



# Maine Human Rights Commission

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The Honorable Anne Carney, Senate Chair  
The Honorable Matt Moonen, House Chair  
Joint Standing Committee on the Judiciary  
100 State House Station  
Augusta, ME 04333-0005

*Re LD 1904, "An Act to Enact the Maine Fair Chance Housing Act"*

Dear Sen Carney, Rep Moonen, and members of the Joint Standing Committee on Judiciary

The Maine Human Rights Commission ("Commission") - the State agency charged with enforcing the Maine Human Rights Act, 5 M R S §§ 4551, *et seq* ("MHRA") - has the duty of investigating, conciliating, and at times litigating protected-class discrimination cases under the MHRA. It is also charged with promulgating rules and regulations to effectuate the MHRA, and with making recommendations for legislation or executive action concerning infringements on human rights or personal dignity in Maine. 5 M R S § 4566(7), (11). To that end, the Commission is pleased to provide this testimony neither for nor against LD 1904.

*LD 1904 targets unlawful housing discrimination in line with the MHRA*

The MHRA bars discrimination in housing based on a person's innate characteristics, such as race or color, sex, disability, religion, age, sexual orientation or gender identity, and national origin. Race discrimination in housing was one of the key reasons that anti-discrimination laws were established in this country in the 1960s, as African-American combat veterans returned home from fighting for democracy in wars abroad but were unable to get good jobs or housing at home. Unfortunately, in the 50 years since those laws were established in Maine and the United States, race discrimination has not been eradicated. This is shown to be true in all aspects of housing, but is particularly notable in applications. In study after study, white applicants receive more responses and housing opportunities than black applicants, even when the candidates have no criminal history and are identical in every other respect. This has been demonstrated when the name of the applicant indicates that the applicant is African-American, or the applicant's voice sounds African-American.

Housing providers surely do not want to run afoul of laws like the MHRA, and look for objective criteria for making rental decisions. One such commonly used query on housing applications is whether an applicant has a criminal history. It is understandable that housing providers want to know all they can about people to whom they are considering renting their homes, and asking about criminal history seems like an objective and neutral inquiry that would provide useful information to prospective housing providers.

Utilizing criminal history as an initial exclusion for hiring removes qualified and motivated applicants of all races and colors from the workforce, but it also perpetuates racism. Unfortunately, because our nation's criminal justice system disproportionately polices, arrests and convicts people from communities of color as compared to people perceived to be white by many orders of magnitude, asking about the existence of criminal history on an housing application has a disparate impact on individuals from communities of color. In essence, asking about criminal history can become a proxy for asking about an applicant's color, even inadvertently. The federal government has recognized this, and issued guidance in 2016 to help housing providers recognize this issue as real.

Neither our country nor Maine has managed to eradicate discrimination based on race in housing. LD 1904 represents one approach to combatting unlawful discrimination in housing by removing the inquiry about criminal history from applications for housing. Known colloquially as "Ban the Box" ("BTB"), because it bars housing providers from putting a check-box on initial applications for a person with criminal history to check off, this approach is being adopted all around the country to protect applicants and convicted of a crime from automatic disqualification during the housing application process. BTB is easy to adopt and attractive to housing providers because it simply delays when an housing provider can ask about and consider an applicant's criminal history rather than barring consideration of such history altogether. The intent is to give a housing provider time to gauge an applicant's qualifications before considering criminal history, and to allow a potential tenant to engage in a discussion about the criminal history that would never happen if the housing provider as a matter of practice ruled out anyone with criminal history from the start.

*LD 1904 likely will have substantial impact on the Commission*

While the goal of LD 1904 is critically important, the Commission would be remiss if it did not discuss how the bill would impact our agency's workload and functioning in several key aspects:

- Section 2
  - Conducting periodic reviews with private housing providers to assess compliance with BTB. There is no indication of what this would entail. No matter what it does include, however, the Commission currently does not have sufficient staffing to accomplish this and would require additional staffing. The Commission also would need to create a regulation, and public enforcement materials, for private housing providers to follow before the Commission could enforcing "assess compliance".
  - Adding a fine structure for the Commission to follow regarding alleged BTB violations. The MHRA does not currently authorize the Commission to impose fines, or provide any mechanism for doing so. The Commission would need to create a regulation, public enforcement materials, and standard operating procedures with the State Treasurer, before imposing fines.
  - Inserting a requirement that the Commission conduct "compliance counseling" with housing providers who have violated BTB.
- Section 3
  - The proposed scope of LD 1904 (in what would be new § 4777) definition of a "housing provider" subject to LD 1904 is broader than the current MHRA definition of "housing accommodation" providers subject to the MHRA.
    - The MHRA currently prohibits "any owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these" from discriminating based on protected-class status. 5 M R S

§ 4581-A A “housing accommodation” “includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, that is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes” (5 M R S § 4553(6)) The MHRA explicitly carves out an exception for owner-occupied housing if it is a duplex or rents out fewer than four rooms 5 M R S § 4581(4)

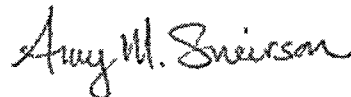
- Applying BTB to all providers of housing, even those not currently subject to the MHRA (owner-occupied homes in which four or fewer rooms are rented out and owner-occupied duplexes) likely represents a significant number of rental situations in Maine, making those housing accommodations subject to the MHRA will add a significant number of intakes and complaints for the Commission to review, screen, draft, and investigate
- Staff time to amend intake and complaint forms (English plus five other languages), public education publications, etc

In order to implement LD 1904’s valuable goals, the Commission essentially would need to create a new program New resources needed would include at least two new full-time MHR Investigator positions (intake, investigation), a new full-time attorney (drafting regulations and public information, reviewing investigations for legal sufficiency, litigating, conducting compliance/ counseling), an administrative support staffer, and funding for technology updates (our internal database and website)

#### *Conclusion*

Thank you for the opportunity to provide this testimony about LD 1904 The Commission will be glad to discuss this matter at your convenience and/or be present at the work session for further deliberation

Sincerely,



Amy M Sneirson  
Executive Director

Cc Maine Human Rights Commission