follows.

A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. [1985, c. 388, §2 (AMD).]

B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. [1985, c. 388, §2 (AMD).]

C. The contractor will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment. [1975, c. 153, §1 (NEW).]

D. The contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor. [1975, c. 153, §1 (NEW).]

E. Contractors and subcontractors with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs. [1991, c. 807, §1 (NEW).]

[1991, c. 807, §1 (AMD) .]

SECTION HISTORY

1975, c. 153, §1 (NEW). 1985, c. 388, §2 (AMD). 1991, c. 807, §1 (AMD).

§785. State employment services

Any state agency or state related agency engaged in employment, referral or placement service for private industry or public agencies shall fill all job orders on a nondiscriminatory basis, and shall decline any job order carrying a specification or limitation as to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap, unless it relates to a bona fide job requirement. [1985, c. 388, §2 (AMD).]

SECTION HISTORY

1975, c. 153, §1 (NEW). 1985, c. 388, §2 (AMD).

§786. Training for job opportunities

All educational and vocational-guidance counseling programs and all apprenticeship and on-the-job training programs conducted, supervised or funded by the State or state-related agency must be conducted to encourage the fullest development of interest and aptitudes without regard to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap, unless sex or age relates to a bona fide job requirement. In the event that any such programs are conducted in conjunction with private employers or private educational institutions, the supervising or contracting department or agency shall insure that the provisions of this chapter are complied with fully by such private employer or private educational institution. [RR 1993, c. 1, §7 (COR).]

SECTION HISTORY

1975, c. 153, §1 (NEW). 1985, c. 388, §2 (AMD). RR 1993, c. 1, §7 (COR).

§787. State financial assistance

No state agency or state related agency shall approve a grant of state financial assistance to any recipient who is engaged in discriminatory practices. All recipients of state financial assistance shall submit to the Maine Human Rights Commission, at its request, information relating to the recipient's operations with regard to race, color, religious creed, sex, national origin, ancestry, age, physical handicap or mental handicap. Such information shall be furnished on a form to be prescribed by the Maine Human Rights Commission. [1985, c. 388, §2 (AMD).]

SECTION HISTORY

1975, c. 153, §1 (NEW). 1985, c. 388, §2 (AMD).

§788. Bureau of Human Resources

The Bureau of Human Resources shall take positive steps to insure that the entire civil service examination and testing process, including the development of job specifications and employment qualifications, is free from either conscious or inadvertent bias. Furthermore, the Bureau of Human Resources will have the initial responsibility of resolving civil service conflicts and complaints, changing administrative procedures when necessary and providing assistance for preparing affirmative action programs. It is the responsibility of the State Affirmative Action Coordinator in the Bureau of Human Resources to monitor the civil service affirmative action program and insure compliance with all federal and state regulations. [1985, c. 785, Pt. B, §23 (AMD).]

SECTION HISTORY

1975, c. 153, §1 (NEW). 1985, c. 388, §3 (AMD). 1985, c. 785, §23 (AMD).

§789. Human Rights Commission

All affirmative action programs, whether part of the civil service or not, shall be subject to the review and comment of the Human Rights Commission. [1975, c. 153, §1 (NEW).]

All powers and duties granted to the Maine Human Rights Commission under sections 4551, et seq., as amended, apply to this section. Complaints of discrimination based on race, color, religious creed, sex, national origin, age, physical handicap or mental handicap should be made to the Maine Human Rights Commission. [1985, c. 388, §3 (AMD).]

SECTION HISTORY

1975, c. 153, §1 (NEW). 1985, c. 388, §3 (AMD).

§790. Affected state agencies and state related agencies

All state financed agencies, political subdivisions, quasi-independent agencies, school districts and instrumentalities of State Government are required to implement this Code of Fair Practices and Affirmative Action. [1975, c.153, §1 (NEW).]

SECTION HISTORY

1975, c. 153, §1 (NEW).

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DESCRIPTION OF EEO JOB CATEGORIES

Officials and managers: Occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: officials, executives, middle management, plant managers, department managers, and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains, mates and other officers, farm operators and managers, and kindred workers.

Professionals: Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, teachers, surveyors and kindred workers.

Technician: Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

Protective Service Workers: Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police patrol officers, fire fighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers and kindred workers.

Administrative Support: - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required an office. Includes: bookkeepers, messengers, office machine operators, clerk typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks and kindred workers.

Skilled Craft Workers: Occupations in which workers perform jobs that require special manual skill and a thorough and comprehensive knowledge of the process involved in the work that is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics, and repairers, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters and kindred workers.

Service –Maintenance: Occupations in which workers perform duties that result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry-cleaning operatives, truck drivers, bus drivers, garage laborers, custodial employees, gardeners and groundskeepers, refuse collectors, construction laborers.

**REASSIGNMENT OF EMPLOYEE AS A REASONABLE ACCOMMODATION
UNDER THE
AMERICANS WITH DISABILITIES ACT**

A-3

GENERAL POLICY

It is the policy of the State of Maine to provide reasonable accommodations in the event that an employee is disabled or becomes disabled and can no longer perform the essential functions of his or her position. If reasonable accommodations cannot be made within the employee's current position, state and federal laws require the employer to explore reassignment to a vacant position. Agencies **must** first explore transfer and then demotion options for disabled employees who can no longer successfully perform their current jobs with or without reasonable accommodation.

The transfer or demotion of a disabled employee that is necessary to provide a reasonable accommodation for continued employment must be given priority over other means to fill available vacant positions, unless the reassignment would cause an undue hardship on the agency.

A position is available if it is currently vacant, approved to be filled, and there are no employees with a contractual right to the position.

Demotion to a position in a lower pay grade is appropriate only if there are no accommodations that would enable the employee to remain in a position in the same pay grade, or if both the agency and the employee agree that demotion is the most appropriate accommodation.

There is no obligation to promote an employee as a reasonable accommodation under the ADA. The transfer/demotion provisions of this policy do not apply to applicants for employment but are applicable only to employees currently holding or having rights to positions in State government.

Employees Who are Injured on the Job

Whether an employee who is injured on the job is protected by the state or federal law will depend on whether the employee meets the statutory definition of "individual with a disability". Again due the recent change in the law, no individual shall be denied a reasonable accommodation on the basis that the individual does not meet the definition of an individual with a disability, without prior consultation with the State Equal Employment Opportunity Coordinator.

Definitions

Disability – A condition that meets the definition of a disability under the Maine Human Rights Act, the Americans with Disabilities Act or the Rehabilitation Act of 1973.

Qualified Individual with a Disability – Any disabled individual who can perform the essential functions of a position with or without reasonable accommodation.

Reasonable Accommodation – Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. It is unlawful not to make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the organization. Reasonable accommodations may take such forms as:

- Making a facility accessible to employees;
- Job restructuring, within job’s classification and compensation and without unreasonable impact on other workers;
- Some changes or flex in work hours or days;
- Providing interpretive services or assistive devices;
- Reassignment to a vacant position

Essential Job Functions – The fundamental job duties of the position. A job function may be considered an essential function if employees in the position must perform the function and: 1) the position exists to perform that function, or 2) the function is essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or 3) the function is highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the function.

Undue Hardship – Significant difficulty or expense in, or resulting from, the provision of an accommodation. The determination of “undue hardship” takes into consideration anything that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature of the operation of the business.

Qualification Standards – The personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements that an individual must meet in order to be eligible for the position held.

Reassignment Provisions

Each agency must first attempt to make reasonable accommodations that will enable the employee to successfully perform the essential job functions of the current position. If such reasonable accommodation is not possible, or if both the employee and the agency agree that reassignment to another position within the agency is a more appropriate accommodation that accommodation in the current job, then the following provisions apply.

1. The agency must attempt to place the employee in an equivalent vacant position that the employee can perform, with or without reasonable accommodations, provided one is available within the agency. An equivalent position is a position with similar pay, status, promotional opportunities, and other conditions of employment but not necessarily in the same job classification to which the employee is currently assigned. The agency may nominate such employee without testing, provided that the employee meets the established minimum qualifications for the classification.

2. An agency may demote an employee to a lower graded available position if: 1) there are not accommodations that would enable the employee to remain in the current position and there are no equivalent positions available for which the individual is qualified with or without reasonable accommodation, or 2) both the agency and the employee agree that demotion is the

most appropriate accommodation. In the event that an employee demotes to another position standard salary policies regarding demotions will apply.

The agency may nominate such employee without testing, provided that the employee meets the established minimum qualifications for the classification.

3. If demotion is being considered as a reasonable accommodation for a disability, or if no accommodation is available within the agency, the agency must inform the employee of his/her right to access existing vacancies in other agencies. If the employee selects this option, the agency must refer the employee to the Bureau of Human Resources where the employee will be assisted in identifying other transfer and demotion opportunities in state government for which they qualify. Normal transfer and demotion qualifying procedures will be followed.

Agencies will be required to consider all such employees immediately after recalls from layoff. No candidates other than recall may be hired by an agency until disabled employees seeking transfer or demotion from other agencies as a reasonable accommodation have been considered. A disabled employee is qualified and must be hired if the employee is qualified to perform the essential functions of the position with or without reasonable accommodation.

Transitional Status

The ADA requires the search of positions that are available at the time that it becomes evident that transfer must be explored as a reasonable accommodation. Recognizing that this search may take some time to complete, employees will be allowed to use accrued sick, vacation, and/or compensatory time to cover any time period that may elapse between the determination that the employee cannot continue to perform the duties of his/her present position and the time that the employee is reassigned or terminated in the event that reassignment cannot be made.

Procedures

These procedures are specifically for the reassignment provision. Refer to the State of Maine Policy and Procedure for Processing Requests from Employees and Applicants for Reasonable Accommodations for more detailed guidance on providing accommodations within a given position.

The potential for reassignment as a reasonable accommodation begins when a request for accommodation is made in accordance with established procedures, but may be considered **only** when no reasonable accommodation can be made in the employee's current position.

1. Requests for consideration for reassignment can be initiated by the employee needing accommodation, the supervisor/manager, the EEO Officer or agency/State Workers Compensation staff. Requests can be made at any time. Under the State of Maine Policy and Procedure for Processing Requests from Employees and Applicants for Reasonable Accommodations, agency EEO Officers **must** be notified of all requests for accommodation. The State EEO Coordinator is also available for technical assistance in the reasonable accommodation search/documentation process. All requests for accommodation and efforts to provide accommodation must be documented. It is recommended that medical documentation of the employee's limitations and need for accommodation be required. Accommodations must be explored in the following order:

- Accommodation within the existing job
- Reassignment to a job of similar pay and status
- Demotion

Full documentation must be provided concerning efforts to make reasonable accommodation in accordance with this policy, including reasons for bypassing reassignment to a position of similar pay and status.

2. If the employee is transferred or demoted, the agency must submit a statement that the action is taken in accordance with this policy to the Bureau of Human Resources when the transaction is entered on MFASIS. This statement will serve as authorization for the reassignment and will serve as notice to the Bureau that such an accommodation has been made.

3. Whenever a reasonable accommodation cannot be made within the employing agency, or whenever the only accommodation available within the agency is demotion, the employee must be informed of his/her right to access existing vacancies in other agencies and referred to the Bureau of Human Resources.

4. The Bureau will review all such referrals and the agency's accommodation documentation to ensure that more favorable accommodations cannot be made for the employee within the agency before considering placement to another agency.

Interpretive Guidance and Technical Assistance

A complete understanding of essential job function, reasonable accommodation and undue hardship is necessary to properly administer the provisions of this policy.

Additionally, agencies may need technical assistance when it is necessary to explore the need for reasonable accommodation that may or may not include reassignment. Technical assistance is available from the following:

State EEO Coordinator, Bureau of Employee Relations – 287-4651
Legal Counsel, Bureau of Employee Relations - 287- 4447

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
Bureau of Human Resources

October 30, 1995

HUMAN RESOURCES MEMORANDUM 14-95

TO: Agency Heads, Directors of Administrative Services, Agency
Personnel Officers and Managers, Agency EEO Coordinators,
Departmental Outplacement Coordinators

SUBJECT: Employees with Disabilities Affected by Bumping


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Following are guidelines for agencies to follow when an employee who requires reasonable accommodation for a disability is bumping into another position.

1. Determine whether the employee can be accommodated in the new position. To make this determination, you must first identify the "essential job functions" to determine if the employee can perform them with or without accommodation. Possible accommodations should be explored with the employee and the supervisor and a determination made whether accommodation is reasonable. If so, the employee will bump into the position.
2. If the agency believes that the employee is not qualified for the position or that accommodations are not reasonable, justification must be submitted to the Bureau of Human Resources with documentation of the agency's attempts to provide reasonable accommodations and reasons those attempts failed.
3. If BHR approves the agency's justification, Steps 1 and 2 must be repeated for the employee's next available bumping option.
2. If the agency believes that the employee is not qualified for the position or that accommodations are not reasonable, justification must be submitted to the Bureau of Human Resources with documentation of the agency's attempts to provide reasonable accommodations and reasons those attempts failed.
3. If BHR approves the agency's justification, Steps 1 and 2 must be repeated for the employee's next available bumping option.
4. If all options are exhausted and the employee is unable to be accommodated in any position to which s/he has contractual rights, the Reassignment Provisions in Civil Service Bulletin 8.19 apply. If, under these provisions, an employee is referred to the Bureau of Human Resources for consideration for statewide vacancies, the agency must provide the employee's name, position classification, resume or employment/education background and history of attempts to place the employee within the agency to the Bureau of Human Resources.

If you have any questions regarding these guidelines, please contact Don Wills or Laurel Shippee of my staff. Laurel is also available to provide technical assistance in the determination of essential job functions and/or the provision of accommodations to those agencies that do not have full-time EEO Coordinators.

Thank You.


NANCY J. KENNISTON, DIRECTOR
Bureau of Human Resources

**AN ORDER REGARDING MAINE STATE GOVERNMENT
AS A MODEL EMPLOYER OF PEOPLE WITH DISABILITIES**

Office of the Governor
February 24, 2006

Number 13 FY 06/07

WHEREAS, Maine people with disabilities offer a valuable asset for promoting Maine's future workforce and economic growth; and

WHEREAS, Maine people with disabilities are underemployed; and

WHEREAS, Maine State Government has been a recognized leader for affirmative efforts to hire qualified workers with disabilities in state positions; and

WHEREAS, Maine State Government has an opportunity to become a model for all employers seeking to improve their workforce and raise the skills and incomes of Maine people;

NOW, THEREFORE, I, John E. Baldacci, Governor of the state of Maine, by the authority vested in me, do hereby order that:

1. The Maine Department of Labor, in cooperation with the Maine Bureau of Human Resources, implement a promotional outreach campaign for people with disabilities that emphasizes the benefits of working for Maine State Government, including a state-wide job recruitment and career fair focused on workers with disabilities.

2. The Maine Department of Labor, in cooperation with the Maine Bureau of Human Resources, identify state jobs that are difficult to fill today and that are projected to be difficult to fill in future years.

3. The Maine Commission on Disability and Employment, in cooperation with the Maine Bureau of Human Resources, conduct a survey of current state employees who volunteer such information to determine the prevalence of workers with disabilities.

4. The Bureau of Rehabilitation Services and the Bureau of Human Resources partner to lead efforts to facilitate the employment of people with disabilities in all state agencies.

5. The Maine Job Council, in cooperation with the Bureau of Human Resources and the Department of Labor, develop a plan to promote the employment of people with disabilities. This plan will be submitted to the Maine Commission on Disability and Employment by September 1, 2006.

6. The Maine Jobs Council, in cooperation with the Bureau of Human Resources and the Department of Labor, report to the Governor and Legislature on the results of these efforts by March 1, 2007.

The implementation costs associated with this Executive Order shall be covered by existing resources within participating agencies.

The provisions of this Executive Order are not intended to supersede existing collective bargaining agreements or State and Federal Law.

Effective Date

The effective date of this Executive Order is February 24, 2006.

John E. Baldacci, Governor

MAINE HUMAN RIGHTS COMMISSION COMPLAINT POLICY

A. PURPOSE

A relationship of trust and confidence between employees of the Maine Human Rights Commission and the communities that they serve is essential to the effective operation of state government. Agency employees must be free to exercise their best judgment in the performance of their duties. Agency employees also have a special obligation to respect the rights of all persons. The Maine Human Rights Commission acknowledges its responsibility to establish a complaint system and procedures that not only will subject Maine Human Rights Commission employees to corrective action when improper conduct has occurred, but that will also protect Maine Human Rights Commission employees from unwarranted or spurious criticism when they discharge their duties properly. The purpose of these procedures is to provide prompt, just, and open disposition of complaints regarding the conduct of Maine Human Rights Commission employees. This procedure is not for complaints about the results of investigations of charges of discrimination filed with the Commission.

It is the policy of the Maine Human Rights Commission to encourage the public to comment when the conduct of the employee is believed to be improper. The Maine Human Rights Commission will make every effort to ensure that no adverse consequences occur to any person or witness as a result of having brought a complaint or for providing information concerning a complaint. Any Maine Human Rights Commission employee who subjects a complainant or witness to such recrimination will be subject to appropriate disciplinary action.

B. PROCEDURE

1. The Maine Human Rights Commission encourages the public to bring forward legitimate complaints regarding misconduct by its employees. To this end, a copy of "HOW TO FILE A PERSONNEL COMPLAINT" will be posted at agency worksites and on agency websites and will be given to anyone requesting this information. A copy of this document is attached to this policy. Complaints, regardless of nature, can be lodged in person, by mail, or by telephone. Telephone contacts are welcome, but complaints must be in writing, provide contact information, and contain specific details about the complaint. Anonymous complaints will not be accepted.
2. Any employee of the Maine Human Rights Commission who receives a complaint about an agency employee shall, as soon as practicable, notify the Executive Director of the details of the complaint for evaluation and assignment.
3. Upon receipt of a complaint, the Executive Director shall determine whether the complaint should be investigated and by whom. Complaints of criminal conduct should be forwarded to the Bureau of Employee Relations to ensure cooperation with appropriate law enforcement authorities.
4. Investigations of complaints shall be completed within a reasonable time.
5. It is the responsibility of the investigator to thoroughly and confidentially investigate the matter and, when appropriate, to submit a complete and accurate investigation report. In the event a report is warranted, all relevant information obtained by the investigator shall be included.
6. All investigations shall comply with the provisions of the applicable collective bargaining agreement.

C. REPORT

1. When applicable, the report shall include a summary of interviews with the complainant, synopsis, finding(s) of fact, chronology of the investigation, and documentation of compliance with the employee's contractual rights.

2. Recommendations regarding the disposition of an investigation or discipline generally are not included in the investigation report. Such recommendations should only be included in consultation with the appointing authority.

D. NOTIFICATION TO THE COMPLAINANT

1. Upon final disposition, the complainant will be notified of the outcome of the investigation to the extent permitted by civil service and agency confidentiality laws.

E. ADMINISTRATIVE RESPONSIBILITIES

1. The Commission shall ensure that:

All citizen complaint records and investigations remain confidential as allowed or required by statute.

Each complaint and corresponding investigation is documented.

An annual summary report is prepared for the agency head that includes statistical data that will aid in identifying the possible need for training, supervision, or other pertinent issues.

HOW TO FILE A PERSONNEL COMPLAINT

Complaints may be filed in any of the following ways:

1. By letter addressed to:

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

2. By phone: (207) 624-6050

3. FAX: (207) 624-6063

4. TTY: 1-888-577-6690

5. By e-mail: melody.piper@maine.gov

6. In person at the Commission's office at:

Hallowell State Annex, Cleveland Bldg.,
9 Coos Lane (off Winthrop Street),
Hallowell, ME 04347

Please provide the following information when filing:

- Your Name
- Your Mailing Address
- City, State, Zip code
- Phone # where you can be reached between 8:00 a.m. and 5:00 p.m.
- Name of MHRC employee you are complaining about
- Date of the incident
- Description of the complaint/incident
- (Attach additional sheets if necessary.)
- Name(s) and contact information of witness(es) to the incident

All complaints will be processed as defined in section B. PROCEDURE of the Maine Human Rights Commission's Complaint Policy.

MHRC 2009 Program Evaluation Report

Exhibit B

***EEOC/MHRC Work Sharing
Agreement***

FY 2009 EXTENSION OF WORKSHARING AGREEMENT

Inasmuch as there have been no substantive changes in the processes, procedures, statutes, policies or regulations that would adversely affect or substantially alter the work sharing arrangement between the NEW YORK District Office

and the MAINE HRC, or that would affect the processing of charges filed under the pertinent Federal, state or local statutes, the parties agree to extend the current work sharing agreement that was executed on 9-27-07 through the FY 2009 Charge Resolution Contract Option Period. This agreement, as well as the attendant Work sharing Agreement may be reopened and amended by mutual consent of the parties.

[Signature]
For the FEPA

10-16-08
Date

[Signature]
For the EEOC District Office

10/31/08
Date

RECEIVED
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M.H.R.C

RECEIVED

OCT 02 2006

M.H.R.C

WORKSHARING AGREEMENT
BETWEEN

Maine Human Rights Commission

and

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office
FOR FISCAL YEAR 2007

I. INTRODUCTION

- A. The (Maine Human Rights Commission), hereinafter referred to as the FEPA, has jurisdiction over allegations of employment discrimination filed against employers of 1 or more employees occurring within the State of Maine based on race, color, sex, sexual orientation, religion, national origin, ancestry, age, physical and mental disability, pursuant to the Maine Human Rights Act.

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 State of Maine and Federal laws.

II. FILING OF CHARGES OF DISCRIMINATION

- A. In order to facilitate the assertion of employment rights, the EEOC and the FEPA each designate the other as its agent for the purpose of receiving and drafting charges,

including those that are not jurisdictional with the agency that initially receives the charges. 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 (c) and (e) (1) of Title VII. This delegation of authority to receive charges does not include the right of one Agency to determine the jurisdiction of the other Agency over a charge. Charges can be transferred from one agency to another in accordance with the terms of this agreement or by other mutual agreement.

- B. The FEPA shall take all charges alleging a violation of Title VII, 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 requirements of those Acts, and for charges specified in Section III. A. 1. below, refer them to the EEOC for initial processing.
- C. Each Agency will inform individuals of their rights to file charges directly with the other Agency and or assist any person alleging employment discrimination to draft a charge in a manner which will satisfy the requirements of both agencies to the extent of their common jurisdiction.

Normally, once an agency begins an investigation, it resolves the charge. Charges may be transferred between the EEOC and the FEPA within the framework of a mutually agreeable system. Each agency will advise Charging Parties that charges will be resolved by the agency taking the charge, except when the agency taking the charge lacks jurisdiction or when the charge is to be transferred in accordance with Section III (Division of Initial Charge Processing Responsibilities).

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 and vice versa. The date the charge was received 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.
- 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 the applicable Federal, State, or Local statutes.

III. DIVISION OF INITIAL CHARGE-PROCESSING RESPONSIBILITIES

In recognition of the statutory authority granted to the FEPA by Section 706(c) and 706(d) of

Title VII as amended; and by Title I of the Americans with Disabilities Act, and the transmittal of charges of age discrimination pursuant to the Age Discrimination in Employment Act of 1967, the primary responsibility for resolving charges between the FEPA and the EEOC will be divided as follows:

- A. EEOC and the FEPA will process all Title VII, ADA, and ADEA charges that they originally receive.
1. For charges originally received by the EEOC and/or to be initially processed by the EEOC, the FEPA waives its right of exclusive jurisdiction to initially process such charges for a period of 60 days for the purpose of allowing the EEOC to proceed immediately with the processing of such charges before the 61st day, and to ensure that charging parties in all co-jurisdictional charges initially filed with the FEPA are timely dual filed with the EEOC.

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

- All Title VII, ADA, and concurrent Title VII/ADA charges jurisdictional with the FEPA and received by the FEPA 240 days or more after the date of violation;
- All disability-based charges which may not be resolved by the FEPA in a manner consistent with the ADA.
- All concurrent Title VII/EPA charges;
- All charges against the FEPA or its parent organization where such parent organization exercises direct or indirect control over the charge decision making process;
- All charges filed by EEOC Commissioners;
- Charges also covered by the Immigration Reform and Control Act;
- Complaints referred to 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 Respondents 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 statute, 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 subject to agreement of the other agency. Such variations shall not be inconsistent with the objectives of this Worksharing Agreement or the Contracting Principles.

C. Each Agency will on a quarterly basis notify the other of all cases in litigation and will notify each other when a new suit is filed. As charges are received by one Agency against a Respondent on the other Agency's litigation list a copy of the new charge will be sent to the other Agency's litigation unit within 10 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, 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

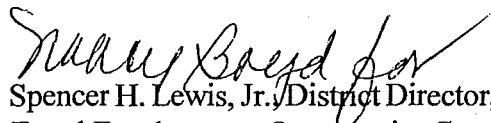
- A. Both agencies will adhere to the procedures set out in EEOC's State and Local Handbook, including current revisions thereto.
- B. For the purpose of according substantial weight to the FEPA final finding and orders, the FEPA must submit to the EEOC copies of all documents pertinent to conducting a 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 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. The liaison official for the EEOC will be Joseph Alvarado.
- 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 Field Programs for resolution.
- E. This Agreement shall operate from the first (1st) day of October 2006 to the thirtieth (30th) day of September 2007 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



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

Date

9-7-2002



Patricia E. Ryan, Executive Director
Maine Human Rights Commission

MHRC 2009 Program Evaluation Report

Exhibit C

***HUD Contributions Agreement
2009***

2009 CONTRIBUTIONS AGREEMENT

SCHEDULE OF ARTICLES

1. SCOPE OF WORK (FIXED PRICE)
2. PERIODS OF PERFORMANCE
3. INSPECTION AND ACCEPTANCE
4. CONDUCT OF WORK
5. INSTRUMENT AMOUNT AND REQUESTS FOR PAYMENT
6. NARRATIVE REPORT
7. CRITERIA FOR PROCESSING
8. PART 85
9. USE OF COOPERATIVE AGREEMENT FUNDS
10. MAINTENANCE OF EFFORT
11. HUD'S SUBSTANTIAL INVOLVEMENT
12. ASSURANCES
13. USE OF CONSULTANTS
14. PUBLICATIONS AND NEWS RELEASES
15. REPRODUCTION OF REPORTS
16. FLOW DOWN PROVISIONS
17. DISPUTES
18. MAINTENANCE OF RECORDS
19. CUSTOMER SERVICE STANDARDS
20. REPORTING REQUIREMENTS
21. TRAINING
22. INITIAL CONTACT DATE
23. CHANGES LIMITING EFFECTIVENESS OF RECIPIENT'S LAW
24. FHAP AND FIRST AMENDMENT
25. TESTING

Appendix A: Statement of Work

Attachment A: Criteria for Processing

Attachment B: Standards for Timeliness and Quality

Attachment C: Program Funds Control Plan

1. SCOPE OF WORK (FIXED PRICE)

The Recipient (or Agency) shall furnish all the necessary personnel, materials, services, equipment, facilities (except at otherwise specified herein) and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work (SOW) and all attachments for the firm fixed price set forth herein.

2. PERIODS OF PERFORMANCE

The Recipient shall provide all services hereunder during the periods of performance.

For the **FY2009** Cooperative Agreement, the periods of performance are as follows:

Complaint Processing: July 1, 2008 – June 30, 2009

Administrative Costs and Training: October 1, 2008 – September 30, 2009

Note: While as a general rule, the cut-off day for incurring administrative costs is September 30, 2008, the GTR may change the cut-off date to several days before the end of the fiscal year if that is necessary to complete closeout documentation.

3. INSPECTION AND ACCEPTANCE

The Government Technical Monitor (GTM), if so delegated, may accomplish inspection and acceptance of all but the final products. The Government Technical Representative (GTR) shall accomplish acceptance of all final products. The GTR is identified in Block 9 of the HUD-1044.

4. CONDUCT OF WORK

During the effective period of this instrument, the GTR or GTM shall be responsible for monitoring the technical effort of the Recipient, unless the Recipient is notified in writing by the Cooperative Agreement Officer (CAO) of a replacement. The CAO is identified in Block 8a of the HUD-1044.

Only the CAO has the power to authorize deviations from this instrument, including deviations from the Statement of Work. In the event the Recipient does deviate without written approval of the CAO, such deviation shall be at the risk of the Recipient, and any costs related thereto shall be borne by the Recipient.

5. INSTRUMENT AMOUNT AND REQUESTS FOR PAYMENT

Agencies that have received Capacity Building funds for one year may be eligible for Contributions funds. Contributions funds consist of three categories: Complaint Processing; Administrative Costs; and Training.

- **Complaint Processing** - GTRs shall determine payment amounts based upon the FY2009 Standards for Timeliness and Quality, which enumerate a range for complaint processing funds up to \$2,450 per case, with the possibility of an additional \$500 for “charged” complaints. If the GTR decides not to reduce payment for extremely aged cases, they must justify the reason for not reducing payment (e.g., a charged case, or complex investigation).
- **Administrative Costs** - Agencies that acceptably process 100 cases or more shall receive 10% of the Recipient’s FHAP payment amount for the preceding year. Agencies that process fewer than 100 cases shall receive \$10,000.
- **Training** - All Contributions agencies are eligible to receive training funds for attendance at the National Fair Housing Training Academy (NFHTA), and other HUD-approved or HUD-sponsored training. *See Instruction and Guidance for FHAP “Contributions Agencies” for specific requirements related to training funds.*

The maximum amount for performance under the Articles of this Cooperative Agreement, Appendix, and Attachments, is the total amounts of all categories of Contributions funds (i.e., Complaint Processing, Administrative Costs, and Training). Draw-downs are permitted at the discretion of the GTR. Complete draw-downs of the total amount obligated for Complaint Processing funds shall be permitted at any point after June 30, 2009, and before September 30, 2009.

The Recipient shall follow the instructions in the Program Funds Control Plan (Attachment C) in requesting payments under the FHAP. Payment is subject to withholding if the CAO determines that the Recipient is not complying with all terms of the Cooperative Agreement, the Appendix, and all Attachments hereto.

6. NARRATIVE REPORT

A Narrative Report describing activities undertaken during the periods of performance pursuant to which payment is being requested is required. The Narrative Report shall include a listing of complaints acceptably processed, including the name of complainant, respondent, and date closed, type of closure, date referred to legal for enforcement action, information on investigative and conciliation techniques, and descriptions of all activities undertaken to justify all administrative closures. This list must demonstrate that the agency receives and processes a reasonable number of complaints cognizable under the Fair Housing Act, as required in 24 CFR § 115.206(e)(7). The Narrative Report shall also include a description of outreach activities undertaken in support of fair housing case processing to educate the public on fair housing rights and responsibilities. The GTR/GTM should verify that the Recipient is undertaking the education and outreach activities identified. If the Recipient meets the requirements outlined in the 2009 FHAP Agency Contribution Guidance, remaining funds may be used to undertake the fair housing education and outreach activities.

Where information is provided electronically through the Title Eight Automated Paperless Office Tracking System (TEAPOTS) or some other software application, the Report need not be provided in hard copy unless required by the GTR.

7. CRITERIA FOR PROCESSING

The Criteria for Processing are the standards by which HUD determines whether a complaint, cognizable under the Fair Housing Act and processed by the Recipient, warrants reimbursement with FHAP funds. The Criteria for Processing are hereby incorporated as Attachment A.

8. PART 85

The Administrative Requirements for Grants and Cooperative Agreements (24 CFR Part 85) is not attached hereto because of its size. The authorized Recipient official must verify to the GTR/GTM that the Recipient has a copy on file. If the authorized Recipient official cannot verify that a copy of Part 85 is on file at the Agency, the GTR/GTM is required to provide the copy to the Recipient.

9. USE OF COOPERATIVE AGREEMENT FUNDS AND NO CO-MINGLING

The Recipient is entitled to receive the fixed amount identified in Block 14 of the HUD-1044 for satisfactory completion of the work to be performed, regardless of costs incurred. FHAP funds must be used for the purpose that HUD provided the funds including the processing of complaints cognizable under the Fair Housing Act, training under the Fair Housing Act and the state or local fair housing law, administrative costs associated with fair housing complaint processing, creation and maintenance of data and information systems, and the development and maintenance of fair housing education and outreach projects. The Recipient must segregate FHAP funds from the Recipient's and the state or local government's other funds.

10. MAINTENANCE OF EFFORT

The Recipient must spend at least 20 percent of its total annual budget on fair housing activities if it enforces antidiscrimination law(s) other than a fair housing law. The term "total annual budget" means the entire budget assigned by the jurisdiction to the agency for enforcing and administering antidiscrimination laws, but does not include FHAP funds.

Maintenance of effort also means that the Recipient shall not unilaterally reduce the level of financial resources currently committed to fair housing. Budget and staff reductions occasioned by legislative action outside the control of the Recipient will not, alone, result in a determination of ineligibility. However, HUD will take such actions into consideration in assessing the ongoing viability of a Recipient's fair housing program.

11. HUD'S SUBSTANTIAL INVOLVEMENT

- A. HUD intends to have substantial involvement in the review and approval of all aspects of the work to be carried out as a result of an award under this Agreement.
- B. Anticipated substantial involvement may include, but is not necessarily limited to, the following:

1. Review and guidance during and upon completion of cases cognizable under the Fair Housing Act;
2. Requests for additional information on such cases to provide clarification or for completeness of a case investigation or file;
3. Development and presentation of national and regional office fair housing investigation and conciliation training;
4. Participation in the development and presentation of in-house investigation and conciliation training;
5. Participation and approval of education and outreach programs or materials;
6. Provision of appropriate directives and guidance for case processing;
7. Assistance in the investigation, conciliation, and/or enforcement of fair housing cases cognizable under the Fair Housing Act;
8. Requests for updates on the final status of cause determinations; and
9. Review and analysis of agency's fair housing law for determinations of continued substantial equivalence to the Fair Housing Act.

12. ASSURANCES

As a condition for the receipt of FHAP funds, the Recipient assures HUD that it will:

- A. Provide a drug-free workplace;
- B. Comply with the provision of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limits the political activities of employees whose principle employment activities are funded in whole or part with Federal funds;
- C. Establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain;
- D. Comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Sections 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F);
- E. Comply with all federal nondiscrimination laws including, but not necessarily limited to: (a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of federal financial assistance (b) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of

sex by recipients of federal financial assistance ; (c) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability by recipients of federal financial assistance, and (d) the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age by recipients of federal financial assistance;

- F. Comply with all applicable requirements of federal laws, executive orders, regulations, and policies governing this program; and
- G. Comply with the requirements of the Resource Conservation and Recovery Act which mandates that state agencies using federal funds for procurement programs give preference to products containing recycled materials when purchasing specific products identified in guidelines developed by the Environmental Protection Agency (40 CFR 247-253).

13. USE OF CONSULTANTS

Salary payments to consultants under this instrument shall not exceed the equivalent of the maximum daily rate paid to level IV of the Executive Schedule, as evidenced by current pay vouchers.

14. PUBLICATIONS AND NEWS RELEASES

A. Definition. For the purpose of this clause, “publication” includes:

- (1) Any document containing information for public consumption;
- (2) The act of, or any act that may result in, disclosing information to the public; or
- (3) Any products resulting from the education and outreach efforts of the Recipient that are planned to be made available to the public through dedication, assignment by the Government, or other such means as HUD shall determine.

B. Government Ownership of Official Products of Work

All interim and final reports and information, data analyses, special methodology, findings, and their related documents and work products, including reports, work sheets, survey instruments, computer tapes, and any other physical materials and products produced directly under the SOW of this instrument are considered Official Products of Work, owned by the U.S. Government and held for the benefit of the public.

C. Publication of Official Products of Work

Official Products of Work, quotations there from, paraphrasing, or disclosures of interim findings may not be published without the approval of the GTR for a period of sixty (60) days after acceptance of the product by the GTR. Thereafter, the Recipient shall be free to publish without HUD approval.

D. Acknowledgement and Disclaimer

All Official Products of Work, or any part thereof, and any Independent Products and Special Products arising out of this instrument, when published by Recipient or other participants in the work, shall contain the following acknowledgment and disclaimer:

“The work that provided the basis for this publication was supported by funding under a Cooperative Agreement with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government.”

E. Notice of News Release and Public Announcements

Copies of all press releases, formal announcements, and other planned, written issuances containing news or information concerning this instrument that may be made by the Recipient or its staff, or any subcontractor or other person or organization participating in the work of this instrument shall be provided to the GTR at the earliest possible time. News releases and other public announcements may not disclose any interim finding or quote or paraphrase any part of any Official Product of Work without complying with paragraph D above, entitled Acknowledgement and Disclaimer.

The Recipient agrees that no news releases, publications, studies, or other products involving FHAP funded activities will be released to the public without prior HUD approval. The Recipient further agrees that it will submit any and all press releases/news announcements, studies and/or other products developed with FHAP funds to the GTR for review and approval of at least two weeks prior to its release, unless HUD agrees to waive the two-week submission requirements. Publication flyers, and other routine documents previously approved by the GTR and/or the Department, may be published without further HUD approval.

15. REPRODUCTION OF REPORTS

In accordance with Government Printing and Binding Regulations, reproduction of reports, data or other written materials, if required herein, is authorized, provided that the materials produced do not exceed 5,000 production units of any page and the items consisting of multiple pages do not exceed 25,000 production units in aggregate.

16. FLOW DOWN PROVISIONS

The Recipient shall include provisions of this instrument in all contracts of employment with persons who perform any part of the work under this instrument, and with all subcontractors and other persons or organizations participating in any part of the work under this instrument. There shall be provisions for a further flow down of such requirements to each sub-tier of employees and subcontractors to the extent feasible. If the Recipient subcontracts to a public or private organization any activity for which it receives FHAP funds, it must ensure in

writing that the organization is complying with all relevant civil rights laws including: (a) Title VI of the Civil Rights Act of 1964; (b) Title IX of the Education Amendments of 1972, as amended; (c) Section 504 of the Rehabilitation Act of 1973; and (d) the Age Discrimination Act of 1975.

17. DISPUTES

During performance of the instrument, disagreements may arise between the Recipient and the GTR on various issues, such as the acceptability of complaints forwarded for reimbursement. If a dispute arises, the CAO shall be the final authority on the matter and shall prepare a final decision, taking into account all facts and documentation presented. The CAO's decision shall be mailed, emailed, faxed, or telephonically provided to the Recipient.

18. MAINTENANCE OF RECORDS

The GTR and CAO are to maintain all appropriate records relating to the implementation of this cooperative agreement for a period of 5 years for the GTR files and a period of 7 years for the CAO files. The files for the CAO are to be kept in a secure place and should be accessible to others only with the CAO's permission. After 7 and 5 years respectively, the records may be archived at the records center.

The Recipient agrees to maintain records demonstrating its financial administration of FHAP funds. The Recipient also agrees to maintain records of its performance under FHAP, including all past performance assessment reports, performance improvement plans, and other documents relative to the Recipient's performance.

The Recipient agrees to permit reasonable public access to its records as required at 24 CFR § 115.308(c) (i.e., records are made available at the agency's office during normal working hours for public review). The Recipient agrees to permit the Secretary of HUD, Inspector General of HUD, Comptroller General of the United States, and any of their authorized representatives, access to all the pertinent books, accounts, reports, files, and other payments for surveys, audits, examinations, excerpts and transcripts as they relate to the agency's participation in the FHAP. The Recipient agrees to keep files in such a fashion as to permit the audits under applicable Office of Management and Budget circulars, procurement regulations and guidelines, and the Single Audit requirements for state and local agencies.

19. CUSTOMER SERVICE STANDARDS

The Recipient agrees to ensure that any and all individuals associated with fair housing complaints, including aggrieved persons, complainants, respondents, and representatives, are treated with dignity and respect. The Recipient agrees to maintain regular contact with parties to a complaint, including not allowing more than 30 business days to pass without some form of contact with parties. The Recipient agrees that its staff will not communicate disinterest or distrust in the complaint process to any of the parties to the complaint. Complaints to HUD from individuals associated with FHAP fair housing complaints will be reviewed by the GTR. The GTR will work with the Recipient and the individual to resolve the matter. In addition, customer satisfaction issues identified that may impact

the timely and effective processing of fair housing complaints will be considered when HUD conducts performance assessments of the Recipient in accordance with 24 CFR § 115.206.

20. REPORTING REQUIREMENTS

The Recipient agrees to provide the GTR timely information on all fair housing complaints cognizable under the Fair Housing Act, from receipt to closure, regardless of whether payment has been received by the Recipient.

The Recipient agrees to fully utilize the Title VIII Automated Paperless Office Tracking Systems (TEAPOTS), and input information in TEAPOTS in a timely manner. Failure to meet this requirement shall result in HUD identifying such failure as a deficiency in the FHAP agency's performance assessment, thereby authorizing HUD to proceed with performance deficiency procedures enumerated in the FHAP regulation at 24 CFR § 115.210.

21. TRAINING

The Recipient agrees to send staff to mandatory training sponsored by HUD, including, but not necessarily limited to, the National Fair Housing Training Academy. The Recipient shall participate in such trainings in accordance with the requirements enumerated in the document entitled *Instructions and Guidance for FHAP "Contributions Agencies": Allocation of FY2009 Fair Housing Assistance Program Funds*.

22. INITIAL CONTACT DATE

The Recipient must use the Initial Contact Date field in TEAPOTS to record the actual date on which a complainant first contacts the Recipient or FHEO to inquire about filing a housing discrimination complaint, or to report an alleged discriminatory housing practice. The Recipient will be required to comply with the following procedures with respect to documenting a complainant's initial contact.

For cases initially filed with the Recipient, the Recipient must:

- A) Maintain records of each complainant's initial contact with the Recipient, including records of all telephone, e-mail, letters, and in-person contacts;
- B) Place the original record of a complainant's initial contact, or a copy of that record, in the case file under the complainant's evidence section of the file, consistent with the requirements of Chapter 10 of the Title VIII Manual; and
- C) Ensure that the Initial Contact Date field in TEAPOTS reflects the earliest date of contact referenced in the case file.

For cases initially filed with FHEO, the Recipient:

- A) Must ensure that the Initial Contact Date filed in TEAPOTS reflects the earliest date of contact referenced in the case file referred to the Recipient by FHEO;
- B) Must not change the date that FHEO entered in the Initial Contact Date field in TEAPOTS even if records contained in the case file received from FHEO reflect a later date of contact by the complainant. If FHEO has entered an initial date of contact in TEAPOTS that is earlier than any contact date referenced in the case file, the Recipient must contact the FHEO regional office to obtain any records of contact that may have been omitted from the case file.

23. CHANGES LIMITING EFFECTIVENESS OF RECIPIENT'S LAW

If a state or local fair housing law that a Recipient enforces is amended, or rules or procedures concerning the fair housing law are adopted, or judicial or other authoritative interpretations of the fair housing law are issued, the Recipient must notify HUD's Fair Housing Assistance Program Division at the following address:

Fair Housing Assistance Program Division
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

24. FHAP AND THE FIRST AMENDMENT

None of the funding made available under the FHAP may be used to investigate or prosecute any activity engaged in by one or more persons that may be protected by the First Amendment of the United States Constitution.

25. TESTING

The following requirements apply to testing activities funded under the FHAP:

- A. Testing must be done in accordance with a HUD-approved testing methodology;
- B. Testers must not have prior felony convictions or convictions of any crimes involving fraud or perjury;
- C. Testers must receive training or be experienced in testing procedures and techniques;
- D. Testers and the organizations conducting tests, and the employees and agents of these organizations, may not: 1) have an economic interest in the outcome of the test, without

prejudice to the right of any person or entity to recover damages for any cognizable injury; 2) be a relative or acquaintance of any party in a case; 3) have had any employment or other affiliation, within five years, with the person or organization; or 4) or be a competitor of the person or organization to be tested in the listing, rental, sale or financing of real estate.

APPENDIX A - CONTRIBUTIONS AGREEMENT STATEMENT OF WORK

FY 2009

1. The Recipient agrees to process housing discrimination complaints cognizable under the Fair Housing Act in accordance with the Agreement for the Interim Referral of Complaints and Other Utilization of Services (Interim Agreement) or Memorandum of Understanding (MOU) between the Recipient and HUD, the Schedule of Articles, the Criteria for Processing, and 24 C.F.R. Part 115.
2. The Recipient agrees to cooperate with HUD in the processing of housing discrimination complaints cognizable under the Fair Housing Act in accordance with the Interim Agreement, MOU, the Schedule of Articles, the Criteria for Processing, and 24 C.F.R. Part 115.
3. The Recipient agrees to augment its fair housing enforcement efforts by engaging in outreach and education, and engaging and participating in training and technical assistance pursuant to the Interim Agreement and MOU.
4. The Recipient agrees to follow HUD's guidance in processing complaints cognizable under the Fair Housing Act unless and until the Department rescinds such requirement in writing to the Recipient.
5. The Recipient agrees to identify to HUD all staff assigned to carry out fair housing activities by name, position, salary, relevant experience, and percentage of time spent carrying out fair housing responsibilities.
6. The Recipient may be required to participate in customer satisfaction evaluation activities under this agreement. The Recipient agrees to furnish to HUD all information collected from its customers in the form specified by HUD.
7. If the Recipient has aged cases, upon request from HUD, the Recipient must provide updates to HUD on its handling of aged cases and submit a plan to the GTR/GTM for closing such cases.

MHRC 2009 Program Evaluation Report

Exhibit D

***US Department of Justice
OCR Certification***



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

DEC 12 1997

M.H.R.C.
DEC 18 1997
RECEIVED

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

Dear Ms. Ryan:

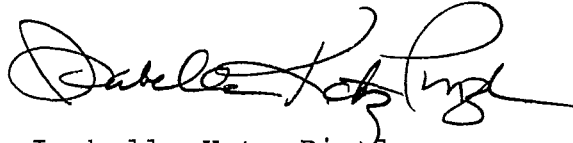
This is to inform you that the Department of Justice, pursuant to 42 U.S.C. § 12188(b)(1)(A)(ii) and 28 C.F.R. § 36.605(b), has certified that the Maine Human Rights Act, 5 MRSA § 4553, and the Maine Accessibility Regulations (together referred to herein as the "Maine law"), adopted on April 14, 1997,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

MHRC 2009 Program Evaluation Report

Exhibit E

**US Department of Justice / OCR /
Immigration (OSC) Work Sharing
Agreement**



U.S. Department of Justice

Special Counsel for Immigration Related
Unfair Employment Practices

Office of Special Counsel

1425 New York Avenue, N.W., Suite 9000

P.O. Box 27728

Washington, D.C. 20038-7728

(202) 616-5594

1-800-255-7688

AGREEMENT

between

MAINE HUMAN RIGHTS COMMISSION

and

**UNITED STATES DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION RELATED
UNFAIR EMPLOYMENT PRACTICES**

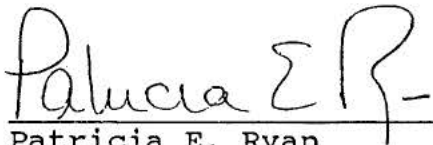
The **Maine Human Rights Commission** is charged with the enforcement of the provisions of the **Maine Human Rights Act** which prohibits discrimination in employment on the basis of national origin, ancestry, race, color, sex, physical and mental disability, religion, age, worker's compensation retaliation, or whistleblower's retaliation. The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 (as amended) which prohibit discrimination in employment on the basis of national origin or citizenship status, or in the form of "document abuse." The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The **Maine Human Rights Commission** and OSC hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency referring the charge will advise the charging party that an opportunity exists to file a complaint with the other agency and will forward a copy of the charge to the other agency as soon as possible.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort. It is understood that neither agency will divulge information under this Agreement in violation of applicable laws.

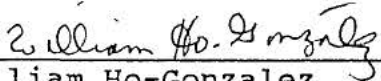
Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.



Patricia E. Ryan
Executive Director
Maine Human Rights Commission

5-16-94

Date



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

5-9-94

Date

MHRC Program Evaluation Report

Exhibit F

MHRC 2009 Annual Report

Maine Human Rights Commission



2009 Annual Report

July 1, 2008 - June 30, 2009

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Patricia E. Ryan
Executive Director

Maine Human Rights Commission

51 State House Station - Augusta, ME 04333

John P. Gause
Commission Counsel

A LETTER FROM THE CHAIRMAN

October 15, 2009

The Honorable John E. Baldacci, Governor
The Honorable Elizabeth H. Mitchell, Senate President
The Honorable Hannah Pingree, Speaker
State House
Augusta ME 04333

Dear Governor Baldacci, President Mitchell and Speaker Pingree:

On behalf of myself, my fellow Commissioners, and staff of the Maine Human Rights Commission, we are pleased to present you with the 2009 Annual Report of the Maine Human Rights Commission. In 2009 we welcomed Commissioner Fredette to a position that had been vacant for a couple of years. As you can see by the following we are up-holding the charge of the Commission, and handling the challenges to enforce Maine's anti-discrimination laws. The following lays out much data concerning fulfilling our collective responsibilities.

- The number of new charges that were filed increased 4% from the previous year.
- Employment charges comprised the largest category of complaints filed. Housing charges more than doubled from the prior year; while public accommodation charges decreased from the prior year¹.
- 76.9% of charges filed were employment charges; 14.4% were housing charges; 7.5% were public accommodation charges; and 1.2% were education.
- Disability charges comprised the largest number of complaints filed, with the number decreasing slightly from the previous year (to 450); the percentage of the total number of complaints filed increased slightly to 40%.
- Sex discrimination charges also decreased (from 196 to 149), and the percentage decreased to 13% of the total charges filed.
- The percentage of sexual harassment allegations of the total of sex discrimination charges filed decreased slightly to 47%.
- Whistleblower's complaints decreased in numbers but increased in percentage of total (180 complaints; 16% of total). Whistleblower's charges continue to exceed both number and percentage of sex discrimination charges.
- Disability, sex, and whistleblower's allegations were named in 69% of the new charges filed. Race/Color, Ancestry/National Origin, Age, Retaliation & Sexual Orientation followed, comprising an additional 27% of the total. All other categories comprised the remaining 4%.
- Sexual orientation allegations were filed in 1.7% of the charges.
- The number of charges closed increased by nearly 22.4% from the previous year.

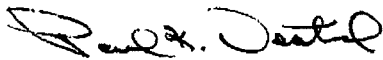
¹ During FY 2008, 62 Public Accommodation charges were filed by a single Complainant on the same issue.

- 301 cases were listed on Commission agendas. 46% were uncontested and listed on the consent agenda. Commissioners heard argument in 162 cases.
- Reasonable grounds were found in 14% of the cases.
- At the end of FY 2009, 893 cases were pending in our inventory. The number of pending cases increased significantly from the previous year.

In addition to the above, the staff and Commissioners have participated in 32 training forums during this time period both providing and receiving the newest information pertinent to our arena.

On behalf of the Maine Human Rights Commission and Commissioners Jadine O'Brien, Sallie Chandler, Joseph Perry, and Kenneth Fredette we pledge our continued commitment to the promotion of diversity, tolerance, and to ensuring basic human rights for all Maine citizens and visitors to our wonderful State. We certainly look forward to the continuing relationship with the Executive and Legislative branches to assure the citizens of Maine the basic protections afforded under the Maine Human Rights Act.

Sincerely,



Paul K. Vestal
Chairman of Maine Human Rights Commission

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:

AREAS OF JURISDICTION

EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION
Race	Race	Race	Race	Race
Color	Color	Color	Color	--
Sex	Sex	Sex	Sex	Sex
Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation
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
Origin				
Ancestry	Ancestry	Ancestry	Ancestry	--
Religion	Religion	Religion	Religion	--
Age	--	--	Age	--
Worker's Comp Retaliation	Receipt of public assistance	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
- 2005** Sexual Orientation

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, 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 2009 budget appropriation was \$1,024,076 including \$463,032 in federal funds from the Equal Employment Opportunity Commission and the U.S. Dept. of Housing & Urban Development.

Approximately 86% 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.

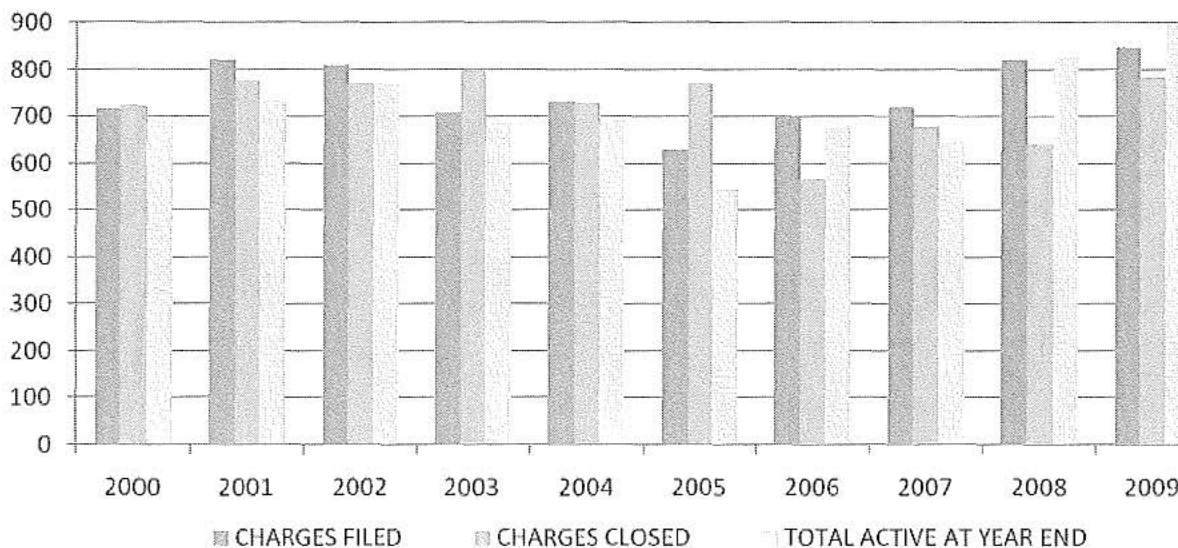
CASE ACTIVITY

During the last fiscal year, eight hundred and forty-nine (849) new charges were filed, which represents a significant increase from the previous year. Out of these charges, 1,132 bases were named in these charges, representing more complex investigations in many cases. Seven hundred and eighty-two (782) cases were closed during the same time period. The pending inventory of cases has increased by 8% since last fiscal year.

CASE ACTIVITY FY 2000 – 2009

FISCAL YEAR	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
PREVIOUS YEAR TOTAL	696	689	732	771	683	688	544	679	646	826
CHARGES FILED	716	819	808	708	731	628	700	718	819	849
CHARGES CLOSED	723	776	769	796	726	772	565	678	639	782
TOTAL ACTIVE AT YEAR END	689	732	771	683	688	544	679	646	826	893

CASE ACTIVITY CHART



CHARGES FILED

As in past years, the Commission continued to devote the majority of its resources to the processing of charges of discrimination filed with it.

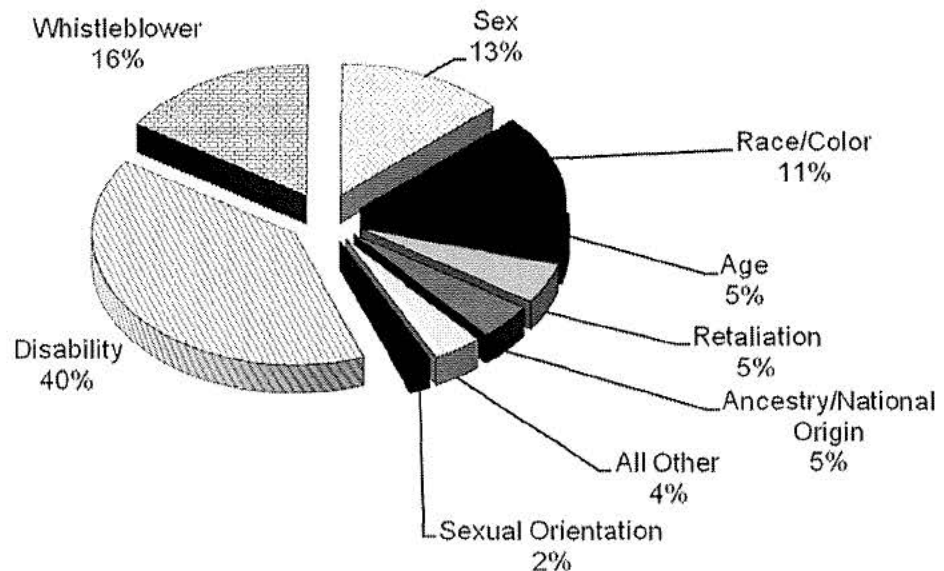
- 849 new charges were filed.
- Nearly 77% of these new charges alleged discrimination in employment.
- The largest number of complaints was filed on the basis of disability (40%).
- The second and third largest number of complaints were based on whistleblower's 16% and sex 13%.
- Disability, whistleblower's and sex comprised 69% of the complaints filed.
- Race/color was the 4th largest category of complaints (11%), followed by
 - Age (5%)
 - Retaliation (5%)
 - Ancestry/national origin (5%)

Of the sex discrimination complaints filed, seventy (70) alleged sexual harassment. This number comprised 47% of the total of sex discrimination complaints.

BASIS OF CHARGES SUMMARY FISCAL YEAR 2009

BASIS	# ALLEGATIONS
Disability	450
Whistleblower Retaliation	180
Sex	149
Race / Color	123
Age	60
Retaliation	56
Ancestry / National Origin	51
All Other	44
Sexual Orientation	19
TOTAL ALLEGATIONS	1132

BASES OF CHARGES FY 2009 CHART



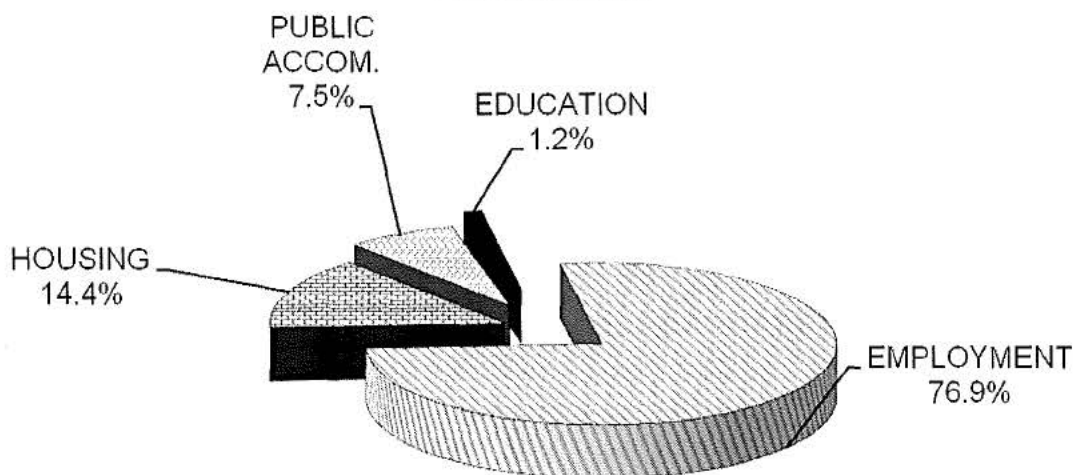
BASES OF CHARGES FILED FISCAL YEARS 2000 -2009

BASES	FY:	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
RACE / COLOR		68	73	97	82	64	60	64	88	113	123
SEX		263	316	296	262	258	201	236	207	196	149
PHYSICAL DISABILITY		221	267	223	203	202	201	201	244	370	338
MENTAL DISABILITY		88	81	97	117	104	80	107	102	97	112
RELIGION		14	14	17	13	18	15	10	16	25	15
AGE		99	95	117	82	95	75	66	94	97	60
ANCESTRY / NATIONAL ORIGIN		49	29	54	42	38	43	40	43	106	51
MARITAL STATUS (Credit only)		1	0	1	0	0	0	0	0	0	0
SOURCE OF INCOME (Housing)		2	4	3	7	15	10	16	8	9	10
FAMILIAL STATUS (Housing)		7	5	6	14	6	14	19	13	6	19
WHISTLEBLOWER RETALIATION		119	126	155	151	167	138	143	147	201	180
WORKER'S COMP RETALIATION		8	5	2	5	2	4	1	3	0	0
RETALIATION		43	95	82	91	72	68	98	98	147	56
SEXUAL ORIENTATION		N/A	N/A	N/A	N/A	N/A	N/A	13	33	32	19
GENETIC PRE-DISPOSITION		0	0	0	0	0	0	0	1	0	0
TOTAL ALLEGATIONS		982	1110	1150	1069	1041	909	1014	1097	1394	1132

**SUMMARY OF CHARGES FILED BY AREA OF JURISDICTION
FISCAL YEARS 2000 – 2009**

FISCAL YEAR	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
EMPLOYMENT	605.0	617.0	680.0	590.0	613.0	515.5	502.5	544.0	604.0	653.0
HOUSING	35.5	69.5	14.0	53.0	69.0	75.0	136.0	114.0	59.0	122.0
PUBLIC ACCOM.	65.5	109.0	94.0	58.0	42.5	34.0	49.0	53.5	142.0	64.0
EDUCATION	10.0	23.5	20.0	7.0	6.5	3.50	11.5	5.5	11.0	10.0
CREDIT EXTENSION	1.0	0.0	0.0	0.0	0.0	0.0	1.0	1.0	1.0	0.0
OFFENSIVE NAMES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	2.0	0.0
TOTALS	716.0	819.0	808.0	708.0	731.0	628.0	700.0	718.0	819.0	849.0

**AREA OF JURISDICTION CHART
FISCAL YEAR 2009**



CHARGES CLOSED

Seven hundred eighty-two (782) of discrimination were investigated and closed during the last fiscal year.

- **Merit Closures**

Merit closures are closures in which either a determination was made that there were reasonable grounds to believe that unlawful discrimination had occurred, or cases in which the Complainant received some benefit from the Respondent prior to a determination on the merits of the complaint. Merit closures include reasonable grounds determinations, with successful and unsuccessful conciliations; pre-determination settlements; and withdrawals with settlement.

During the last fiscal year, there were 220 cases closed which were reasonable grounds cases or cases that 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, one hundred and seventy-nine (179) cases were settled prior to a finding by the Commission. The monetary value of these settlements amounted to \$1,216,707 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 eighteen (18) successful conciliations of the forty-one (41) reasonable grounds determinations. 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 \$182,994. Total monetary relief for merit closures was \$1,453,181.

- **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-three (43) 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. One hundred and forty-two (142) 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. One hundred and seventeen (117) cases were closed during the last year for such reasons.

WITHDRAWALS AND DISMISSALS FISCAL YEAR 2009

TYPE	NUMBER
CHARGE WITHDRAWN	43
RIGHT TO SUE	142
FAILURE TO COOPERATE/PROCEED	74
NO JURISDICTION	33
OTHER	10
TOTAL	302

- **Non merit closures**

In addition to cases closed finding reasonable grounds and/or providing some remedy to the Complainant, and cases administratively dismissed, Two hundred sixty (260) 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.

Three hundred-one (301) cases came before the Commission in fiscal year 2009 for a determination. One hundred and thirty-nine (139) 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 forty-one (41) cases, which was 14% of the cases they considered. The Commission found no reasonable grounds to believe that unlawful discrimination occurred in two hundred sixty (260) cases². 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 2009. The figures following represent cases actually closed during fiscal year 2009.

SUMMARY OF CASE CLOSURES FOR FY 2009:

CASES CLOSED FY 09	MERIT CLOSURES: 28%			NO RG DETERMINATIONS 33%	WITHDRAWALS & DISMISSALS 39%
	SETTLEMENTS	SUCCESSFUL CONCILIATIONS	UNSUCCESSFUL CONCILIATIONS		
782	179	18	23	260	302

² 62 of the no reasonable grounds cases were filed by one Complainant involving an identical issue. If 61 of those cases are not included in the percentage calculation of reasonable grounds determinations, that percentage is 17%.

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.

During Fiscal Year 2009, the Commission directed Counsel to file complaints in four cases on behalf of the Commission. Seven cases were resolved that had been referred to Counsel for litigation or amicus filings. The Commission was a party in eight court cases throughout the year. At the end of Fiscal Year 2009, there were six cases pending in court in which the Commission was a party.