



Maine Human Rights Commission

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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: An Act to Prohibit Discrimination in Housing Based on Source of Income, Veteran Status or Military Status - LD 521

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, nonpartisan State agency charged with enforcing our state anti-discrimination law, the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* (“MHRA”). The Commission is statutorily charged with the duties of: investigating, conciliating, and at times litigating protected-class discrimination cases under the MHRA; promulgating rules and regulations to effectuate the Act; 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 neither for nor against LD 521.

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. This includes 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 of a housing provider which refused to adopt the addenda required by a federal housing voucher program (“Program”), resulting in its declining to rent to a Program participant. *See Dussault v. RRE Coach Lantern Holdings, LLC et al.*, 2014 ME 8. The Law Court found that this 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, 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 addendum. *Id.* at ¶ 17. The Court stated specifically that it was bound by the terms of the MHRA as enacted, noting that although it had considered amendments to § 4581-A(4), the Legislature had not amended the statute to make discrimination on the basis of public assistance programs’ terms and

conditions unlawful, or participation in Program mandatory. *Id.* at ¶ 19 (*citing* LD 685 § 2 (123rd Legis. 2007) and amendments thereto).

LD 521's Impact on the MHRA and the MHRC

This bill would amend the MHRA to prohibit discrimination in housing on the basis of source of income (removing the current prohibition on discrimination based on receipt of public assistance), veteran status, or military status.

A. Discrimination based on source of income:

LD 521 attempts to mitigate the impact of *Dussault* by defining source of income to include federal, state, or local housing assistance; Social Security, Social Security Disability, and Railroad Retirement payments; and various other forms of income, and then adding source of income as a protected class in the housing provisions of the MHRA. However, because LD 521 does not propose amending the provisions of 5 M.R.S. § 4583 which allow housing providers to impose specifications in the renting of a housing accommodation that are "consistent with business necessity and are not based on" protected class status, housing providers would be able to invoke an affirmative defense of business necessity if they refused to rent to a tenant receiving public assistance. 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. By broadening the definition of income, this bill would strengthen the MHRA's protections for individuals who receive income from sources which would not require housing providers to comply with a program's rules (like the Section 8 program, for example), but would largely leave *Dussault* in place.

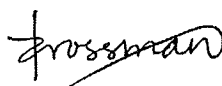
The Commission is open to stronger protections for recipients of public assistance, particularly housing vouchers, as that is the most common form of public assistance alleged in housing discrimination cases and would be happy to work with the bill's sponsor on an amendment with that aim.

B. Discrimination based on military and veteran status:

The MHRA addresses adverse treatment against individuals based primarily upon innate characteristics (such as race or national origin), characteristics over which they have no control (such as age or disability), and sincerely held beliefs (such as religion). Given this, military and veteran status might be an outlier within the MHRA's current framework. However, the definition of who would be a member of these protected classes is narrow, and the Commission does not anticipate that its total number of complaints would increase significantly as a result of adding these protected classes. The Commission suggests that if military and veteran status is added as a protected class under the housing provisions of the MHRA, it should be added across the MHRA's five areas of jurisdiction (employment, public accommodation, education, and credit extension, in addition to housing). The Commission would likewise be happy to work with the bill's sponsor on an amendment to that effect.

Thank you for this opportunity to provide testimony about LD 521. The Commission would be pleased to discuss these issues with you at your convenience, including at the work session on this matter.

Sincerely,



Kit Thomson Crossman, Executive Director

Cc: Commissioners