

Maine Human Rights Commission

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March 10, 2025

The Honorable Anne Carney, Senate Chair
The Honorable Amy Kuhn, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Re: LD 847: An Act To Prohibit Housing Discrimination

Dear Senator Carney, Representative Kuhn, and Members of the Joint Standing Committee on Judiciary:

The Maine Human Rights Commission (“Commission”) is Maine’s quasi-independent, neutral, apolitical State agency charged with enforcing our state anti-discrimination law, the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* (“MHRA” or the “Act”). The Commission is statutorily charged with the duties of investigating, conciliating, and at times litigating discrimination cases under the MHRA and the Maine Whistleblowers’ Protection Act (“WPA”); promulgating rules and regulations to effectuate the MHRA & WPA; and making recommendations for further legislation or executive action concerning infringements on human rights in Maine. 5 M.R.S. § 4566(7), (11). With those duties in mind, the Commission is pleased to provide this testimony in favor of LD 847, *An Act To Prohibit Housing Discrimination*.

This bill would amend the MHRA to prohibit discrimination in housing on the basis of source of income (in addition to the current prohibition on discrimination based on receipt of public assistance), to require certain owners of rental housing to participate in tenant-based rental assistance programs, and to provide additional remedies under the Unfair Trade Practices Act.

Background: MHRA Coverage of Discrimination in Housing on the Basis of Receipt of Public Assistance

Recognizing a “basic human right to a life with dignity”, see 5 M.R.S. § 4552, the Maine Legislature enacted the MHRA in 1971 to “prevent discrimination in employment, housing or access to public accommodations” on account of a protected trait. For decades, this has included protection against discrimination in housing on the basis of receipt of public assistance benefits by making it unlawful for “[a]ny 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.” 5 M.R.S. § 4581-A(4).

In 2014, the Maine Supreme Judicial Court, sitting as the Law Court, interpreted this provision. In the case before the court, a housing provider refused to adopt the addenda required by the federal housing voucher program commonly referred to as “Section 8” (“Program”), and declined to rent to a Program participant.

See *Dussault v. RRE Coach Lantern Holdings, LLC et al.*, 2014 ME 8. The Law Court found that refusing to comply with Program's additional requirements did not amount to discrimination on the basis of the renter's status as a recipient of public assistance. First, the Court found that by refusing to adopt any addenda to its rental agreements, whether pursuant to Program or otherwise, the housing provider was offering the same terms of rental to each of its prospective tenants. *Id.* at ¶ 16. Second, the Court found that Program participants were not excluded because of their status as recipients of public assistance, but because the owner did not want to be bound by the terms of the Section 8 addendum. *Id.* at ¶ 17. In interpreting the terms of the MHRA, the Court explained that it was bound by the terms of the MHRA as enacted, noting that although the Legislature had considered amendments to § 4581-A(4) in the past, it had not made discrimination on the basis of *public assistance programs' terms and conditions* unlawful, nor had it made participation in Program mandatory. *Id.* at ¶ 19 (citing LD 685 § 2 (123rd Legis. 2007) and amendments thereto). Accordingly, the Court concluded that the existing language of the MHRA compelled a finding that the housing provider's actions were not based on the tenant's status, but on the allegedly burdensome requirements of Program itself.

Because of the Court's interpretation, the Commission has been severely limited in its ability to meaningfully enforce this provision of the MHRA. While the Commission has been able to address discrimination on the basis of other types of public assistance – such as pandemic relief or stereotypes about people receiving “welfare” – discrimination based on receipt of a Section 8 or other housing voucher has been virtually impossible for the Commission to address.

LD 847's Impact on the MHRA and the MHRC

A. Section 3: Discrimination based on source of income:

Section 3 of LD 847 would mitigate the effects of *Dussault* by making it unlawful to refuse to participate in state, federal, or local assistance programs. Housing providers who are not otherwise exempted from the MHRA's housing provisions would be required to participate in these programs by allowing inspections, making repairs needed to meet the program standards, completing program paperwork, and providing information to the programs. This change would likely remove a barrier to housing for individuals who participate in assistance programs, since the paperwork and other programmatic requirements would no longer be legitimate nondiscriminatory reasons for refusing individuals who use these programs to pay for their housing.

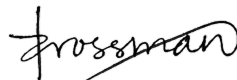
LD 847 does not propose amending 5 M.R.S. § 4583 (which provides that the antidiscrimination provisions do not prohibit housing providers from imposing specifications in the renting of a housing accommodation that are “consistent with business necessity and are not based on” protected class status), so housing providers would still be able to invoke an affirmative defense of business necessity if they refused to rent to a tenant receiving public assistance, as they might for any other applicant who alleged protected-class discrimination. As explained by the Law Court in *Dussault*, reading § 4581-A and § 4583 together “establish[es] that a landlord may not refuse to rent to, or impose different terms of tenancy on, a recipient of public assistance who is an otherwise-eligible tenant primarily on the basis of that person's status as a recipient unless the landlord can demonstrate a business necessity that justifies the refusal.” *Dussault*, 2014 ME 8 at ¶ 13. Under the provisions proposed by LD 847, simply complying with the requirements of a tenant-based rental assistance program would not meet the definition of a business necessity.

Since the beginning of the COVID-19 pandemic, the Commission has seen a rise in housing complaints. Complaints based on receipt of public assistance were particularly prevalent when emergency rent relief programs were in effect in the early years of the pandemic. The Commission's Executive Director was also included in a group of stakeholders convened by LD 2158, passed last session, to make recommendations to improve the housing voucher system and reduce the number of voucher expirations. While we are probably all aware of the housing crisis facing Mainers, until I participated in those meetings I had not realized that many people with housing vouchers have a time limit within which they can obtain housing with that voucher before the voucher expires. Passing LD 847 would directly address this problem by expanding the pool of housing available to some of Maine's most vulnerable residents.

Conclusion

Thank you for this opportunity to provide testimony in favor of LD 847. The Commission would be pleased to discuss these issues with you at your convenience, including at the work session on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Crossman", with a stylized flourish at the end.

Kit Thomson Crossman,
Executive Director

Cc: Commissioners