

MONTGOMERY COUNTY CODE
Chapter 27

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*Editor's note—Chapter 27 (§§ 27-1 through 27-63) is cited in Montgomery County v. Glenmont Hills Associates, Privacy World at Glenmont Metro Centre, 402 Md. 250, 936 A.2d 325 (2007). Chapter 27 is cited in Ruffin Hotel Corp v. Gasper, 418 Md. 594, 17 A.3d 676 (2011), Janey v. N. Hess Sons, Inc., 268 F. Supp. 2d 616 (2003), and Magee v. Dansources Technical Services, Inc., 137 Md. App. 527, 769 A.2d 231 (2001). Chapter 27, Article I, Division 1 is interpreted in Holiday Universal Club of Rockville, Inc. v. Montgomery County, 67 Md. App. 568, 508 A.2d 991 (1986), where the Court held Chapter 27 is a valid exercise of the police power and is not void for vagueness. Chapter 27, Article I, is discussed in Evans v. Technologies Applications & Services Co., 875 F.Supp. 1115 (D.Md. 1995). Chapter 27 is cited in McCrary Corp. v. Fowler, 319 Md. 12, 570 A.2d 834 (1990); in Holiday Spas v. Montgomery County Human Relations Commission, 315 Md. 390, 554 A.2d 1197 (1989); and in Hanna v. Emergency Medicine Associates, P.A., 77 Md. App. 595, 551 A.2d 492 (1989). Chapter 27 is discussed in City of Takoma Park v. Citizens for Decent Government, 301 Md. 439, 483 A.2d 348 (1984).

See County Attorney Opinion dated 5/11/05 analyzing disparate impact claims in lending practices and whether Chapter 27 encompasses these claims. See also the supplemental County Attorney Opinion dated 6/22/05.

2001 L.M.C., ch. 9, § 2, states: Transition and application. An Executive regulation or a Human Relations Commission regulation or rule in effect when this Act becomes law [August 13, 2001] remains in effect but is modified to the extent necessary to be consistent with Chapter 27 of the County Code, as amended by this Act. This Act applies to every complaint under Article I of Chapter 27, unless the complaint was resolved or is pending before a Commission panel or a court on the date this Act takes effect [August 13, 2001].

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ARTICLE I. COMMISSION ON HUMAN RIGHTS.*

***Editor's note**—Article I of this chapter, originally amended by creating subtitles within the article, has been revised by changing subtitles to divisions as is done for the remainder of the Code.

Cross reference—Human Rights Rules of Procedure, COMCOR 27.02.01.

State law reference—Maryland Commission on Human Relations, Ann. Code of Md., art. 49B.

Editor's note—Section 27-1 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008). Section 27-1 is cited and quoted in Jacob v. Didlake Corp., 2007 U.S. Dist. LEXIS 4095 (Jan. 19, 2007). Section 27-1 is cited in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007). Section 27-1(b) is interpreted and quoted in Haas v. Lockheed Martin Corp., 166 Md. App. 163, 887 A.2d 673 (2005), where the court held that summary judgment granted to employer was proper where an employee filed a discrimination claim after the statute of limitations expired; limitations began to run on the date of notice of discharge, not when the actual discharge occurred. Section 27-1 is cited in Ridgely v. Montgomery County, 164 Md. App. 214, 883 A.2d 182 (2005), where the court held that firefighter's narcolepsy prevented him from performing his duties but did not prevent him from working a different job and, therefore, did not support a claim of disability based on a disability. Section 27-1(f) is quoted in Manor Country Club v. Flaa, 387 Md. 297, 874 A.2d 1020 (2005), reversing and remanding 158 Md. App. 483, 857 A.2d 604 (2004), where the Court interpreted factors for calculating attorney's fees under former language contained in Montgomery County Code § 27-7; the section was amended prior to the Court's decision. Section 27-1 is quoted in Cohen v. Montgomery County Health and Human Services, 149 Md. App. 578, 817 A.2d 915 (2003), where the Court held that the employee's claim that the County's delay in providing reasonable accommodation for her disability stated a cause of action for employment discrimination based on disability. The above section is mentioned in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated*, Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc. failed to exhaust its administrative remedies before the Human Relations Commission). The above section is cited in American Red Cross v. Epperly, 351 Md. 216, 717 A.2d. 938 (1998).

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See County Attorney Opinion dated 4/8/03 indicating that sponsorship of a community dialogue on faith and understanding would not violate the Establishment Clause of the First Amendment to the Constitution, because the program would not advance or inhibit religion. See County Attorney Opinion dated 6/13/00 explaining that the County cannot refuse access to facilities based on the fact that a group has a discriminatory membership policy.

2000 L.M.C., ch. 36, §§ 1, 2, 4 and 5, read as follows:

Sec. 1. Short Title. This Act may be cited as the Genetic Information Employment Rights Act of 2000.

Sec. 2. Findings. The County Council finds that:

(a) Genetic status can be used as a proxy for otherwise illegal grounds for discrimination, such as discrimination based on religion, race, nationality, sex, or age, providing a loophole in employment protections previously guaranteed by County law.

(b) The threat of discrimination in employment based on the actual or perceived genetic status of an employee (including an applicant for employment) discourages genetic testing that could prevent or reduce disease or disabilities, provide peace of mind for individuals at risk for certain genetic conditions, and improve medical knowledge through genetic research.

(c) Montgomery County, as home to the Human Genome Project of the National Institutes of Health, the Food and Drug Administration, Celera Genomics, and other public and private institutions at the cutting edge of genetic research, is an international center for the discovery of genetic knowledge to improve public health and welfare that depends on clinical research volunteers who live and work in the County.

(d) Other than an Executive Order protecting federal employees, federal, state, and local employment laws generally have not kept pace with recent, rapid advances in genetic testing and therapies.

Sec. 4. Regulations. All County regulations in effect when this Act becomes law [March 21, 2001] continue in effect, except that any reference in a regulation to employment discrimination includes discrimination based on genetic status, as provided in this Act. Within 120 days after this Act becomes law [March 21, 2001], the County Executive and the Human Relations Commission must submit to the Council, for approval under method (2), any amendments to their respective regulations necessary to implement this Act.

Sec. 5. Public Education Program. The Human Relations Commission must, within 90 days after this Act becomes law [March 21, 2001], propose to the County Council and County Executive a public education program to inform employers, employees, genetic research and testing organizations, and the general public about County law regarding employment discrimination based on genetic information. In developing the proposed program, the Commission should consider the advice of employee and employer groups, genetics researchers, human rights organizations, and other interested individuals and organizations. This Section does not limit any authority or duty of the Commission under Chapter 27 of the County Code.

Sec. 27-1. Statement of policy.

- (a) The County Council finds that discrimination because of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, genetic status, presence of children, family responsibilities, source of income, sexual orientation, or gender identity adversely affects the health, welfare, peace, and safety of the community. Persons subject to discrimination suffer unemployment and under employment resulting in low family income, overcrowded housing, poor health conditions, antisocial behavior, poverty, and lack of hope, injuring the public welfare, placing a burden upon the public treasury to ameliorate the conditions thus produced and creating conditions which endanger the public peace and order. Montgomery County's policy is to foster equal opportunity for all without regard to race, color, religious creed, ancestry, national origin, sex, marital status, age, disability, presence of children, family responsibilities,

source of income, sexual orientation, gender identity, or genetic status and strictly in accord with their individual merits as human beings.

- (b) The prohibitions in this article are substantially similar, but not necessarily identical, to prohibitions in federal and state law. The intent is to assure that a complaint filed under this article may proceed more promptly than possible under either federal or state law. It is not County policy, however, to create a duplicative or cumulative process to those existing under similar or identical state or federal laws. Once a complaint is fully adjudicated under a similar or identical state or federal law, the complaint should not be reprocessed under this article if the effect is duplicative or cumulative. (1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 1; 1978 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 26, § 1; 2000 L.M.C., ch. 36, § 3; 2001 L.M.C., ch. 9, § 1; 2004 L.M.C., ch. 3, § 1; 2007 L.M.C., ch. 18, § 1.)

Sec. 27-1A. Reserved.

Editor's note—Section 27-1A, relating to the applicability of this chapter within incorporated municipalities, derived from 1974 L.M.C., ch. 53, § 1, and 1984 L.M.C., ch. 26, § 2, was repealed by 1985 L.M.C., ch. 31, § 18. See § 2-96.

Sec. 27-2. Commission membership and case review boards.

- (a) *Commission on Human Rights.* The Commission on Human Rights is established. The Commission has 15 members. The members are appointed by the County Executive and confirmed by the County Council. The members should be men and women who are broadly representative of the diverse population of the County. Each member serves a 3 year term. Each member of the Commission continues to serve until a successor has been appointed and confirmed. The members of the Commission serve without compensation.
- (b) *Commission case review boards.*
 - (1) The Commission must appoint a case review board of 3 individuals to consider and decide each complaint that the director certifies to the Commission. The director promptly must certify a complaint to the Commission after the director determines under Section 27-7(f) whether there are reasonable grounds to believe that the respondent violated this Chapter, if:
 - (A) the director determined that there are reasonable grounds to believe a violation occurred and the complaint was not resolved by conciliation; or
 - (B) the director determined that there are no reasonable grounds to believe a violation occurred and the complainant appeals the director's decision to the Commission.

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- (2) Each member of a case review board must be a member of the Commission when appointed to the board.
 - (3) Each board member is subject to disqualification under Section 2A-8(i)(1)c. and must not have:
 - (A) any interest in the complaint;
 - (B) any close relationship with the parties;
 - (C) participated in the investigation of the complaint; or
 - (D) participated in any conciliation of the complaint before a hearing on the merits.
 - (4) A board member serves until the complaint is resolved, even if the board member's membership on the Commission ends before the case is resolved.
- (c) Article I of Chapter 2A (appeals from administrative agencies) governs a hearing under Section 27-7(h), except as otherwise provided in this Chapter. The Commission may issue rules, as regulations under method (2), that establish any additional procedures it finds necessary for:
- (1) the director to certify a complaint to the Commission;
 - (2) the Commission to select members of a case review board, including a board member to fill a vacancy that arises before the case is resolved;
 - (3) the Commission or the board to select a board chair;
 - (4) a board to decide in each case where a complainant appeals to the Commission under Section 27-7(f)(2) whether to conduct a hearing under Section 27-7(h); and
 - (5) a board to decide whether a hearing examiner or the board itself will conduct a hearing.
- (d) As part of its annual budget submission, the Commission must report the number of complaints filed during the previous fiscal year and statistical information regarding the nature and disposition of complaints. (Mont. Co. Code 1965, § 77-1; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 1; 1986 L.M.C., ch. 39, § 1; FY 1991 L.M.C., ch. 9, § 1; 1995 L.M.C., ch. 21, § 1; 2001 L.M.C., ch. 9, § 1.)

Editor's note—The above section is mentioned in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated*, Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc. failed to exhaust its administrative remedies before the Human Relations Commission). The above section is cited and interpreted in American Red Cross v. Epperly, 351 Md. 216, 717 A.2d. 938 (1998). A rule adopted by the human relations commission which required landlords with twenty-five or more rental units to report quarterly on minority tenants, etc., was upheld against constitutional challenges in Montgomery County v. Fields Road Corporation, 282 Md. 575, 386 A.2d. 344 (1978). The above section is interpreted and applied in Holiday Spas v. Montgomery County Human Relations Commission, 70 Md.App. 344, 521 A.2d 340 (1987).

Cross reference—Boards and commissions generally, § 2-141 et seq.

Sec. 27-3. Officers; meetings; quorum; voting.

The Commission must recommend individuals to the County Executive for the position of Commission chair. After considering the Commission's recommendations, the Executive must designate a member of the Commission to be chair. The Commission may elect other officers as it deems necessary. The Commission must meet at least once a month for 9 months in each calendar year. Eight members of the Commission, qualified to vote, constitutes a quorum for the transaction of business, and a majority vote of those present at a meeting is required for any official action by the Commission. (Mont. Co. Code 1965, § 77-2; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 1; 2001 L.M.C., ch. 9, § 1.)

Editor's note—The above section is mentioned in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated*, Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc. failed to exhaust its administrative remedies before the Human Relations Commission).

Sec. 27-4. Office of Human Rights.

- (a) The Executive Director appointed under Section 1A-204(a) heads the Office of Human Rights and must assist the Commission to implement this Article.
- (b)
 - (1) The County Executive may assign additional staff to assist the Commission in carrying out this article. The Commission may, with the approval of the County Executive, engage the services of volunteer workers and volunteer consultants, who, subject to appropriations, may be reimbursed for out-of-pocket expenses incurred in performing volunteer services. Services of an individual as a volunteer worker or consultant must not be considered as service of employment in any merit system of the county or state.
 - (2) If the Commission and the county attorney determine that a representational conflict exists within the county attorney's office, then the county attorney may employ special legal counsel to represent the Commission after consultation with the Commission and approval by the County Council.

- (3) The director may receive sworn complaints alleging discrimination that violates this chapter.
- (4) Before a complaint is certified to the Commission under Sections 27-7(f)(2) or (g)(4), the director may investigate, resolve, or conciliate the complaint.
- (5) The director may issue regulations under method (2) to carry out the responsibilities of the director and the Office of Human Rights under this article.
- (6) The director must carry out any other duties described in this Chapter.
- (c) In proposing a budget for the operation of the Commission and in selecting other personnel and facilities, the County Executive and the County Council must seek and consider the recommendations of the Commission.
- (d) The Office of Human Rights must educate County residents about discriminatory lending practices through the use of literature, counseling, educational workshops, or public fora. The Office may work with the Commission for Women, the Office of Consumer Protection, and any other government or non-government agency or organization to identify that educate the public about discriminatory lending practices.*

***Editor's note**—Paragraph (d) of Sec. 27-4 was added by 2005 L.M.C., ch. 29, § 2 (Bill 36-04). However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06.

(Mont. Co. Code 1965, § 77-3; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch.30, § 1; 1984 L.M.C., ch. 26, § 3; 1986 L.M.C., ch. 37, § 3; 2001 L.M.C., ch. 9, § 1; 2005 L.M.C., ch. 29, § 2; 2006 L.M.C., ch. 33, § 1; 2007 L.M.C., ch. 5, § 1.)

Editor's note—The above section is mentioned in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated*, Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc. failed to exhaust its administrative remedies before the Human Relations Commission).

2007 L.M.C., ch. 5, § 2, states: Affect on incumbents. If on the effective date of this Act [May 28, 2007] a merit system employee occupies a position which this Act converts to a non-merit position:

- (a) that employee retains all merit system rights; and
- (b) the position does not become a non-merit position until that employee leaves the position through transfer, promotion, demotion, retirement, or other separation from service.

Sec. 27-5. Duties generally.

- (a) The Commission must:
 - (1) Research, analyze, and disseminate information about activities and programs to eliminate prejudice, intolerance, bigotry, and discrimination.

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- (2) Conduct educational and other programs to promote equal rights and opportunities of all persons regardless of race, color, religious creed, ancestry, national origin, sex, age, marital status, disability, sexual orientation, gender identity, genetic status, presence of children, family responsibilities, or source of income.
- (3) Promote goodwill, cooperation, understanding and human relations among all persons.
- (4) Cooperate with interested citizens, racial, religious, and ethnic groups; and community, business, professional, technical, educational, and civic organizations.
- (5) Cooperate with the County Executive and all governmental agencies on matters within the Commission's jurisdiction.
- (6) Study and investigate, through public or private meetings, conferences, and public hearings, conditions that could result in discrimination, prejudice, intolerance, or bigotry because of race, color, religious creed, ancestry, national origin, sex, age, marital status, disability, sexual orientation, gender identity, genetic status, presence of children, family responsibilities, or source of income.
- (7) Advise county residents, the County Council, the County Executive, and the various departments of County, State, and federal governments about racial, religious, and ethnic prejudice, intolerance, discrimination, and bigotry and recommend procedures, programs, and laws to promote and protect equal rights and opportunities for all persons, regardless of race, color, religious creed, ancestry, national origin, sex, age, marital status, disability, sexual orientation, gender identity, genetic status, presence of children, family responsibilities, or source of income.
- (8) Work to eliminate discrimination, prejudice, intolerance, and bigotry in housing, recreation, education, health, employment, public accommodations, justice, and related matters.
- (9) Initiate and receive complaints of discrimination, prejudice, intolerance, and bigotry from any person or group because of race, color, sex, age, marital status, religious creed, ancestry, national origin, disability, sexual orientation, gender identity, genetic status, presence of children, family responsibilities or source of income, that deprives that person or group of equal rights, protection, or opportunity in employment, real estate, and public accommodation. The Commission must:
 - (A) approve any conciliation agreement before the agreement is enforceable as an order of the Commission;

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- (B) appoint a case review board under Section 27-2(b) and (c) to consider and decide a complaint certified to the Commission under Sections 27-7(f)(2) or (g)(4), and
 - (C) take any other action necessary to resolve a complaint under this Article and any other applicable law.
- (10) Keep a record of the Commission's hearings and activities and minutes of all other meetings. The Commission is a public body under the State Public Information Act and Open Meetings Act.
- (11) Provide to the County Executive and County Council:
- (A) a quarterly written or oral report of Commission activities and recommendations within 30 days after each calendar quarter;
 - (B) an annual written report summarizing Commission activities, goals, needs, and recommendations promptly after each calendar year; and
 - (C) by March 1 of each year, an annual written report, compiled by the Office of Human Rights, for the preceding calendar year detailing the number and type of housing discrimination complaints received under this Section, including the age, gender, and race of the complainant, the area where complainant resides, the decision of the Commission, and the type and amount of the penalty imposed. This report must also identify overall lending patterns in the County for prime and subprime loans as compiled from Home Mortgage Disclosure Act and Fair Housing Administration data. This report must be separate from the Commission's annual report.*

*Editor's note—Subparagraph (C) of Sec. 27-5(a)(11) was added by 2005 L.M.C., ch. 29, § 2 (Bill 36-04). However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 "null and void" by order dated 11/30/06.

- (12) Issue any other regulations under method (2) necessary to carry out this article.
- (b) If the County Executive does not object, the Commission may conduct additional programs to relieve group tension or adverse intergroup actions resulting from causes other than race, color, sex, religious creed, ancestry, national origin, age, marital status, disability, sexual orientation, gender identity, genetic status, presence of children, family responsibilities, or source of income. (Mont. Co. Code 1965, § 77-5; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1974 L.M.C., ch. 19, § 1; 1977 L.M.C., ch. 30, § 1; 1978 L.M.C., ch. 6, § 2; 1984 L.M.C., ch. 24, § 30; 1984 L.M.C., ch. 26, § 4; 2000 L.M.C., ch. 36, § 3; 2001 L.M.C., ch. 9, § 1; 2004 L.M.C., ch. 3, § 2; 2005 L.M.C., ch. 29, § 2; 2006 L.M.C., ch. 33, § 1; 2007 L.M.C., ch. 18, § 1.)

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Editor's note—Section 27-5 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008). The above section is mentioned in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated*, Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc. failed to exhaust its administrative remedies before the Human Relations Commission). The above section is interpreted and applied in Holiday Spas v. Montgomery County Human Relations Commission, 70 Md. App. 344, 521 A.2d 340 (1987).

See County Attorney Opinion dated 8/26/04 discussing the extent and limits of the Commission on Health's authority. See County Attorney Opinion dated 4/8/03 indicating that sponsorship of a community dialogue on faith and understanding would not violate the Establishment Clause of the First Amendment to the Constitution, because the program would not advance or inhibit religion.

2000 L.M.C., ch. 36, §§ 1, 2, 4 and 5, read as follows:

Sec. 1. Short Title. This Act may be cited as the Genetic Information Employment Rights Act of 2000.

Sec. 2. Findings. The County Council finds that:

(a) Genetic status can be used as a proxy for otherwise illegal grounds for discrimination, such as discrimination based on religion, race, nationality, sex, or age, providing a loophole in employment protections previously guaranteed by County law.

(b) The threat of discrimination in employment based on the actual or perceived genetic status of an employee (including an applicant for employment) discourages genetic testing that could prevent or reduce disease or disabilities, provide peace of mind for individuals at risk for certain genetic conditions, and improve medical knowledge through genetic research.

(c) Montgomery County, as home to the Human Genome Project of the National Institutes of Health, the Food and Drug Administration, Celera Genomics, and other public and private institutions at the cutting edge of genetic research, is an international center for the discovery of genetic knowledge to improve public health and welfare that depends on clinical research volunteers who live and work in the County.

(d) Other than an Executive Order protecting federal employees, federal, state, and local employment laws generally have not kept pace with recent, rapid advances in genetic testing and therapies.

Sec. 4. Regulations. All County regulations in effect when this Act becomes law [March 21, 2001] continue in effect, except that any reference in a regulation to employment discrimination includes discrimination based on genetic status, as provided in this Act. Within 120 days after this Act becomes law [March 21, 2001], the County Executive and the Human Relations Commission must submit to the Council, for approval under method (2), any amendments to their respective regulations necessary to implement this Act.

Sec. 5. Public Education Program. The Human Relations Commission must, within 90 days after this Act becomes law [March 21, 2001], propose to the County Council and County Executive a public education program to inform employers, employees, genetic research and testing organizations, and the general public about County law regarding employment discrimination based on genetic information. In developing the proposed program, the Commission should consider the advice of employee and employer groups, genetics researchers, human rights organizations, and other interested individuals and organizations. This Section does not limit any authority or duty of the Commission under Chapter 27 of the County Code.

Section 27-5, formerly § 27-6, was renumbered and amended pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-5, relating to compensation and expenses of members of the commission on human relations, was repealed by FY 1991 L.M.C., ch. 9, § 1. The section was formerly derived from Mont. Co. Code 1965, § 77-4; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; and 1977 L.M.C., ch. 30, § 1. See § 2-145.

Sec. 27-6. Definitions.

The following words and phrases have the following meanings, unless the context indicates otherwise:

Commission means the County Commission on Human Rights.

Commissioner means an individual appointed and confirmed to serve on the Commission.

Director means the Executive Director of the Office of Human Rights and includes the Executive Director's designee.

Disability means a physical or mental impairment that substantially limits one or more of an individual's major life activities, a record of having such an impairment, being associated with an individual with a disability, or being regarded as having such an impairment. The term also includes:

- (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, blood and lymphatic, skin and endocrine;
- (2) alcoholism or prior drug dependency or current medically supervised drug dependency; or
- (3) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Dwelling means any building, facility or structure, or portion thereof, that is designed, intended or arranged for occupancy as a home, residence or sleeping place of one or more individuals. Dwelling includes that portion of a dwelling used for a home occupation.

Employee means any individual employed by an employer, either for compensation or as a volunteer. Employee includes an individual seeking or applying for employment by an employer.

Employee's relative means any individual who is, or is perceived to be:

- (1) biologically related to the employee; or
- (2) eligible for health care insurance or other benefit from the employer because of the individual's relationship to the employee.

Employer means any person who employs one or more individuals in the County, either for compensation or as a volunteer. Employer includes a person who recruits an individual in the County to apply for employment in the County or elsewhere. Employer includes Montgomery County and its instrumentalities and agencies.

Employment agency means any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer.

Family responsibilities means the state of being financially or legally responsible for the support or care of a person or persons, regardless of the number of dependent persons or the age of any dependent person.

Gender identity means an individual's actual or perceived gender, including a person's gender-related appearance, expression, image, identity, or behavior, whether or not those gender-related characteristics differ from the characteristics customarily associated with the person's assigned sex at birth.

Genetic condition includes the presence of deoxyribonucleic acid (DNA), ribonucleic acid (RNA), chromosomes, proteins, or certain metabolites that indicate or confirm that an individual has a mutation or other genotype associated with a disease or disability.

Genetic information means information regarding an employee's (or an employee's relative's):

- (1) actual or perceived genetic condition;
- (2) request for or receipt of any test that can detect, indicate, or analyze a genetic condition;
or
- (3) medical history, if the information otherwise satisfies either paragraph (1) or (2).

Genetic status: Discrimination based on genetic status includes discrimination based on:

- (1) genetic information; or
- (2) the actual or perceived genetic condition of an employee or the employee's relative.

Housing means a dwelling or any vacant land intended for the construction or location of a dwelling.

Labor organization means any entity in which employees participate directly or indirectly for the purpose, in whole or in part, of dealing with employers concerning the terms, conditions, or privileges of employment. Labor organization includes any conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization.

*See Editor's note at the end of this Section, prior to the legislative history.

Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Marital status means whether an individual is married, unmarried, widowed, or divorced.

Mortgage loan means the making of a loan or providing other financial assistance to purchase, refinance, construct, improve, repair, or maintain a dwelling that is secured by real property, or any other type of loan that is secured by a dwelling.*

*See **Editor's note** at the end of this Section, prior to the legislative history.

Person means an individual; a legal entity; or a department, agency, or instrument of the County or, to the extent allowed by law, of federal, State, or local government. A lending institution, including any bank, insurance company, savings and loan association, or other organization regularly engaged in the business of lending money, brokering money, or guaranteeing loans, is a person.*

*See **Editor's note** at the end of this Section, prior to the legislative history.

Presence of children means the existence in a household of an individual under the age of 18 years.

Qualified individual with a disability means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or seeks.

Real estate means any interest in land or anything permanently attached to land. Real estate includes residential and commercial property.

Real estate, commercial means any real estate used, in whole or in part, for business, industrial, or agricultural purposes.

Real estate broker means any person licensed as a real estate broker under Maryland law.

Real estate salesperson means any person:

- (1) licensed as a real estate salesperson under Maryland law; or
- (2) otherwise engaged or employed to sell or lease real estate.

Readily achievable means easily accomplishable and able to be carried out without unreasonable difficulty or expense. Factors that can affect whether an action is readily achievable include

- (1) the nature and cost of the accommodation needed to comply with this article;
- (2) the overall financial resources of the person required to provide the reasonable accommodation; and
- (3) the impact of the accommodation.

Reasonable accommodation means any modifications necessary to make an environment suitable for a disabled person, without undue hardship or significant risk to any person's health or safety.

Reasonable accommodation in employment includes:

- (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- (2) 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.

Religious creed includes all aspects of religious observance, practice, and belief.

The terms “*because of sex*” or “*on the basis of sex*” include because of, or on the basis of, pregnancy, childbirth, or related medical conditions.

Sexual orientation means actual or perceived male or female homosexuality, heterosexuality, or bisexuality;

- (1) by practice between lawfully consenting adults; or
- (2) by inclination.

Source of income means any lawful source of money, paid directly or indirectly to a renter or buyer of housing, including income from:

- (1) any lawful profession or occupation;
- (2) any government or private assistance, grant, or loan program;
- (3) any gift, inheritance, pension, annuity, alimony, child support, or other lawful compensation or benefit; or
- (4) any sale or pledge of any property or interest in property.

Undue hardship means an action requiring significant difficulty or expense. In determining whether an accommodation would impose an undue hardship, the decision maker must consider:

- (1) the nature and cost of the accommodation needed to comply with this article;
- (2) the overall financial resources of the person who would provide the accommodation; and
- (3) the impact of the accommodation on other persons.

***Editor’s note**— The definition of *lending institution* was repealed, the definition of *mortgage loan* was added, and the definition of *person* was amended by 2005 L.M.C., ch. 29, § 2 (Bill 36-04). However, in American

Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06. Prior to 2005 L.M.C., ch. 29, the definitions of *lending institution* and *person* read as follows:

Lending institution means any bank, insurance company, savings and loan association, or any other person or organization regularly engaged in the business of lending money or guaranteeing loans. *Lending institution* includes a department, agency, or instrument of the County or, to the extent allowed by law, a federal, State, or local government that lends money or guarantees loans.

Person means any individual; a legal entity; or a department agency, or instrument of the County, or to the extent allowed by law, of federal, State, or local government.

(1978 L.M.C., ch. 6, § 3; 1984 L.M.C., ch. 24, § 30; 1984 L.M.C., ch. 26, § 5; 2001 L.M.C., ch. 9, § 1; 2001 L.M.C., ch. 33, § 1; 2004 L.M.C., ch. 3, § 3; 2005 L.M.C., ch. 29, § 2; 2007 L.M.C., ch. 5, § 1; 2007 L.M.C., ch. 18, § 1.)

Editor’s note—Section 27-6 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008). Section 27-6 is quoted in Jacob v. Didlake Corp., 2007 U.S. Dist. LEXIS 4095 (Jan. 19, 2007), in Montgomery County v. Glenmont Hills Associates, Privacy World at Glenmont Metro Centre, 402 Md. 250, 936 A.2d 325 (2007), and in Haas v. Lockheed Martin Corp., 396 Md. 469, 914 A.2d 735 (2007). Portions of Section 27-6 are quoted in Ridgely v. Montgomery County, 164 Md. App. 214, 883 A.2d 182 (2005), where the Court held that firefighter’s narcolepsy prevented him from performing his duties but did not prevent him from working a different job and, therefore, did not support a claim of disability based on a disability. Section 27-6 is quoted in Cohen v. Montgomery County Health and Human Services, 149 Md. App. 578, 817 A.2d 915 (2003), where the Court held that the employee’s claim that the County’s delay in providing reasonable accommodation for her disability stated a cause of action for employment discrimination based on disability.

2007 L.M.C., ch. 5, § 2, states: Affect on incumbents. If on the effective date of this Act [May 28, 2007] a merit system employee occupies a position which this Act converts to a non-merit position:

- (a) that employee retains all merit system rights; and
- (b) the position does not become a non-merit position until that employee leaves the position through transfer, promotion, demotion, retirement, or other separation from service.

Section 27-6, formerly § 27-6A, was renumbered, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Sec. 27-7. Administration and enforcement.

- (a) *Filing complaints.* Any person subjected to a discriminatory act or practice in violation of this Article, or any group or person seeking to enforce this Article or Articles X, XI, or XII, may file with the Director a written complaint, sworn to or affirmed under the penalties of perjury, that must state:
 - (1) the particulars of the alleged violation;
 - (2) the name and address of the person alleged to have committed the violation; and
 - (3) any other information required by law or regulation.

- (b) *Commissioner initiated complaints.* Any commissioner or the Commission may initiate a complaint in the commissioner's or Commission's name in the manner provided in subsection (a).
- (c) *Testing and corroboration.* After a complaint is filed, the director promptly must provide a copy or synopsis of the complaint to the respondent. If the director decides to corroborate the complaint by testing, the director must provide the copy or synopsis to the respondent promptly after completion of the testing. The Commission may also initiate or corroborate complaints on the basis of testing carried out by its staff, contractors, or volunteers authorized by the Commission or the director, or their designees.
- (d) *Limitations; filing with other agencies.* Any complaint must be filed with the director or the Commission within one year after the alleged discriminatory act or practice. If those acts or practices are continuing in nature, the complaint must be filed within one year after the most recent act or practice. Filing with any federal or state agency charged with civil rights enforcement constitutes a filing under this article.
- (e) *Investigation.*
 - (1) After receiving a complaint, the director must investigate as necessary to ascertain appropriate facts and issues. The director may:
 - (A) issue subpoenas to compel the attendance of witnesses, the production of documents, and other evidence relevant and necessary to investigate the complaint;
 - (B) conduct discovery, including interrogatories and depositions; and
 - (C) require both the complainant and respondent to attend a fact-finding conference and, if either party fails to attend, dismiss the complaint, impose a default judgment, or order other appropriate sanctions against the absent party.
 - (2) The Commission, director, and staff must not disclose any information gathered during the investigation, including the parties' identities, except that:
 - (A) Any information may be released at any time if the release has been agreed to in writing by both the complainant and the respondent.
 - (B) The identity of the complainant may be disclosed to the respondent at any time.

- (C) If the director certifies a complaint to the Commission, any information may be released unless the case review board grants a private hearing before the board or a hearing examiner.
 - (D) After the director certifies a case to the Commission, documents or materials gathered during the investigation must be available to the parties, except that any investigatory materials that the Commission, case review board, hearing examiner, or director determines are privileged or confidential and would not be used at a hearing must not be released to any party.
- (f) *Initial determination, dismissal before hearing.*
- (1) The Director must determine, based on the investigation, whether reasonable grounds exist to believe that a violation of this Article or Articles X, XI, or XII, occurred and promptly send the determination to the complainant and the respondent.
 - (2) If the Director determines that there are no reasonable grounds to believe a violation occurred, and the complainant appeals the determination to the Commission within 30 days after the Director sends the determination to the complainant, the Director promptly must certify the complaint to the Commission. The Commission must appoint a case review board to consider the appeal. The board may hear oral argument and must:
 - (A) dismiss the complaint without a hearing;
 - (B) order the Director to investigate further; or
 - (C) set the matter for a hearing by a hearing examiner or the board itself, and consider and decide the complaint in the same manner as if the Director had found reasonable grounds to believe that a violation of this Article or Articles X, XI, or XII, occurred.
 - (3) If the Director determines that there are reasonable grounds to believe a violation occurred, the Director must attempt to conciliate the matter under subsection (g).
- (g) *Conciliation.*
- (1) A conciliation conference is informal and nothing said or done during a conciliation conference is admissible in any subsequent hearing under this article. The Commission or the director may disclose something said or done during a conciliation conference only if the parties agree in writing.

- (2) The terms of a conciliation agreement must be reduced to writing and approved by the Commission. An approved conciliation agreement is an “informal disposition” under Section 2A-10(g), is binding on the parties, has the force and effect of a contract, and is enforceable as a contract. The Commission may enforce the agreement as an order of the Commission.
- (3) A conciliation agreement that requires confidentiality and is otherwise acceptable to the Commission:
 - (A) may be approved by the Commission, at its discretion, to resolve a complaint regarding discrimination in a place of public accommodation;
 - (B) must not be approved unless the Commission finds that disclosure would not further the purposes of this article or State or federal laws prohibiting discrimination in real estate;
 - (C) should be approved by the Commission to resolve a complaint regarding employment discrimination.
- (4) If conciliation has not occurred within 90 days after the director found reasonable grounds to believe a violation occurred, or the director decides at any time that conciliation would be fruitless, the director promptly must certify the complaint to the Commission, which must appoint a case review board to consider and decide the complaint. The director may extend the conciliation deadline by mutual consent of the complainant and respondent.
- (h) *Hearings.* The hearing must be conducted by the Commission case review board or a hearing examiner according to Sections 2A-1 to 2A-11, this Chapter, and Commission rules. If a hearing is granted, the Commission or the director may ask the County Attorney to intervene on behalf of the County to enforce this Chapter. The County may recover its costs, including reasonable attorney’s fees, if it substantially prevails.
- (i) *Decision and order.*
 - (1) The case review board must issue a final decision on a complaint according to Section 2A-10, this Chapter, and Commission rules.
 - (2) If any party, after proper notice, does not appear at a scheduled hearing, a hearing examiner may recommend and the board may order any relief to another party that the facts on record warrant.
 - (3) The board may award costs, including reasonable attorney’s fees, to any party if another party filed or maintained a frivolous complaint, or filed or maintained a complaint not in good faith.

- (4) The board must apply relevant federal, State, County, and case law to the facts. The board may order payment of damages and any other relief that the law and facts allow and warrant. The board's decision is binding on the parties, subject to appeal to the courts under subsection (k).
- (5) If a hearing examiner conducts the hearing, the hearing examiner must forward a recommended decision and order to the board. The board may hear additional oral argument and must adopt, reverse, modify, or remand the recommended decision before issuing the board's final decision and order.
- (j) *Notification to other agencies.* If a case review board determines that a person has violated this article, the director may refer the decision to any State or County agency or authority that:
 - (1) issued a license or franchise to the person; or
 - (2) does business under contract with the person.
- (k) *Appeal.* Any party aggrieved by a case review board's final decision may seek full appellate review under Section 2A-11. A decision by a case review board under subsection (f)(2)(A) to uphold the Director's finding that there are no reasonable grounds to believe a violation occurred is not subject to appellate review.
- (l) *Enforcement of orders and subpoenas.* The Commission, a case review board, or a hearing examiner may direct, and the director may ask, the County Attorney to enforce by any appropriate legal action a subpoena or other order issued by the director, hearing examiner, board, or Commission. The County or any party seeking to enforce an order or subpoena may recover costs and reasonable attorney's fees if the County or party substantially prevails.
- (m) *Interim relief.* At any time after a complaint has been filed, the Commission, a case review board, or a hearing examiner may direct, and the director may ask, the County Attorney to seek any appropriate legal relief, such as a temporary restraining order or a preliminary injunction, to preserve the *status quo* or prevent irreparable harm. (Mont. Co. Code 1965, § 77-7; Ord. No. 6-56; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 1; 1979 L.M.C., ch. 17, §§ 3, 4; 1983 L.M.C., ch. 22, § 32; 1984 L.M.C., ch. 26, § 6; 1986 L.M.C., ch. 39, § 2; 1997 L.M.C., ch. 39, § 1; 2001 L.M.C., ch. 9, § 1; 2007 L.M.C., ch. 5, § 1; 2012 L.M.C., ch. 18, § 1; 2013 L.M.C., ch. 34, § 1; 2014 L.M.C., ch. 36, § 1.)

Editor's note—Section 27-7 is cited in Montgomery County v. Glenmont Hills Associates, Privacy World at Glenmont Metro Centre, 402 Md. 250, 936 A.2d 325 (2007). Section 27-7(g) is cited in Haas v. Lockheed Martin Corp., 396 Md. 469, 914 A.2d 735 (2007). In Manor Country Club v. Flaa, 387 Md. 297, 874 A.2d 1020 (2005), reversing and remanding 158 Md. App. 483, 857 A.2d 604 (2004), the Court interpreted factors for calculating attorney's fees under former language contained in Montgomery County Code § 27-7; the section was amended prior

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to the Court's decision. Section 27-7 is cited in Glenmont Hill Associates v. Montgomery County, Maryland, 291 F. Supp.2d 394 (D. Md. 2003). The above section is interpreted in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated* Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc., failed to exhaust its administrative remedies before the Human Relations Commission). The above section is interpreted in American Red Cross v. Epperly, 351 Md. 216, 717 A.2d 938 (1998). In Holiday Spas v. Montgomery County Human Relations Comm'n., et al., 315 Md. 390, 554 A.2d 1197 (1989), the court held that the Human Relations Commission may have failed to comply with the requirements of § 27-7(f) by finding liability on the part of a health club for sex discrimination but deferring a determination of damages. The case was remanded to the Circuit Court for a resolution of this issue. The court also held that an administrative agency order which found liability and directed remedial action was "final" for the purpose of permitting judicial review under § 27-7(g) even though the issue of damages had been deferred. The above section was interpreted and applied in Holiday Spas v. Montgomery County Human Relations Commission, 70 Md.App. 344, 521 A.2d 340 (1987).

See County Attorney Opinion dated 3/24/10 regarding housing discrimination based on marital status and the laws restricting the occupancy of a dwelling unit to a maximum number of people. See County Attorney Opinion dated 12/21/00 indicating that the Human Relations Commission cannot award attorney's fees to a complainant until the panel holds a hearing on the complaint and makes a finding that the respondent violated Chapter 27. See County Attorney Opinion dated 6/12/00 analyzing when and what information the Human Relations Commission may disclose based on its investigations.

2007 L.M.C., ch. 5, § 2, states: Affect on incumbents. If on the effective date of this Act [May 28, 2007] a merit system employee occupies a position which this Act converts to a non-merit position:

- (a) that employee retains all merit system rights; and
- (b) the position does not become a non-merit position until that employee leaves the position through transfer, promotion, demotion, retirement, or other separation from service.

Former Section 27-7A, relating to disclosure of sexual orientation, derived from 1984 L.M.C., ch. 26, § 7, was repealed by 2001 L.M.C., ch. 9, § 1.

Former Section 27-7B, relating to marital status, derived from 1984 L.M.C., ch. 26, § 7A, was repealed by 2001 L.M.C., ch. 9, § 1.

Sec. 27-8. Penalties and relief.

- (a) *Damages and other relief for complainant.* After finding a violation of this Article or Articles X or XI, the case review board may order the payment of damages (other than punitive damages) and any other relief that the law and the facts warrant, such as:
 - (1) compensation for:
 - (A) reasonable attorney's fees;
 - (B) property damage;
 - (C) personal injury;
 - (D) unreimbursed travel or other reasonable expenses;

- (E) damages not exceeding \$500,000 for humiliation and embarrassment, based on the nature of the humiliation and embarrassment, including its severity, duration, frequency, and breadth of observation by others;*

***Editor's note**—Subparagraph (E) of Sec. 27-8(a)(1) was amended by 2005 L.M.C., ch. 29, § 2 (Bill 36-04). However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06. Prior to 2005 L.M.C., ch 29, subparagraph (E) read as follows: (E) up to \$5,000 for humiliation and embarrassment, based on the nature of the humiliation and embarrassment, including its severity, duration, frequency, and breadth of observation by others.

- (F) financial losses resulting from the discriminatory act or a violation of Article X; and*

***Editor's note**—Subparagraph (F) of Sec. 27-8(a)(1) was added and former subparagraph (F) was relettered (G) by 2005 L.M.C., ch. 29, § 2 (Bill 36-04). However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06.

- (G) interest on any damages from the date of the discriminatory act or violation, as provided in subsection (c);

- (2) equitable relief to prevent the discrimination or the violation of Articles X or XI, and otherwise effectuate the purposes of this Chapter;
- (3) consequential damages, such as lost wages from employment discrimination or a violation of Article X or higher housing costs from housing discrimination, for up to 2 years after the violation, not exceeding the actual difference in expenses or benefits that the complainant realized while seeking to mitigate the consequences of the violation (such as income from alternate employment or unemployment compensation following employment discrimination); and
- (4) any other relief that furthers the purposes of this Article or Articles X or XI, or is necessary to eliminate the effects of any discrimination prohibited under this Article.

(b) *Civil penalties.*

- (1) In addition to any damages awarded to any person under this Article, the case review board may require any person, except the County, who has violated this Article or Article XII to pay to the County as a civil penalty:
 - (A) for each violation involving discrimination in housing:
 - (i) up to \$10,000, if no court or administrative agency has found that the respondent committed any previous discriminatory act or practice involving discrimination in housing;

- (ii) up to \$25,000, if any court or administrative agency has found that the respondent committed a previous act or practice involving discrimination in housing during the 5 years before this complaint was filed with the Commission; and
- (iii) up to \$50,000, if any court or administrative agency has found that the respondent committed 2 or more previous acts or practices involving discrimination in housings during the 7 years before this complaint was filed with the Commission;
- (B) for each violation involving discrimination in employment or public accommodations, up to \$5,000;
- (C) for each violation involving discrimination in commercial real estate, up to \$1,000;
- (D) for each violation involving intimidation, up to \$1,000;
- (E) for each violation of Article XII, up to \$1,000;
- (F) for any other violation, \$500.
- (2) When imposing a civil penalty, the board must consider:
 - (A) any prior findings of discrimination;
 - (B) the willfulness of the discrimination act; and
 - (C) the severity of the complainant's injury.
- (c) *Interest.* The board may order the respondent to pay to the complainant interest on a damage award at 6 percent per year of any money that was unavailable to the complainant as a result of the act of discrimination, from the date of the discriminatory act to the later of the date of the Commission or judicial order. After judgment, the rate of interest on the judgment is 10 percent per year. (2001 L.M.C., ch. 9, § 1; 2005 L.M.C., ch. 29, § 2; 2012 L.M.C., ch. 18, § 1; 2013 L.M.C., ch. 34, § 1; 2014 L.M.C., ch. 36, § 1.)

Editor's note—Section 27-8 is quoted in Manor Country Club v. Flaa, 387 Md. 297, 874 A.2d 1020 (2005), reversing and remanding 158 Md. App. 483, 857 A.2d 604 (2004), where the Court interpreted factors for calculating attorney's fees under former language contained in Montgomery County Code § 27-7; the section was amended prior to the Court's decision.

See County Attorney Opinion dated 6/16/00 indicating that the Human Relations Commission does not have jurisdiction to investigate complaints of housing or public accommodation discrimination by inmates at the County detention center.

Sec. 27-9. Civil actions.

- (a) Any person subjected to an act of discrimination or intimidation under this article may pursue a civil action under Maryland law. A person who substantially prevails in a civil action may recover costs and reasonable attorney's fees.
- (b) If a person fails to comply with a court order issued in a civil action under this article, the Commission, acting through the County Attorney, may sue to compel compliance, and the County may recover costs and reasonable attorney's fees if the County substantially prevails in the action.
- (c) The County Attorney may bring a civil action to enforce this article. The County may recover costs and reasonable attorney's fees if the County substantially prevails in an enforcement action. (2001 L.M.C., ch. 9, § 1.)

Editor's note—Section 27-9 is cited in Gaspar v. Ruffin Hotel Corp. of Maryland, Inc., 183 Md. App. 211; 960 A.2d 1228 (2008).

See County Attorney Opinion dated 6/16/00 indicating that the Human Relations Commission does not have jurisdiction to investigate complaints of housing or public accommodation discrimination by inmates at the County detention center. See County Attorney Opinion dated 4/13/99-A discussing what should occur when an Ethics Commission member holds over as a result of the Council not having confirmed a newly appointed member.

DIVISION 1. DISCRIMINATION IN PUBLIC ACCOMMODATIONS.***Sec. 27-10. Scope.**

- (a) This division applies to every public accommodation of any kind in the County whose facilities, accommodations, services, commodities, or use are offered to or enjoyed by the general public either with or without charge, such as:
 - (1) restaurants, soda fountains, and other eating or drinking places, and all places where food is sold for consumption either on or off the premises;
 - (2) inns, hotels, and motels, whether serving temporary or permanent patrons;
 - (3) retail stores and service establishments;
 - (4) hospitals and clinics;
 - (5) motion picture, stage, and other theaters and music, concert, or meeting halls;
 - (6) circuses, exhibitions, skating rinks, sports arenas and fields, amusement or recreation parks, picnic grounds, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool rooms, and swimming pools;

*State law references—Discrimination in public accommodation, Ann. Code of Md., art. 49B, §§ 5, 6, 7, 8, 8A

- (7) public conveyances, such as automobiles, buses, taxicabs, trolleys, trains, limousines, boats, airplanes, and bicycles;
 - (8) utilities, such as water and sewer service, electricity, telephone, and cable television;
 - (9) streets, roads, sidewalks, other public rights-of-way, parking lots or garages, marinas, airports, and hangars; and
 - (10) places of public assembly and entertainment of every kind.
- (b) In this Chapter, “public accommodation” includes any service, program, or activity offered to or used by the general public.
- (c) This division does not apply to accommodations that are distinctly private or personal. (Mont. Co. Code 1965, § 77-9; Ord. No. 6-43; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 2001 L.M.C., ch. 9, § 1; 2001 L.M.C., ch. 33, § 1.)

Editor’s note—Section 27-10, formerly § 27-8, was renumbered, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-10, relating to penalties, derived from Mont. Co. Code 1965, § 77-11; Ord. No. 6-57; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 3, was repealed by 2001 L.M.C., ch. 9, § 1.

Sec. 27-11 Discriminatory practices.

- (a) An owner, lessee, operator, manager, agent, or employee of any place of public accommodation in the County must not, with respect to the accommodation:
- (1) make any distinction with respect to any person based on race, color, sex, marital status, religious creed, ancestry, national origin, disability, sexual orientation, or gender identity in connection with:
 - (A) admission;
 - (B) service or sales; or
 - (C) price, quality, or use of any facility or service;
 - (2) display, circulate or publicize or cause to be displayed, circulated or publicized, directly or indirectly, any notice, communication, or advertisement that states or implies:
 - (A) any distinction in the availability of any facility, service, commodity, or activity related to the accommodation that would violate paragraph (1), or

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- (B) that the patronage or presence of any person is unwelcome, objectionable, unacceptable, or not desired or solicited on account of any person's race, color, sex, marital status, religious creed, ancestry, national origin, disability, sexual orientation, or gender identity;
 - (3) retaliate against any person because that person:
 - (A) lawfully opposed any discriminatory practice under this division; or
 - (B) filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this division;
 - (4) assist in, compel, or coerce any discriminatory practice under this division;
 - (5) obstruct or prevent enforcement or compliance with this division; or
 - (6) attempt directly or indirectly to commit any discriminatory practice under this division.
- (b) A person must not refuse to make any readily achievable modification that would give a person with a disability equal opportunity to use and enjoy the public accommodation. (Mont. Co. Code 1965, § 77-10; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1978 L.M.C., ch. 6, § 4; 1984 L.M.C., ch. 26, § 8; 2001 L.M.C., ch. 9, § 1; 2001 L.M.C., ch. 33, § 1; 2006 L.M.C., ch. 33, § 1; 2007 L.M.C., ch. 18, § 1.)

Editor's note—Section 27-11 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008) and in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007). The above section is interpreted and applied in Holiday Spas v. Montgomery County Human Relations Commission, 70 Md.App. 344, 521 A.2d 340 (1987) and in Peppin v. Woodside Delicatessen, 67 Md.App. 39, 506 A.2d 263 (1986).

See County Attorney Opinion dated 6/16/00 indicating that the Human Relations Commission does not have jurisdiction to investigate complaints of housing or public accommodation discrimination by inmates at the County detention center.

Section 27-11, formerly § 27-9, was renumbered, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-11, relating to definitions under division 2, discrimination in real estate, derived from Mont. Co. Code 1965, § 77-12; Ord. No. 6-57; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 1977 L.M.C., ch. 30, § 5; 1984 L.M.C., ch. 26, § 9; 1988 L.M.C., ch. 4, § 1; CY 1991 L.M.C., ch. 3, § 1, was repealed by 2001 L.M.C., ch. 9, § 1.

DIVISION 2. DISCRIMINATION IN REAL ESTATE.*

*Subdivision A. Discrimination in Housing***

Sec. 27-12. Discriminatory housing practices.

- (a) A person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age:
 - (1) refuse, or refuse to negotiate, to sell, broker, appraise, lease, sublease, rent, assign, or otherwise transfer the title, leasehold, or other interest in any housing;
 - (2) represent that housing is not available for inspection, sale, lease, sublease, rental, assignment, or other transfer when it is available;
 - (3) otherwise deny or withhold any housing from any person;
 - (4) include in the terms, conditions, or privileges of any sale, lease, sublease, rental, assignment, or other transfer of any housing, any clause, condition, or restriction discriminating against any person in the use or occupancy of that housing; or
 - (5) discriminate in the furnishing of any facilities, repairs, improvements, or services, or in the terms, conditions, privileges, or tenure of occupancy of any person.

***Editor's note**—A prior fair housing law was held invalid in Scull v. Montgomery Citizens League, 249 Md. 271, 239 A.2d 92 (1968) because it was not adopted by the council while meeting in legislative session. A fair housing ordinance was held to be within the legislative powers of the council in Montgomery Citizens League v. Greenhalgh, 253 Md. 151, 252 A.2d 242 (1969).

Section 1 of 1988 L.M.C., ch. 4, changed the title of this division from “Discrimination in Housing” to “Discrimination in Real Estate.”

Cross reference—Recording of racial, etc., covenants, § 12-20.

State law reference—Housing discrimination, Ann. Code of Md., art. 49B, § 23.

****Editor's note**—Section 1 of 1988 L.M.C., ch. 4, designated §§ 27-12--27-15 as subdivision A.

Cross references—Coordination of fair housing activities by department of housing and community development, § 2-27B; interagency fair housing coordinating group, § 2-27C.

***(b)** A person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age, discriminate in:

- (1) lending or brokering money;
- (2) guaranteeing, servicing, or purchasing loans;
- (3) accepting a deed of trust or mortgage;
- (4) making available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of any housing;
- (5) fixing the rates, terms, conditions, or provisions of any financial assistance; or
- (6) extending any other service in connection with housing finance.

***Editor's note**—Section 27-12(b) was amended by 2005 L.M.C., ch. 29, § 2 (Bill 36-04). However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06. Prior to 2005 L.M.C., ch. 29, Section 27-12(b) read as follows:

(b) A lending institution must not because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age, discriminate in:

- (1) lending money;
- (2) guaranteeing loans;
- (3) accepting a deed of trust or mortgage;
- (4) making available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of any housing;
- (5) fixing the rates, terms, conditions, or provisions of any financial assistance; or
- (6) extending any other service in connection with housing finance.

***(c)** Without limiting the general application of Subsection (b), a person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age:

- (1) Engage in steering, which means:
 - (A) restricting or attempting to restrict a person's choices because of factors other than a person's income or credit level in connection with seeking, negotiating, buying, or renting a dwelling, including seeking a mortgage loan for a dwelling;

- (B) discouraging a person from a particular mortgage loan with more favorable terms if the person may qualify for that particular mortgage loan;
 - (C) directing a person away from a housing or mortgage loan product, program, or service with more favorable terms if the person may qualify for that particular product, program, or service; or
 - (D) offering less favorable mortgage loan terms than would otherwise be offered;
- (2) Make available a mortgage loan which:
- (A) includes the financing of single premium credit life insurance;
 - (B) provides for excessive upfront points, excessive fees, or excessive prepayment penalties; or
 - (C) provides compensation paid directly or indirectly to a person from any source.

***Editor's note**—Section 27-12(c) was added by 2005 L.M.C., ch. 29, § 2 (Bill 36-04). Former paragraph (c) of Sec. 17-12, and all subsequent lettered paragraphs of Sec. 17-12, were relettered alphabetically. However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06.

- (d) (1) A person must not:
- (A) publish or circulate, or cause to be published or circulated, any housing notice, statement, listing, or advertisement;
 - (B) announce a policy, or use any form of application for the purchase, lease, rental, or financing of any housing; or
 - (C) make any record or formal business inquiry in connection with the prospective purchase, lease, rental, or financing of any housing;
- indicating that race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age could influence or affect any act described in subsections (a), (b), and (c).*

***Editor's note**—Section 27-12(c) was added by 2005 L.M.C., ch. 29, § 2 (Bill 36-04). However, in American Financial Services, et. al. v. Montgomery County, (Civil Action No. 269105), the Court declared Bill 36-04 “null and void” by order dated 11/30/06.

- (2) This subsection does not prohibit:
 - (A) use of a logo or other means of advertising that housing is suitable or adapted to use by persons with a disability; or
 - (B) keeping records or making reports required by federal, State, or County law.
- (e) A person must not:
 - (1) assist in, compel, or coerce any discriminatory practice under this subdivision,
 - (2) obstruct or prevent enforcement or compliance with this subdivision, or
 - (3) attempt directly or indirectly to commit any discriminatory practice under this subdivision.
- (f) A person must not:
 - (1) directly or indirectly induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existing or potential proximity of real property owned, used, or occupied by any person of any particular race, sex, color, religious creed, ancestry, national origin, disability, source of income, sexual orientation, gender identity, age, the presence of children, or family responsibilities.
 - (2) promote, induce, influence, or attempt to promote, induce, or influence by the use of postal cards, letters, circulars, telephone, visitation, or any other means, directly or indirectly, a property owner, occupant, or tenant to list for sale, sell, remove from, lease, assign, transfer, or otherwise dispose of any housing having the effect of inciting neighborhood unrest or community tension in any street, block, neighborhood, or any other area by referring to the race, sex, color, religious creed, ancestry, national origin, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age of actual or anticipated neighbors, tenants, or other prospective buyers or occupants of any housing.
 - (3) make or cause another person to make a statement or in any other manner attempt to incite neighborhood unrest or community tension in any street, block, neighborhood, or any other area to obtain a listing of any housing for sale, rental, assignment, transfer, or other disposition by referring to the race, sex, color, religious creed, ancestry, national origin, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age of actual or anticipated neighbors, tenants, or other prospective buyers or occupants of any housing where the statement is false or materially misleading or where

there is insufficient basis to judge its truth or falsity to warrant making the statement.

- (4) make any representation to any prospective purchaser or lessee that any housing in a particular block, neighborhood, or area may undergo, is undergoing, or has undergone a change with respect to racial, color, religious, nationality, presence of children, family responsibilities, source of income, disability, sex, sexual orientation, gender identity, age, or ethnic composition.
- (5) place a sign or other display either purporting to offer for sale, lease, assignment, transfer, or other disposition, or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer, or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer, or other disposition.
- (6) induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, sex, color, religious creed, ancestry, national origin, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age in the area will or may result in:
 - (A) lower property values;
 - (B) increased criminal or antisocial behavior in the area; or
 - (C) a decline in quality of the schools serving the area.
- (7) induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, sex, color, religious creed, ancestry, sexual orientation, gender identity, presence of children, family responsibilities, source of income, or national origin in the area will or may result in a change in the racial, color, religious, age, nationality, or ethnic composition of the block, neighborhood, or area where the property is located.
- (g) A person must not retaliate against a person for:
 - (1) lawfully opposing any discriminatory practice under this subdivision, or
 - (2) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this subdivision.
- (h) A person, must not because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age deny any other person:

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- (1) access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of buying, selling, or renting housing in the County, or
 - (2) discriminate against any person in the terms or conditions of the access, membership, or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of buying, selling, or renting housing.
- (i) A person must not discriminate against a person with a disability in the sale or rental of housing such as by:
- (1) refusing to allow a person with a disability to make reasonable modifications to existing premises that the person does or would occupy, despite the person's willingness and ability to pay for the modifications, and reasonably restore any interior modification upon vacating, if the modifications are necessary to provide full enjoyment of the premises; or
 - (2) refusing to make reasonable accommodations necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. (1968 L.M.C., Ex. Sess., ch. 19, § 1; 1977 L.M.C., ch. 30, § 6; 1978 L.M.C., ch. 6, § 5; 1984 L.M.C., ch. 26, § 10; 1988 L.M.C., ch. 4, § 1; CY 1991 L.M.C., ch. 3, § 1; 2001 L.M.C., ch. 9, § 1; 2004 L.M.C., ch. 3, § 4; 2005 L.M.C., ch. 29, § 2; 2007 L.M.C., ch. 18, § 1.)

Editor's note—Section 27-12 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008). Section 27-12 is quoted, cited, and interpreted in Montgomery County v. Glenmont Hills Associates, Privacy World at Glenmont Metro Centre, 402 Md. 250, 936 A.2d 325 (2007). Section 27-12 is cited in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007). The Court declined to interpret Montgomery County Code Section 27-12 in Glenmont Hill Associates v. Montgomery County, Maryland, 291 F. Supp.2d 394 (D. Md. 2003), because adequate avenues for relief existed.

See County Attorney Opinion dated 3/24/10 regarding housing discrimination based on marital status and the laws restricting the occupancy of a dwelling unit to a maximum number of people. See County Attorney Opinion dated 6/16/00 indicating that the Human Relations Commission does not have jurisdiction to investigate complaints of housing or public accommodation discrimination by inmates at the County detention center.

Sec. 27-13. Posting of notices; reports.

- (a) A notice prepared by the Commission, summarizing this subdivision and explaining how to file a complaint, must be posted in a conspicuous place by:
 - (1) each real estate broker, real estate salesperson, real estate appraiser, and lending institution where the terms of a sale, lease, or appraisal of real estate is normally negotiated; and

- (2) each person who operates a multi-unit residential building that contains more than 2 dwelling units where the rental of a dwelling unit is normally negotiated.
- (b) A real estate broker, real estate salesperson, or person who owns or manages a building containing 2 or more rental dwelling units must submit to the Commission whatever reports relating to housing under the person's control that the Commission decides is necessary to carry out this subdivision. A person must not provide false information in a report. The identity of persons and housing contained in reports submitted under this Section must be confidential.
- (c) Every person subject to subsection (b) must prepare and retain for a period of 120 days from the date of submission to them all applications for rental of housing and any other records that Commission regulations require for filing reports under subsection (b).
- (d) A violation of this section is a class A violation. Each month that a violation continues to exist constitutes a separate offense. The Commission is responsible for enforcing this section. (1968 L.M.C., Ex. Sess., ch. 19, § 1; 1974 L.M.C., ch. 19, § 2; 1977 L.M.C., ch. 30, § 6; 1978 L.M.C., ch. 6, § 6; 1984 L.M.C., ch. 26, § 11; 1988 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 9, § 1.)

Sec. 27-14. Applicability of division.

- (a) This division does not apply to:
 - (1) The rental or leasing of a part of a dwelling in which the owner is residing; provided, that the dwelling must continue to be used by the owner thereof as a bona fide residence for himself or herself and any member of his or her family; provided further, that the dwelling does not contain more than two (2) rental or leasing units.
 - (2) The rental or leasing of a dwelling by any religious corporation, association, or society to a person of a particular religion whose rental or leasing therein is connected with the carrying on by such corporation, association, or society of its purely religious activities.
- (b) The prohibitions in this division against discriminating on account of age, the presence of children, or family responsibilities do not apply to any:
 - (1) Housing for the elderly that is required by federal, state, county, or municipal law to restrict occupancy to individuals of a minimum age and other members of their household over 18 years old;
 - (2) Housing whose declaration, bylaws, charter, or other incorporating documents restrict that housing to occupancy by individuals 62 years old or older and other members of their household over 18 years old;

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- (3) Retirement community located in a planned retirement community zone as defined in section 59-C-7.4;
- (4) Housing that the Commission finds limited occupancy to adults on or before February 5, 1984; and
- (5) Housing, subsidized in whole or in part by the county, that provides:
 - (A) Housing for adults and children who are undergoing a transition in their lives because of a change in their family relationships;
 - (B) Child care services;
 - (C) Career guidance; and
 - (D) Counseling services.
- (c) The provisions of this division do not require a person to:
 - (1) Violate or contribute to the violation of laws restricting the occupancy of a dwelling unit to a maximum number of people; or
 - (2) Enter into a contract with a person under the age of eighteen (18) years.
- (d) The prohibitions in this division against discriminating because of source of income do not prohibit:
 - (1)
 - (A) a commercially reasonable verification of a source and amount of income, or
 - (B) a commercially reasonable evaluation of the stability, security, and creditworthiness of any source of income; or
 - (2)
 - (A) the eviction of or refusal to rent to any person because of that person or a family member's drug-related criminal activity or violent criminal activity, or
 - (B) the refusal to consider income derived from any criminal activity. (1968 L.M.C., Ex. Sess., ch. 19, § 1; 1972 L.M.C., ch. 23, § 2; 1977 L.M.C., ch. 30, §§ 7, 8; 1984 L.M.C., ch. 26, § 11A; 1988 L.M.C., ch. 4, § 1; CY 1991 L.M.C., ch. 3, § 1; 2001 L.M.C., ch. 9, § 1; 2004 L.M.C., ch. 3, § 5.)

Editor's note—Section 27-14(a) is cited in Montgomery County v. Glenmont Hills Associates, Privacy World at Glenmont Metro Centre, 402 Md. 250, 936 A.2d 325 (2007).

See County Attorney Opinion dated 3/24/10 regarding housing discrimination based on marital status and the laws restricting the occupancy of a dwelling unit to a maximum number of people.

Section 27-14, formerly § 27-15, was renumbered and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-14, relating to penalties and monetary awards, derived from 1972 L.M.C., ch. 23, § 1; 1974 L.M.C., ch. 19, § 3; 1977 L.M.C., ch. 30, § 6; 1988 L.M.C., ch. 4, § 1, was repealed by 2001 L.M.C., ch. 9, § 1.

Sec. 27-15. Licensing and licensing authorities.

- (a) Whenever it appears that the holder of a license or franchise issued by any agency or authority of the state or county is a person found to be after proper hearing in violation of this division, the commission may take such action it deems advisable or desirable, notwithstanding any other action it may take or may have taken under the authority of this division, and may refer to the proper licensing agency or authority the facts and identities of all persons involved in that finding for such action as the agency or authority in its judgment considers appropriate based upon the facts thus disclosed to it.
- (b) Nothing in this division shall be deemed to relieve any agency or authority of the state or county of its obligation to take immediate and independent action regarding a matter filed with it that also may be the subject of a complaint filed with the commission.
- (c) If a complaint is filed against a person licensed by the state real estate commission and the Director finds that reasonable grounds exist to believe the law has been violated, the Director must promptly transmit a copy of the Director's findings and the complaint to the real estate commission for such action as the commission considers appropriate. The Director must promptly forward to the real estate commission the final disposition of any complaint previously forwarded to the commission. (1968 L.M.C., Ex. Sess., ch. 19, § 1; 1977 L.M.C., ch. 30, §§ 7, 8; 1984 L.M.C., ch. 26, § 12; 2001 L.M.C., ch. 9, § 1; 2007 L.M.C., ch. 5, § 1.)

Editor's note—2007 L.M.C., ch. 5, § 2, states: Affect on incumbents. If on the effective date of this Act [May 28, 2007] a merit system employee occupies a position which this Act converts to a non-merit position:

- (a) that employee retains all merit system rights; and
- (b) the position does not become a non-merit position until that employee leaves the position through transfer, promotion, demotion, retirement, or other separation from service.

Section 27-15, formerly § 27-16, was renumbered pursuant to 2001 L.M.C., ch. 9, § 1.

Subdivision B. Discrimination in Commercial Real Estate.

Sec. 27-16. Discriminatory practices in commercial real estate.

- (a) A person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, sexual orientation, gender identity, or age:
 - (1) refuse or refuse to negotiate to sell, lease, sublease, rent, assign, or otherwise transfer commercial real estate;

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- (2) represent that commercial real estate is not available for inspection, sale, lease, sublease, rental, assignment, or other transfer when it is available;
- (3) deny or withhold commercial real estate from any person;
- (4) include in the terms, conditions, or privileges of any sale, lease, sublease, rental, assignment, or other transfer of commercial real estate any clause, condition, or restriction discriminating against any person in the use or occupancy of the real estate; or
- (5) discriminate in furnishing any facilities, repairs, improvements, or services, or in the terms, conditions, privileges, or tenure of occupancy.
- (b) A lending institution must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, sexual orientation, gender identity, or age:
 - (1) discriminate in lending money, guaranteeing loans, accepting a deed of trust or mortgage, or otherwise making available funds to acquire, construct, alter, rehabilitate, repair, or maintain commercial real estate; or
 - (2) discriminate in fixing the rates, terms, conditions, or provisions of financial assistance, or in extending service in connection with financial assistance.
- (c) A person must not because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age:
 - (1) publish or circulate, or cause to be published or circulated, any commercial real estate notice, statement, listing, or advertisement;
 - (2) announce a policy, or use any form of application for the purchase, lease, rental, or financing of commercial real estate; or
 - (3) make any record or formal business inquiry in connection with the prospective purchase, lease, rental, or financing of any commercial real estate.

This subsection does not prohibit the use of a logo or other means of advertising that any commercial real estate is suitable or adapted to use by persons with a disability.

- (d) A person must not:
 - (1) assist in, compel, or coerce any discriminatory practice prohibited by this subdivision,

- (2) obstruct or prevent enforcement or compliance with this subdivision, or
 - (3) attempt directly or indirectly to commit any discriminatory practice.
- (e) A person must not:
- (1) induce or attempt to induce, by direct or indirect methods, any person to transfer commercial real estate by representations regarding the existing or potential proximity of real estate owned, used, or occupied by any person of any particular race, color, religious creed, ancestry, national origin, sex, marital status, disability, sexual orientation, gender identity, age, the presence of children, or family responsibilities;
 - (2) represent to any prospective purchaser or lessee that any commercial real estate in a particular area may undergo, is undergoing, or has undergone a change with respect to racial, color, religious creed, ancestry, nationality, marital status, disability, presence of children, family responsibilities, sex, sexual orientation, gender identity, ethnic composition, or age of occupants of the area; or
 - (3) place a sign or other display either purporting to offer for sale, lease, assignment, transfer, or other disposition, or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer, or otherwise dispose of any commercial real estate that is not in fact available or offered for sale, lease, assignment, transfer, or other disposition, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, sexual orientation, gender identity, or age.
- (f) A person must not retaliate against any person for:
- (1) lawfully opposing any discriminatory practice under this subdivision; or
 - (2) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this subdivision.
- (g) A person must not because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age:
- (1) deny any other person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of buying, selling, or renting commercial real estate; or

- (2) discriminate against any person in the terms or conditions of the access, membership, or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of buying, selling, or renting commercial real estate. (1988 L.M.C., ch. 4, § 2; 2001 L.M.C., ch. 9, § 1; 2004 L.M.C., ch. 3, § 6; 2007 L.M.C., ch. 18, § 1.)

Editor's note—Section 27-16 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008) and in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

Section 27-16, formerly § 27-16A, was renumbered, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Sec. 27-17. Exemptions.

- (a) Section 27-16A does not apply to religious institutions or organizations or charitable or educational organizations operated, supervised, or controlled by religious institutions or organizations which give preference to members of the same religion in a real estate transaction, as long as membership in such religion is not restricted by race, color, sex, or national origin.
- (b) In the case of age, the following is not an unlawful practice:
 - (1) Inquiring about a person's age to determine a pertinent element of credit-worthiness;
 - (2) Using empirically derived credit systems that consider age if such systems are based on statistically sound data;
 - (3) Offering credit life insurance or credit disability insurance, in conjunction with any mortgage loan, to a limited age group;
 - (4) Refusing to grant a mortgage loan to a person under the age of eighteen (18) years. (1988 L.M.C., ch. 4, § 2; 2001 L.M.C., ch. 9, § 1.)

Editor's note—Section 27-17, formerly § 27-16B, was renumbered pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-17, relating to declaration of policy under division 3, discrimination in employment, derived from 1974 L.M.C., ch. 9, § 1; 1977 L.M.C., ch. 30, § 9; 1978 L.M.C., ch. 6, § 7; 1984 L.M.C., ch. 26, § 13; 2000 L.M.C., ch. 36, § 3, was repealed by 2001 L.M.C., ch. 9, § 1.

Sec. 27-18. Enforcement.

- (a) If the Director, with respect to a violation of this subdivision, (1) does not conciliate a complaint after the parties have, in good faith, attempted conciliation, (2) does not effect an assurance of discontinuance or settlement agreement, or (3) finds that a complaint is not susceptible of conciliation, in addition to the authority provided in Section 27-7, the

Director may (1) transmit the matter to the County Attorney for appropriate legal action, or (2) advise the complainant of the complainant's right to take appropriate legal action.

- (b) Nothing in this subdivision prevents any person from exercising any right or seeking any remedy to which that person is otherwise entitled, or from filing any complaint with any other agency or court. If an action involving the same parties is pending before any other agency or court, the commission must advise the complainant to incorporate the allegations of the complaint in the previous action where appropriate. (1988 L.M.C., ch. 4, § 2; 2001 L.M.C., ch. 9, § 1; 2007 L.M.C., ch. 5, § 1.)

Editor's note—Section 27-18 is cited in Magee v. Dansources Technical Services, Inc., 137 Md. App. 527, 769 A.2d 231 (2001).

See County Attorney Opinion dated 6/16/00 indicating that the Human Relations Commission does not have jurisdiction to investigate complaints of housing or public accommodation discrimination by inmates at the County detention center.

2007 L.M.C., ch. 5, § 2, states: Affect on incumbents. If on the effective date of this Act [May 28, 2007] a merit system employee occupies a position which this Act converts to a non-merit position:

- (a) that employee retains all merit system rights; and
(b) the position does not become a non-merit position until that employee leaves the position through transfer, promotion, demotion, retirement, or other separation from service.

Section 27-18, formerly § 27-16C, was renumbered and amended pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-18, relating to definitions under division 3, discrimination in employment, derived from 1974 L.M.C., ch. 9, § 1; 1975 L.M.C., ch. 18, § 1; 1977 L.M.C., ch. 30, § 9; 1979 L.M.C., ch. 52, § 1; 1984 L.M.C., ch. 26, § 14; 2000 L.M.C., ch. 36, § 3, was repealed by 2001 L.M.C., ch. 9, § 1.

DIVISION 3. DISCRIMINATION IN EMPLOYMENT.*

***Editor's note**—2000 L.M.C., ch. 36, §§ 1, 2, 4 and 5, read as follows:

Sec. 1. Short Title. This Act may be cited as the Genetic Information Employment Rights Act of 2000.

Sec. 2. Findings. The County Council finds that:

(a) Genetic status can be used as a proxy for otherwise illegal grounds for discrimination, such as discrimination based on religion, race, nationality, sex, or age, providing a loophole in employment protections previously guaranteed by County law.

(b) The threat of discrimination in employment based on the actual or perceived genetic status of an employee (including an applicant for employment) discourages genetic testing that could prevent or reduce disease or disabilities, provide peace of mind for individuals at risk for certain genetic conditions, and improve medical knowledge through genetic research.

(c) Montgomery County, as home to the Human Genome Project of the National Institutes of Health, the Food and Drug Administration, Celera Genomics, and other public and private institutions at the cutting edge of genetic research, is an international center for the discovery of genetic knowledge to improve public health and welfare that depends on clinical research volunteers who live and work in the County.

(d) Other than an Executive Order protecting federal employees, federal, state, and local employment laws generally have not kept pace with recent, rapid advances in genetic testing and therapies.

Sec. 4. Regulations. All County regulations in effect when this Act becomes law [March 21, 2001] continue in effect, except that any reference in a regulation to employment discrimination includes discrimination based on genetic status, as provided in this Act. Within 120 days after this Act becomes law [March 21, 2001], the County Executive and the Human Relations Commission must submit to the Council, for approval under method (2), any amendments to their respective regulations necessary to implement this Act.

Sec. 5. Public Education Program. The Human Relations Commission must, within 90 days after this Act becomes law [March 21, 2001], propose to the County Council and County Executive a public education program to inform employers, employees, genetic research and testing organizations, and the general public about County law regarding employment discrimination based on genetic information. In developing the proposed program, the Commission should consider the advice of employee and employer groups, genetics researchers, human rights organizations, and other interested individuals and organizations. This Section does not limit any authority or duty of the Commission under Chapter 27 of the County Code.

Sec. 27-19. Discriminatory employment practices.

- (a) A person must not because of the race, color, religious creed, ancestry, national origin, age, sex, marital status, sexual orientation, gender identity, family responsibilities, or genetic status of any individual or disability of a qualified individual, or because of any reason that would not have been asserted but for the race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation, gender identity, family responsibilities, or genetic status:
 - (1) For an employer:
 - (A) fail or refuse to hire, fail to accept the services of, discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment; or
 - (B) limit, segregate, or classify employees in any way that would deprive or tend to affect adversely any individual's employment opportunities or status as an employee;
 - (2) For an employment agency: fail or refuse to refer for employment, assign job classifications to, classify or refer for employment, or otherwise discriminate against, any individual;
 - (3) For a labor organization:
 - (A) exclude or expel from its membership, or otherwise discriminate against any individual;
 - (B) limit, segregate, or classify its membership or classify, or fail or refuse to refer for employment, any individual in any way that would deprive or tend to deprive any individual of equal employment opportunities, or affect adversely the individual's employment opportunities or status as an employee or as an applicant for employment; or
 - (C) cause or attempt to cause an employer to discriminate against an individual in violation of this section; or
 - (4) For an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training programs: discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training.

- (b) The term “discriminate” in subsection (a) includes excluding, or otherwise denying, equal job opportunity 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.
- (c) A person must not:
 - (1) retaliate against any person for:
 - (A) lawfully opposing any discriminatory practice prohibited under this division; or
 - (B) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this division;
 - (2) assist in, compel, or coerce any discriminatory practice prohibited under this division;
 - (3) obstruct or prevent enforcement or compliance with this division; or
 - (4) attempt directly or indirectly to commit any discriminatory practice prohibited under this division.
- (d)
 - (1) Except as provided in paragraph 2, a person must not print, publish, or cause to be printed or published, any notice or advertisement indicating any preference, limitation, or specification based on race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation, gender identity, family responsibilities, or genetic status relating to:
 - (A) employment by an employer;
 - (B) membership in or any classification or referral for employment by a labor organization; or
 - (C) any classification or referral for employment by an employment agency.
 - (2) This subsection does not prohibit a notice or advertisement from indicating a preference, limitation, or specification that is a bona fide occupational qualification for employment reasonably necessary to the normal operation of the particular business or enterprise.
- (e) Notwithstanding any other provision of this division, it is not an unlawful employment practice:
 - (1) for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to

classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs, to admit or employ any individual in any program, on the basis of race, color, religious creed, age, sex, marital status, national origin, ancestry, disability, sexual orientation, gender identity, family responsibilities, or genetic status based on a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

- (2) for a religious corporation, association, or society to hire and employ employees of a particular religion; or
 - (3) for an employer to deny employment on the basis of religious creed if the observance, practice, or belief cannot be reasonably accommodated by an employer without causing undue hardship on the conduct of the employer's business.
- (f) Notwithstanding any other provision of this division, it is not unlawful for any employer to observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the provisions and purposes of this division, except that an employee benefit plan must not excuse an employer's failure to hire any qualified person.
- (g) (1) Except as provided in paragraph (2), an employer must not discharge or in any other manner discriminate or retaliate against an employee because the employee:
- (A) has inquired about, discussed, or disclosed the wages of the employee or another employee; or
 - (B) asserts any right under this subsection.
- (2) The prohibition against retaliation for wage disclosure under paragraph (1) does not apply to an employee who has access to wage information of other employees or applicants as part of the employee's essential job functions and discloses the wages of other employees or applicants to individuals who do not otherwise have access to the information, unless the disclosure is in response to:
- (A) a formal complaint or charge;
 - (B) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer; or

- (C) is consistent with the employer's legal duty to furnish information.
- (h) Notwithstanding any other provision of this division, a physician or other licensed medical professional may use genetic information about, and consider the genetic status of, an employee to evaluate whether a disease, medical condition, or disability that is currently manifest is preventing the employee from performing the essential functions of the position if:
 - (1) the genetic information is provided to the employee in writing as soon as the information is available;
 - (2) the genetic information is not disclosed to any other person (including the employer) without the employee's voluntary, written consent;
 - (3) the genetic information is maintained as a medical record separate from the employee's employment records; and
 - (4) no other law prohibits:
 - (A) the medical professional from collecting or using the genetic information, or
 - (B) the employer from considering the disease or disability, or the employee's genetic status.
- (i) This division does not prohibit genetic monitoring of biological effects of toxic substances in the workplace if:
 - (1) the employee has provided prior voluntary, informed consent in writing to participate in the monitoring;
 - (2) the employee receives the results of the monitoring, including both aggregate information and any information regarding the specific employee, as soon as results are available;
 - (3) the monitoring complies with all other laws, such as regulations protecting human subjects in research; and
 - (4) the employer (other than a licensed medical professional involved in the genetic monitoring) receives results of the monitoring only in aggregate terms that do not disclose the identity of any specific employee.

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- (j) An employer must not require an employee to obtain or reveal any genetic information that the employer is prohibited from considering under this division.
- (k) An employer may require an employee to adhere to reasonable workplace appearance, grooming, and dress standards that are nondiscriminatory and not precluded by any provision of state or federal law. However, an employer must allow an employee to appear, groom, and dress consistent with the employer's gender identity. (1974 L.M.C., ch. 9, § 1; 1974 L.M.C., ch. 34, § 1; 1975 L.M.C., ch. 18, § 2; 1977 L.M.C., ch. 30, § 9; 1978 L.M.C., ch. 6, § 8; 1979 L.M.C., ch. 52, § 2; 1984 L.M.C., ch. 26, § 15; 1994 L.M.C., ch. 11, § 1; 2000 L.M.C., ch. 36, § 3; 2001 L.M.C., ch. 9, § 1; 2004 L.M.C., ch. 3, § 7; 2007 L.M.C., ch. 18, § 1; 2015 L.M.C., ch. 3, § 1.)

Editor's note—In Prince of Peace Lutheran Church v. Linklater, 421 Md. 664, 28 A.3d 1171 (2011), the Court cited Section 27-19, comparing it to its federal counterpart. Section 2-19 is quoted in Hawkins v. Rockville Printing & Graphics, Inc., 189 Md. App. 1, 983 A.2d 531 (2009) and in Gasper v. Ruffin Hotel Corp. of Maryland, Inc., 183 Md. App. 211, 960 A.2d 1228 (2008). Section 27-19 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008). Section 27-19 is quoted in Jacob v. Didlake Corp., 2007 U.S. Dist. LEXIS 4095 (Jan. 19, 2007). Section 27-19 is cited in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007). Section 27-19 is cited, interpreted, and compared with Haw. Rev. Stat. § 378-2 in Haas v. Lockheed Martin Corp., 396 Md. 469, 914 A.2d 735 (2007). Section 27-19 is cited in Archdiocese of Washington v. Moersen, 399 Md. 637, 925 A.2d 659 (2007); in Jordan v. Alternative Resources Corp., 447 F.3d 324 (4th Cir. 2006) (vacated on hearing); and in Heiko v. Colombo Savings Bank, 434 F.3d 249 (4th Cir. 2006), in which the complaint involved a claim under the Montgomery County Code and the Americans with Disabilities Act. Section 27-19 is interpreted and quoted in Haas v. Lockheed Martin Corp., 166 Md. App. 163, 887 A.2d 673 (2005), where the court held that summary judgment granted to employer was proper where an employee filed a discrimination claim after the statute of

limitations expired; limitations began to run on the date of notice of discharge, not when the actual discharge occurred. Section 27-19 is cited in Ridgely v. Montgomery County, 164 Md. Appl 214, 883 A.2d 182 (2005), where the court held that firefighter's narcolepsy prevented him from performing his duties but did not prevent him from working a different job and, therefore, did not support a claim of disability based on a disability. Section 27-19 is quoted in Cohen v. Montgomery County Health and Human Services, 149 Md. App. 578, 817 A.2d 915 (2003), where the Court held that the employee's claim that the County's delay in providing reasonable accommodation for her disability stated a cause of action for employment discrimination based on disability. A portion of Section 27-19 was held to be constitutionally invalid and the words "to perform purely religious functions" were severed from the section in Montrose Christian School Corp. v. Carver and Walsh, 363 Md. 565, 770 A.2d 111 (2001). The above section is described and interpreted in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated*, Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc. failed to exhaust its administrative remedies before the Human Relations Commission). The above section is interpreted in Weathersby v. Kentucky Fried Chicken Nat'l. Mgt. Co., 86 Md.App. 533, 587 A.2d 569 (1991) and quoted in Hanna v. Emergency Medicine Associates, P.A., 77 Md.App. 595, 551 A.2d 492 (1989). Section 27-19 is cited in Hopkins v. Baltimore Gas and Electric Company, 77 F.3d 745 (4th Cir. 1996), a sexual harassment case, as an example of the enactment of local laws addressing sexual orientation. Section 27-19(b) is cited in Weathersby v. Kentucky Fried Chicken Nat'l. Mgt. Co., 804 F.Supp. 756 (D.Md. 1992).

See County Attorney Opinion dated 9/19/05 explaining that the Office of Human Rights does not have jurisdiction to handle employment discrimination complaints against private employers who operate on federal enclaves.

2000 L.M.C., ch. 36, §§ 1, 2, 4 and 5, read as follows:

Sec. 1. Short Title. This Act may be cited as the Genetic Information Employment Rights Act of 2000.

Sec. 2. Findings. The County Council finds that:

(a) Genetic status can be used as a proxy for otherwise illegal grounds for discrimination, such as discrimination based on religion, race, nationality, sex, or age, providing a loophole in employment protections previously guaranteed by County law.

(b) The threat of discrimination in employment based on the actual or perceived genetic status of an employee (including an applicant for employment) discourages genetic testing that could prevent or reduce disease or disabilities, provide peace of mind for individuals at risk for certain genetic conditions, and improve medical knowledge through genetic research.

(c) Montgomery County, as home to the Human Genome Project of the National Institutes of Health, the Food and Drug Administration, Celera Genomics, and other public and private institutions at the cutting edge of genetic research, is an international center for the discovery of genetic knowledge to improve public health and welfare that depends on clinical research volunteers who live and work in the County.

(d) Other than an Executive Order protecting federal employees, federal, state, and local employment laws generally have not kept pace with recent, rapid advances in genetic testing and therapies.

Sec. 4. Regulations. All County regulations in effect when this Act becomes law [March 21, 2001] continue in effect, except that any reference in a regulation to employment discrimination includes discrimination based on genetic status, as provided in this Act. Within 120 days after this Act becomes law [March 21, 2001], the County Executive and the Human Relations Commission must submit to the Council, for approval under method (2), any amendments to their respective regulations necessary to implement this Act.

Sec. 5. Public Education Program. The Human Relations Commission must, within 90 days after this Act becomes law [March 21, 2001], propose to the County Council and County Executive a public education program to inform employers, employees, genetic research and testing organizations, and the general public about County law regarding employment discrimination based on genetic information. In developing the proposed program, the Commission should consider the advice of employee and employer groups, genetics researchers, human rights

organizations, and other interested individuals and organizations. This Section does not limit any authority or duty of the Commission under Chapter 27 of the County Code.

Sec. 27-20. Notice to be posted; reports and records.

- (a) Every employer, employment agency, and labor organization must keep posted in conspicuous places on its premises, where notices to employees, applicants for employment, and membership are customarily posted, a notice in the form and language approved by the Commission, summarizing the pertinent provisions of this division and how to file a complaint.
- (b) Every employer, employment agency and labor organization, subject both to this division and to title VII of the Civil Rights Act of 1964, must furnish to the Commission all reports that are required by the Equal Employment Opportunity Commission established under the Civil Rights Act of 1964.
- (c) Every employer, employment agency and labor organization subject to this division must preserve all regularly kept personnel or employment records (including application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination rates of pay or other terms of compensation and selection for training or apprenticeship) for the term of the employee's employment and a period of 6 months following termination of employment. Where a charge of discrimination has been filed against an employer, employment agency or labor organization under this division, the respondent must preserve all personnel records, including employment applications, relevant to the charge or action until final disposition of the charge or action. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11; 2001 L.M.C., ch. 9, § 1.)

Editor's note—Section 27-20 is cited and quoted in Washington Suburban Sanitary Commission v. Phillips, 413 Md. 606, 994 A.2d 411 (2010). Section 27-20 is cited in Edwards Systems Technology v. Corbin, 841 A.2d 845, 2004 Md. LEXIS 31 (2004); in H. P. White Laboratory, Inc. v. Blackburn, 372 Md. 160, 812 A.2d 305 (2002); and in Pope-Payton v. Realty Management Services, Inc., 149 Md. App. 393, 815 A.2d 919 (2003). The above section is described in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated*, Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc. failed to exhaust its administrative remedies before the Human Relations Commission).

Section 27-20, formerly § 27-22, was renumbered and amended pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-20, relating to rights of complainant; civil action by county attorney, derived from 1968 L.M.C., Ex. Sess., ch. 19, § 1; 1972 L.M.C., ch. 23, § 6; 1977 L.M.C., ch. 30, §§ 7, 11, was repealed by 2001 L.M.C., ch. 9, § 1.

Sec. 27-21. Reports and records of person under investigation.

In connection with any investigation of a complaint filed under this division, the executive director or the director's designee may:

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- (a) request the reports and relevant records of any person being investigated or proceeded against that:
 - (1) may relate to employment practices prohibited by this division; and
 - (2) are relevant to matters raised in the complaint or similar matters; and
- (b) interview any persons necessary in carrying out the purposes of this division. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11; 1984 L.M.C., ch. 26, § 16; 2001 L.M.C., ch. 9, § 1.)

Editor's note—Section 27-21 is cited and quoted in Washington Suburban Sanitary Commission v. Phillips, 413 Md. 606, 994 A.2d 411 (2010). The above section is mentioned in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998), *vacated*, Montgomery County v. Broadcast Equities, Inc., 360 Md. 438, 758 A.2d 995 (2000) (Broadcast Equities, Inc. failed to exhaust its administrative remedies before the Human Relations Commission).

Section 27-21, formerly § 27-23, was renumbered, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-21, relating to procedure for complaints against county, derived from 1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11, 1979 L.M.C., ch. 24, § 3; 1982 L.M.C., ch. 40, § 1, was repealed by 2001 L.M.C., ch. 9, § 1.

DIVISION 4. DISCRIMINATION THROUGH INTIMIDATION*

Sec. 27-22. Discrimination through intimidation.

A person must not: willfully and maliciously destroy, injure, or deface another person's real or personal property, or willfully and maliciously injure another person, with the intent to intimidate or attempt to intimidate any person because of race, religion, national origin, disability, sexual orientation, or gender identity. (1983 L.M.C., ch. 26, § 1; 1990 L.M.C., ch. 5, § 1; 1990 L.M.C., ch. 31, § 1; 2001 L.M.C., ch. 9, § 1; 2007 L.M.C., ch. 18, § 1.)

Editor's note—Section 27-1 is cited in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008) and in Conaway v. Deane, 401 Md. 219, 932 A.2d 571 (2007).

See County Attorney Opinion dated 2/1/10 regarding County law that proscribes fighting words and true threats that intimidate, as long as the law does not rely on the content of the statements.

Section 27-22, formerly § 27-26A, was renumbered, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

***Editor's note**—1990 L.M.C., ch. 5, § 1, changed the title of this division from “Racial and Religious Intimidation” to “Intimidation.” 2001 L.M.C., ch. 9, § 1, changed the title of this division from “Intimidation” to “Discrimination through Intimidation.”

Sec. 27-23. Parental liability.

- (a) If a child under 18 years old commits an act prohibited by Section 27-22, the child's parent or legal guardian, other than a foster parent or public agency, may be held liable for all damages arising out of a single incident. Liability must not exceed \$5,000, including any civil penalty. A parent may not be held liable under this Section unless first afforded a reasonable opportunity to be heard and to present relevant evidence. A parent who cannot, or because of extenuating circumstances should not, pay may be excused from liability under this Section.
- (b) Liability under subsection (a) may be imposed directly on the child, depending on the child's age and circumstances. A child's liability under this subsection supercedes the parent's liability. (1983 L.M.C., ch. 26, § 1; 2001 L.M.C., ch. 9, § 1.)

Editor's note—Section 27-23, formerly § 27-26C, was renumbered and amended pursuant to 2001 L.M.C., ch. 9, § 1.

Sec. 27-24. Alternative service; anti-hate/violence fund.

- (a) The County Executive may, by regulation under method (3), allow any civil penalty and damages payable to the County under this division by a child or an adult to be paid in kind by performing alternative community service.
- (b) Any funds received by the County as restitution under this division must be deposited to the anti-hate/violence fund created in Section 35-13A, or, if the anti-hate/violence fund no longer exists, into the general fund. (1983 L.M.C., ch. 26, § 1; 1984 L.M.C., ch. 24, § 30; 2001 L.M.C., ch. 9, § 1.)

Editor's note—Section 27-24, formerly § 27-26D, was renumbered and amended pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-24, relating to action against licensee, etc., found in violation of division, under division 3, discrimination in employment, derived from 1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11, was repealed by 2001 L.M.C., ch. 9, § 1.

Sec. 27-25. Reliance on prior judicial decisions.

Any judicial determination that an act prohibited by Section 27-22 or comparable state law has been committed is admissible as proof of the act in a proceeding brought under this article involving the same acts. (1983 L.M.C., ch. 26, § 1; 1984 L.M.C., ch. 26, § 18; 2001 L.M.C., ch. 9, § 1.)

Editor's note—See County Attorney Opinion dated 12/21/00 indicating that the Human Relations Commission cannot award attorney's fees to a complainant until the panel holds a hearing on the complaint and makes a finding that the respondent violated Chapter 27.

Section 27-25, formerly § 27-26E, was renumbered, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-25, relating to penalties and monetary awards, under division 3, discrimination in employment, derived from 1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11; 1984 L.M.C., ch. 26, § 17, was repealed by 2001 L.M.C., ch. 9, § 1.

Sec. 27-26. Partnership Fund for victims of hate/violence.

(a) *Fund established.*

- (1) There is a Partnership Fund for victims of hate/violence.
- (2) The Fund is created to compensate victims of hate/violence for personal injury and property damage caused by the hate/violence incident.
- (3) The Commission on Human Rights must define what conduct is an act of hate/violence.
- (4) The County Executive must designate a subcommittee of the Committee on Hate/Violence to administer the Partnership Fund. In this Section, *subcommittee* refers to this subcommittee.

(b) *Contributions.*

- (1) The subcommittee should solicit and deposit private contributions to the Fund. The subcommittee may spend up to 10 percent of the Fund to publicize the Fund and solicit private contributions.
- (2) The County must contribute \$25,000 per year to the Fund to the extent that funds are appropriated.
- (3) The County government must also contribute \$2 for every \$1 of private contributions to the Fund, up to an additional \$30,000 per a year, to the extent that funds are appropriated.

(c) *Victim compensation.*

- (1) The subcommittee may pay a victim of hate/violence up to \$2,000 from the Fund for each incident of hate/violence to compensate the victim for property damage caused by the hate/violence incident.
- (2) The subcommittee may pay a victim of hate/violence up to \$4,000 from the Fund for each incident of hate/violence to compensate the victim for personal injuries caused by the hate/violence incident. Personal injury awards must be limited to actual damages for medical expenses, psychological services, or lost wages. Lost wages must be based solely on employment income and must be calculated based on an individual's gross average weekly wage immediately before the incident of hate/violence.

- (3) A victim of hate/violence may not receive more than \$8,000 from the Fund in any 12-month period.
- (d) *Police report.* A police report, filed over the telephone or in person to an appropriate law enforcement agency within 7 days after an act of hate/violence occurred or was discovered, must be submitted with all claims. The subcommittee may waive this requirement if an individual had good cause for not filing a police report.
- (e) *Reduction of compensation.* The subcommittee must reduce any payment from the Fund by any amount the victim receives or is entitled to receive from any private or public source as compensation for damages from the hate/violence incident. The Fund may pay for lost wages only to the extent that compensation is not available from an employer for vacation, sick, or any other type of leave, insurance, the State victim compensation program, the County victim assistance program, or any other source arising from the same incident.
- (f) *False claims.* Any person who makes a false claim under this Section:
 - (1) commits a Class A violation; and
 - (2) must reimburse the Fund for any payments received under this Section.
- (g) *Regulations.* The County Executive may adopt regulations to implement this Section under method (2). (1987 L.M.C., ch. 3, § 1; FY 1991 L.M.C., ch. 2, § 1; FY 1991 L.M.C., ch. 9, § 1; 2001 L.M.C., ch. 9, § 1; 2002 L.M.C., ch. 30, § 1; 2005 L.M.C., ch. 24, § 1.)

Editor's note—See County Attorney Opinion dated 12/21/00 indicating that the Human Relations Commission cannot award attorney's fees to a complainant until the panel holds a hearing on the complaint and makes a finding that the respondent violated Chapter 27.

2005 L.M.C., ch. 24, § 2, states: Transition - Committee on Hate/Violence. Until January 1, 2009, the members of the subcommittee of the Committee on Hate/Violence designated to administer the Partnership Fund under Section 27-26(a)(4), as amended by Section 1, need not be members of the Committee on Hate/Violence.

Section 27-26, formerly § 27-26F, was renumbered and amended pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-26, relating to standards of proof, under division 3, discrimination in employment, derived from 1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 11; 1984 L.M.C., ch. 26, § 17, was repealed by 2001 L.M.C., ch. 9, § 1.

Sec. 27-26A. Coordination of fair housing activities.

The director must coordinate the activities of all County departments, offices, and agencies to prevent discrimination in housing and test compliance with housing discrimination laws. The director must designate a staff member at an appropriate managerial level as the County's fair housing coordinator. After consulting appropriate County officials and private citizens, the Commission must:

- (a) encourage housing industry participation in activities promoting fair housing, and maintain liaison with industry representatives;
- (b) test compliance with housing discrimination laws;
- (c) assess information needs, and assure that appropriate County agencies are gathering and analyzing the necessary data to monitor compliance with housing discrimination laws;
- (d) Reserved.
- (e) maintain a bibliography of information and databases relevant to housing discrimination;
- (f) promote education and training to achieve fair housing; and
- (g) provide staff support for meetings and activities of the interagency fair housing coordinating group. (1988 L.M.C., ch. 1, § 2; 1996 L.M.C., ch. 13, § 1; 2001 L.M.C., ch. 9, § 1.)

Editor's note—Section 27-26A, formerly § 27-26G, was renumbered and amended pursuant to 2001 L.M.C., ch. 9, § 1.

Former § 27-26A was renumbered § 27-22, amended and retitled pursuant to 2001 L.M.C., ch. 9, § 1.

Cross reference—Discrimination in housing, § 27-12 et seq.

Sec. 27-26B. Interagency fair housing coordinating group.

- (a) The County Executive must designate an interagency fair housing coordinating group. The purpose of the coordinating group is to facilitate and promote the County's efforts to prevent discrimination in housing.
- (b) The County Executive appoints the members of the coordinating group, subject to confirmation by the County Council. The coordinating group consists of one or more employees of each of the following agencies:
 - (1) Office of Community Outreach in the Office of the Chief Administrative Officer;
 - (2) Human Rights Commission;
 - (3) Housing Opportunities Commission;
 - (4) Department of Housing and Community Affairs;
 - (5) Community service centers;
 - (6) Department of Health and Human Services;
 - (7) Commission for Women; and
 - (8) Commission on People with Disabilities.

- (c) The Executive also may designate, subject to confirmation by the County Council, one or more members of the Executive's staff, and employees of any other County department or office, to serve on the coordinating group. The Executive must also invite the County Council, the Montgomery County public schools, the Montgomery County Economic Development Corporation, and the Maryland-National Capital Park and Planning Commission to designate one or more staff members to serve as full members of the group.
- (d) The Executive must designate a chair of the coordinating group, subject to confirmation by the County Council. The chair or the Executive may call meetings. The group may form its own subcommittees.
- (e) Meetings of the coordinating group and its subcommittees are subject to the Maryland Open Meetings law. In order to create a public forum and encourage diverse participation, the Executive must invite representatives of the housing industry and active community groups to participate in meetings. The group must not be governed by Chapter 2 or Chapter 2A.
- (f) With staff support from the Fair Housing Coordinator, the coordinating group must submit to the County Council and County Executive an annual report on housing discrimination in the County. This report must:
 - (1) assess County, State and Federal laws prohibiting discrimination in housing, and evaluate their enforcement in the County;
 - (2) recommend changes in law, policy, programs or priorities needed to reduce discrimination in housing;
 - (3) include a work program for the coming year;
 - (4) include a progress report on the previous year's work program; and
 - (5) include the views of the Fair Housing Coordinator and any member whose views differ from those of the report. (1988 L.M.C., ch. 1, § 3; 1995 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 9, § 1; 2015 L.M.C., ch. 36, § 1.)

Editor's note—2015 L.M.C., ch. 36, § 8 also states, in part: All other provisions of this Act take effect 180 days after the Montgomery County Economic Development Corporation is designated under Section 30B-2.

Section 5 of 1995 L.M.C., ch. 13, reads as follows: "Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 LMC ch. 13 continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services."

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Section 27-26B, formerly § 27-26H, was renumbered and amended pursuant to 2001 L.M.C., ch. 9, § 1.

Former Section 27-26B, relating to statutory civil liability, derived from 1983 L.M.C., ch. 26, § 1; 1990 L.M.C., ch. 31, § 1, was repealed by 2001 L.M.C., ch. 9, § 1.

Former Sections 27-26C, 27-26D, 27-26E, 27-26F, 27-26G, and 27-26H, were renumbered and amended to Sections 27-23, 27-24, 27-25, 27-26, 27-26A and 27-26B, respectively, by 2001 L.M.C., ch. 9, § 1.

Cross reference—Discrimination in housing, § 27-12 et seq.

ARTICLE II. COMMISSION FOR WOMEN.*

Sec. 27-27. Statement of policy.

It is hereby declared to be the public policy of Montgomery County, Maryland, to eliminate discrimination or prejudice of any form that may exist on account of sex; to fully utilize the potential of each citizen, regardless of sex, in order to preserve our democratic way of life; and to provide equal opportunities to all citizens, regardless of sex, in employment, education, home and community services, and before the law. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 13.)

Sec. 27-28. Created; composition; appointment; terms of office and compensation of members; meetings, etc.

- (a) *Creation and composition; appointment of members; chairperson.* There is a Commission for Women. The Commission consists of 15 members appointed by the County Executive subject to confirmation by the County Council. Nine members are appointed from among those applicants who have been nominated and recommended for appointment by organizations within the County whose interests relate to the status of women. Six members are appointed from among those applicants applying on their own behalf. The Commission must elect one of its members as chairperson and another as vice chairperson, each to serve at the pleasure of the Commission, and such other officers as it determines. Representatives of the Board of Education and the Department of Health and Human Services serve as ex officio members of the Commission. Any city, town, village and special taxing area in the County may appoint one representative to serve as an ex officio member of the Commission.

***Cross reference**—Boards and commissions generally, § 2-141 et seq.

- (b) *Terms; vacancies; reappointments.* The term of office of each of the appointive members shall commence on July 1 of the year of appointment and shall be for a period of 3 years. Of the members first appointed, 5 shall be appointed for terms which will expire in one year, 3 of whom shall be nominees of County-wide organizations and 2 of whom shall be individual applicants; the same shall be appointed for terms which shall expire in 2 years; and the same for terms which shall expire in 3 years. Vacancies shall be filled by appointment for the unexpired terms. The members shall continue in office until their successors are appointed and have qualified and members shall be eligible for reappointment.
- (c) *Compensation.* Members of the Commission receive no compensation for their services.
- (d) *Meetings; reports.* The commission shall meet at the call of the chairperson as frequently as required to perform its duties, but no less than once each month. A majority of the members of the Commission shall constitute a quorum for the transaction of business, and a majority of those present at any meeting shall be sufficient for any official action taken by the Commission. The Commission shall submit an annual report to the County Executive and County Council summarizing its activities, needs, recommendations and the degree to which the goals of the Commission are being met. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 28, §§ 10, 13; 1978 L.M.C., ch. 3, § 1; FY 1991 L.M.C., ch. 9, § 1; 1995 L.M.C., ch. 13, § 1.)

Editor's note—See County Attorney Opinion dated 4/13/99-A discussing what should occur when an Ethics Commission member holds over as a result of the Council not having confirmed a newly appointed member.

Section 5 of 1995 L.M.C., ch. 13, reads as follows: “Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 LMC ch. 13 continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services.”

Sec. 27-29. Powers and duties generally.

The commission shall have the power and it shall be its duty:

- (a) To develop when necessary an information and referral system for all services in the county related specifically to the needs of women, to cooperate with the community services coordinating commission and to develop other services when a need for such services is determined.
- (b) To research, assemble, analyze and disseminate pertinent data and educational materials relating to activities and programs which will assist in meeting the needs of women and in the elimination of prejudice and discrimination on account of sex; and to institute and conduct educational and other programs, meetings and conferences to promote equal rights and opportunities for all persons regardless of their sex. In performance of its duties, the commission shall cooperate with interested citizens, community, business, professional, technical, educational and civic organizations.
- (c) To cooperate with the county executive and all governmental agencies concerned with matters within the jurisdiction of the commission.
- (d) To study and investigate by means of public or private meetings, conferences and public hearings, conditions which may result in unmet needs or in discrimination or prejudice because of sex.
- (e) To advise and counsel the residents of the county, the county council, the county executive and the various departments of county, state and federal governments on matters involving the needs of women and on matters relating to discrimination or prejudice on account of sex, and to recommend such procedures, program or legislation as it may deem necessary and proper to promote and insure equal rights and opportunities for all persons, regardless of their sex.
- (f) To work to remove inequalities due to unmet needs or discrimination or prejudice on the basis of sex in such areas as housing, recreation, employment, education, community services and related matters.
- (g) To adopt, under method (2) of section 2A-15 of this Code, such regulations as may be necessary to carry out the purposes of this article; to keep a record of its activities and minutes of all meetings; such records and minutes shall be on file and shall be open to the public at reasonable business hours upon request.
- (h) To prepare and submit to the county executive a budget to include the recommended appropriation for its own operation. In submitting a recommended budget for carrying out the operation of the commission, the county executive shall take into consideration

the recommendations of the commission. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 13; 1984 L.M.C., ch. 24, § 30.)

Sec. 27-30. Committees generally; advisory committees.

The chairman of the commission may, with the approval of the commission appoint committees from its members to assist in carrying out any of the functions and duties of the commission. Any committee appointed shall consist of not less than three (3) members. The chairman of the commission may also appoint advisory committees of citizens and at least one (1) commission member as in his judgment will aid in effectuating the purposes of the commission. The committee and advisory committee actions shall not be deemed to be the action of the commission and shall in no way bind the commission or its members. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 13.)

Sec. 27-31. Advisory council.

An advisory council, composed of representatives from organizations interested in the activities of the commission, shall be established to advise the commission. Unaffiliated individuals may attend advisory council meetings, but may not vote. Advisory council action shall not be deemed to be the action of the commission and shall in no way bind the commission or its members. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 13.)

Sec. 27-32. Volunteers; consultants.

The commission may engage the services of volunteer workers and consultants without salary as they may find necessary from time to time and may engage other workers and consultants in accordance with the laws of the county subject to budget appropriations to assist it in carrying out its duties. Services of an individual as a volunteer worker or consultant for the commission shall not be considered as service of employment bringing such individual within any merit system of the county or the state. (1972 L.M.C., ch. 22, § 1; 1977 L.M.C., ch. 30, § 13.)

Sec. 27-33. Reserved.

Editor's note—Section 27-33, relating to the executive secretary of the commission for women, derived from 1972 L.M.C., ch. 22, § 1, 1977 L.M.C., ch. 30, § 13, and 1986 L.M.C., ch. 28, § 6, was repealed by 1986 L.M.C., ch. 37, § 4. Section 1 of ch. 37 also made the commission for women an office of the executive branch of government (see § 1A-203(a)), under the supervision of an executive director (see § 1A-204(a)(1)). As a point of information 1986 L.M.C., ch. 50, § 1, amended the repealed § 27-33 to make the change from executive secretary to executive director.

Sec. 27-33A. Fees.

- (a) The county executive by executive order may impose user fees on participants in the programs, services, or activities conducted by the commission for women. Fees must not exceed the reasonable cost of administering the program, service, or activity.

- (b) The Director may waive the user fee charged to a participant if:
 - (1) The waiver would promote the purposes of this article; and
 - (2) The participant cannot afford to pay the fee. (1986 L.M.C., ch. 50, § 2; 2007 L.M.C., ch. 5, § 1.)

Editor's note—2007 L.M.C., ch. 5, § 2, states: Affect on incumbents. If on the effective date of this Act [May 28, 2007] a merit system employee occupies a position which this Act converts to a non-merit position:
(a) that employee retains all merit system rights; and
(b) the position does not become a non-merit position until that employee leaves the position through transfer, promotion, demotion, retirement, or other separation from service.

ARTICLE III. COMMISSION ON AGING.*

Sec. 27-34. Statement of policy.

It is hereby declared to be the public policy of the county to promote and initiate programs to improve conditions of the aging or elderly in the county; to work toward elimination of restrictions which impede older citizens from full participation in the mainstream of community life; and to assist and stimulate all levels of government and the community to be more responsive to the needs of the county's older citizens. (1974 L.M.C., ch. 52, § 2; 1977 L.M.C., ch. 30, § 14.)

Sec. 27-35. Creation; composition; appointment; terms and compensation of members; meetings; quorum; reports.

- (a) *Creation and composition; appointment of members; election of officers.* There is hereby established a commission on aging. The commission shall consist of no less than eighteen (18) members appointed by the county executive, subject to confirmation by the county council. Membership shall consist of the county residents of whom a majority shall be older citizens. The county executive shall take into consideration the recommendations of the commission in making his appointments. The nominees shall be individuals who are or who have been active in business, industry, labor, community service, religion, welfare and/or education, the professions and representatives of major organizations or agencies significantly concerned with the problems of aging. The commission shall elect the following officers and directors from the members appointed by the county executive: chairman, vice chairman, secretary, budget and finance advisor, each to serve at the pleasure of the commission, and directors and such other officers as it shall determine.

*Cross reference—Boards and commissions generally, § 2-141 et seq.

- (b) *Terms; reappointments.* The term of office of each of the appointed members is 3 years. A member must not serve more than 2 consecutive terms. Members shall continue in office until their successors are appointed and approved.
- (c) *Compensation.* Members of the commission receive no compensation for their services.
- (d) *Meetings; reports.* The commission shall meet at the call of the chairman as frequently as required to perform its duties, but no less than six (6) times each year. A majority of the members of the commission shall constitute a quorum for the transaction of business, and a majority of those present at any meeting shall be sufficient for any official action taken by the commission. The commission shall submit an annual report to the county executive and the county council summarizing its activities, needs, recommendations and the degree to which the goals of the commission are being met. (1974 L.M.C., ch. 52, § 2; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 14; FY 1991 L.M.C., ch. 9, § 1.)

Editor's note—See County Attorney Opinion dated 4/13/99-A discussing what should occur when an Ethics Commission member holds over as a result of the Council not having confirmed a newly appointed member.

Sec. 27-36. Executive secretary; additional personnel and facilities.

There shall be an executive secretary of the commission, who shall be a merit system employee. Other personnel and facilities may be authorized as provided by appropriations. (1974 L.M.C., ch. 52, § 2; 1977 L.M.C., ch. 30, § 14.)

Sec. 27-37. Powers and duties generally.

The commission shall have the power and it shall be its duty:

- (a) To research, assemble, analyze and disseminate pertinent data and educational materials relating to activities and programs which will assist in meeting the needs and solving the problems of the aging; to cooperate with public and private agencies, organizations and individuals in identifying and solving the problems of the aging; and to develop and conduct, as appropriate, in cooperation with county government, other services and programs dealing with the problems and needs of the aging.
- (b) To review plans of primary concern to the aging that are developed by other commissions, agencies, offices and departments of the county government.
- (c) To develop an information and referral system for all services in the county related specifically to the needs of the aging.
- (d) To institute and conduct educational and other programs, meetings and conferences to promote the welfare of the aging. In the performance of its duties, the commission shall cooperate with all interested citizens, community, business, professional, technical, educational, health and civic organizations.

- (e) To cooperate with the county executive and all governmental agencies concerned with matters within the jurisdiction of the commission.
- (f) To study and investigate by means of public or private meetings, conferences and public hearings, conditions which may result in unmet needs or in discrimination or prejudice because of age.
- (g) To advise and counsel the residents of the county, the county council, the county executive and the various departments of county, state and federal governments on matters involving the needs of the aging, and to recommend such procedures, programs or legislation as it may deem necessary and proper to promote and ensure equal rights and opportunities for all persons, regardless of their age.
- (h) To work to remove the unmet needs or discrimination or prejudice on the basis of age in such areas as housing, recreation, employment, education, community services and related matters.
- (i) To adopt such rules and procedures as may be necessary to carry out the purposes of this article; to keep a record of its activities and minutes of all meetings; such records and minutes shall be on file and shall be open to the public at reasonable business hours upon request.
- (j) To prepare and submit to the county executive a budget to include the recommended appropriation for its own operation. In submitting a recommended budget for carrying out the operation of the commission, the county executive shall take into consideration the recommendations of the commission, and if requested by the commission, grant a hearing to the commission. (1974 L.M.C., ch. 52, § 2; 1977 L.M.C., ch. 30, § 14.)

Sec. 27-38. Committees.

The chairman of the commission may, with the approval of the commission, appoint committees from its members to assist in carrying out any of the functions and duties of the commission. (1974 L.M.C., ch. 52, § 2; 1977 L.M.C., ch. 30, § 14.)

Sec. 27-39. Volunteer workers and consultants.

The commission may engage the services of volunteer workers and consultants without salary as it may find necessary from time to time, and may engage other workers and consultants in accordance with the laws of the county, subject to budget appropriations to assist it in carrying out its duties. Services of an individual as a volunteer worker or consultant for the commission shall not be considered as service or employment bringing such individual within any merit system of the county or the state. (1974 L.M.C., ch. 52, § 2; 1977 L.M.C., ch. 30, § 14.)

ARTICLE IV. COMMUNITY ACTION AGENCY.**Sec. 27-40. Statement of policy.**

It is the public policy of the County to promote programs to create an awareness of poverty; promote coordination among private and public agencies concerned with poverty; promote better use of existing resources and develop leadership among poor citizens to solve community problems; and develop broad community strategies to attack the basic causes of poverty. (1976 L.M.C., ch. 1, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 15; 1997 L.M.C., ch. 25, §1.)

Sec. 27-41. Creation and organization.

- (a) *Established; purpose.* There is a Community Action Agency within the Executive branch of the County government. The Agency creates and maintains community action programs to encourage the use of public and private resources to enable low-income people to become self-sufficient; to reduce poverty in the County; to involve the low-income population in developing and carrying out anti-poverty programs in the County; and to make government more responsive to the needs of low-income people.
- (b) *Governing board and staff.* The community action agency consists of:
 - (1) the Community Action Board; and
 - (2) merit system employees of the County government, including an executive director and other staff necessary to assist the Board. The Board generally directs and supervises the staff.
- (c) *Board—Composition; membership.*
 - (1) The Community Action Board consists of not more than 24 nor less than 15 members.
 - (2) At least one-third of the members must be representatives of low-income persons in the county, and one-third must be public officials or their representatives. The balance of the Board must be composed of officials or members of business, industry, labor, religious, private welfare, private education, minority, civic, and other major private organizations interested in activities of the agency.
- (d) *Appointment; term of office.*
 - (1) Public Official Members. The County Executive must appoint, subject to confirmation by the County Council, officials of the County government and

other public agencies in the County, or voting representatives of the officials, to serve on the Board. The Council may, in its discretion, recommend a Councilmember or other Council representative to serve on the Board. The Executive must consider for appointment public officials recommended by the Board. The Executive (who is not subject to confirmation), or the Executive's designee, is a public member of the Board. Public-official members, or their representatives:

- (A) collectively must comprise at least one-third of the membership of the Board; and
 - (B) serve at the pleasure of the Executive.
- (2) Private Organization Members. The Executive must appoint, subject to confirmation by the Council, representatives of the private organizations to serve on the Board. These members serve either a 1-, 2-, or 3-year term, as designated by the Executive. In appointing members under this subparagraph, the Executive must consider individuals and organizations recommended by the Board. The terms of private organization members end October 1 of the appropriate year.
- (3) Low-Income Representatives.
- (A) The Executive must appoint, subject to confirmation by the Council, members who represent low-income County residents. In making an appointment under this subparagraph, the Executive must consider the recommendation of the Community Action Board regarding a candidate selected by low-income County residents. Low-income representative members serve either a 1-, 2-, or 3-year term, as designated by the County Executive. The Board must recommend to the Executive an individual to fill any vacancy on the Board. The terms of all members representing low-income residents end October 1 of the appropriate year.
 - (B) The Board must establish a democratic procedure for low-income residents to select candidates for nomination, each of whom must live in a specific geographic area of the County. Individuals participating in the selection of a candidate must be at least 18 years old, reside in the specific geographic area of the County, and have income that does not exceed the limits established under subparagraph (D).
 - (C) For each person nominated under this paragraph, the Executive must explain in writing to the Council how the nominee was selected by a democratic method designed to ensure that the nominee is representative of the poor in the area the nominee would represent.

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- (D) A low-income person, for the purpose of this article, is a person whose income does not exceed amounts set by Executive Order after considering the recommendations of the Board.
- (4) Vacancies. Except as provided in paragraph (5), each member of the Board continues to serve after the member's term expires until the Council confirms a successor, who serves the remainder of the member's term.
- (5) A private-organization member selected under paragraph (2) or a low-income representative selected under paragraph (3) must not serve on the Board for more than 5 consecutive or 10 total years.
- (e) *Officers of the Board.* The officers of the Board are the chair, vice-chair, and secretary, elected annually by the Board under procedures adopted by the Board.
- (f) *Compensation.* The members of the Board serve without compensation.
- (g) *Meetings; quorum.* The Board holds meetings at regular intervals at least 6 times per year. A majority of the members of the Board is a quorum for conducting business. The Board may act on a majority vote of those present. The Board or its designated members should meet from time to time with the County Executive, the County Council, and other public officials to promote the Board's functions.
- (h) *Nonpartisan nature.* The Community Action Agency must not participate in partisan political activities or sectarian activities. The Agency may advocate on behalf of, or discuss public issues affecting, low-income people. (1976 L.M.C., ch. 1, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 10; FY 1991 L.M.C., ch. 9, § 1; 1997, L.M.C., ch. 25, §1; 2005 L.M.C., ch. 24, § 1; 2012 L.M.C., ch. 7, § 1.)

Editor's note—1976 L.M.C., ch. 1, from which this article was derived, became effective September 9, 1975.

Sec. 27-42. General powers and duties of Board.

To accomplish the purposes for which the Community Action Agency is established, the Community Action Board may:

- (a) Make recommendations on the initiation and development of the community action program;
- (b) Recommend to the county executive an annual budget to support the community action program and develop grant applications in support thereof;
- (c) Decide changes in the community action program within the limits of the annual budget;

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- (d) Recommend expenditures within available appropriations or budgetary allocations for the community action program;
- (e) Recommend transfers between and within programs within available appropriations or budgetary allocations;
- (f) Give general advice on the administration of projects carried out in implementation of the community action program;
- (g) Accept, use and account for contributions of property and services from organizations or individuals for purposes consistent with the community action program;
- (h) Participate in recruiting and screening candidates for the position of executive director; and recommend a candidate or candidates for executive director; participate in the performance evaluation of or any personnel actions concerning the executive director;
- (i) Recommend the type and number of personnel required to staff the organization and carry out approved projects;
- (j) Adopt, amend and repeal bylaws, and adopt regulations under method (2) of section 2A-15 of this Code governing the manner in which its activities may be conducted and the powers vested in it may be exercised;
- (k) Provide advice and recommendations to the county executive, county council and other public and private agencies;
- (l) Establish communications with the community concerning programs and policies affecting low-income persons;
- (m) Perform all lawful actions as may be necessary or appropriate to achieve the purposes for which the community action agency is established, including the selection of low-income representatives;
- (n) Carry out such operations as the county government may specifically authorize or provide. (1976 L.M.C., ch. 1, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 15; 1984 L.M.C., ch. 24, § 30; 1997, L.M.C., ch. 25, §1.)

Sec. 27-43. Committees and advisers.

- (a) The Board must establish an executive committee and other subcommittees necessary to assist in performing the functions of the Board.
- (b) The chair of the Board may appoint a person to advise the Board from public agencies not represented on the Board or from interested citizens in the county. An adviser may participate in meetings of the Board and the executive committee but is not entitled to vote. An advisers may serve as a member of a subcommittee and vote at subcommittee meetings. (1976 L.M.C., ch. 1, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 15; 1997, L.M.C., ch. 25, §1.)

Sec. 27-44. Authority of executive director.

The executive director may, after considering the Community Action Board's recommendations:

- (a) recommend to the Chief Administrative Officer appointment of Agency staff; and
- (b) authorize the expenditure of funds. (1976 L.M.C., ch. 1, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 15; 1997, L.M.C., ch. 25, §1.)

Sec. 27-45. Reports.

The Community Action Board annually must report to the County Executive, the County Council, and the public on the Board's activities. (1976 L.M.C., ch. 1, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, §15; 1997, L.M.C., ch. 25, §1.)

Sec. 27-46. Repeal of current resolution.

Resolution No. 6-1332, dated June 18, 1968, the current resolution establishing the community action committee, is hereby rescinded, and any section therein inconsistent with this article is hereby declared null and of no effect or force. (1976 L.M.C., ch. 1, § 1; 1977 L.M.C., ch. 28, § 10; 1977 L.M.C., ch. 30, § 15.)

ARTICLE V. COMMISSION ON CHILDREN AND YOUTH.*

Sec. 27-47. Statement of policy.

The County Council believes that a Commission on Children and Youth is necessary to advise the County Council, County Executive, Department of Health and Human Services and the Board of Education, on the development of coordinated community and government policies, programs and services which support children, youth and families. The objectives of the Commission are: To identify the needs of children and youth according to age, location and special services required; to identify all existing services, public and private, available to children, youth and families; to identify those changes in public policy, service delivery, and funding necessary to improve the supporting services available to children, youth and families; and to serve as the community voice for children and youth and to be a forum for discussion with youth. The Commission on Children and Youth should coordinate work with the Commission on Child Care and should not duplicate the work of the Commission on Child Care. (1979 L.M.C., ch. 4, § 1; 1988 L.M.C., ch. 5, § 1; 1995 L.M.C., ch. 13, § 1.)

Editor's note—Section 5 of 1995 L.M.C., ch. 13, reads as follows: "Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 LMC ch. 13 continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services."

Sec. 27-48. Commission on Children and Youth Generally.

- (a) *Creation and appointment.* There is a Commission on Children and Youth. The County Executive appoints Commission members, subject to County Council approval. The Commission has 27 members, including the following:
 - (1) one representative from the:
 - (A) public school system;
 - (B) private schools in the County; and
 - (C) Department of Recreation.

***Editor's note**—Resolution No. 8-2077, adopted July 11, 1978, states: "It is the legislative intent of the County council with regard to 1979 L.M.C., ch. 4 that:

"One of the governmental representatives appointed to the commission on children and youth shall serve as acting chairperson of the commission.

"In appointing the executive secretaries of both commissions, the director of the office of family resources shall take into consideration recommendations from members of the respective commissions.

"Reports from the commission on children and youth that deal with the office of family resources would be sent initially to the director of the office of family resources."

Cross reference—Boards and commissions generally, § 2-141 et seq.

- (2) The Department of Health and Human Services has 2 representatives.

The remaining 22 members should be equally divided among individuals with recent experience in agencies providing services to children and youth, youth and young adults, and parents. The County Executive appoints the Chair and the Vice-Chair of the Commission, subject to County Council approval. A County government representative must not be the Chair or Vice-Chair. Commission members may make recommendations to the County Executive about appointment of the Chair and Vice-Chair.

- (b) *Terms of office.* The term of a member is 3 years, except that a youth or young adult member is appointed for one year from June 1 to May 30.
- (c) *Compensation.* Members of the Commission must not receive compensation for their services.
- (d) *Meetings.* The Commission meets on the call of the Chair as required to perform its duties but not less than 6 times each year.
- (e) *Staff.* The Department of Health and Human Services provides the necessary staff support to the Commission for the conduct of the Commission's formal sessions. (1979 L.M.C., ch. 4, § 1; 1979 L.M.C., ch. 20, § 1; 1981 L.M.C., ch. 41, § 1; FY 1991 L.M.C., ch. 5, § 1; 1995 L.M.C., ch. 13, § 1.)

Editor's note—Section 5 of 1995 L.M.C., ch. 13, reads as follows: "Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 LMC ch. 13 continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services."

Sec. 27-49. Duties and responsibilities.

The Commission has the following duties and responsibilities:

- (a) Initiate recommendations for such procedures, programs or legislation as it may deem necessary to promote the well-being of children, youth and families in the community;
- (b) Hold public hearings, initiate interagency conferences and create special task forces in order to identify and assess needs, review services, programs and policies and plan new strategies for supporting children, youth and families;
- (c) Collect data on the needs of children and youth, as well as services delivered by public and private agencies in the County;

- (d) Evaluate and review the implementation of County policies and programs affecting children, youth and families, including but not limited to: Early childhood education, health and nutrition, neglected and dependent children and youth, children/ youth with special needs and prevention and treatment of delinquency;
- (e) Recommend annual priorities which the County government should follow for improving services in support of children, youth, and families;
- (f) Review and promote the coordination of services between and among all agencies serving children and youth in this County;
- (g) Review, assess and make recommendations regarding funding of proposals utilizing public funds to be spent in behalf of children and youth;
- (h) Give recommendations to the County Executive and County Council for new sources of public funds for children and youth;
- (i) Review standards for licensing and operation of services to children and youth.
- (j) Serve as the children's council as established by Article 49D of the Annotated Code of Maryland and perform the duties and functions provided therein;
- (k) Provide effective public information on children's programs and services in the County;
- (l) Participate in the activities of the State Office for Children and Youth;
- (m) Solicit advice and suggestions from public and private agencies, and their professional staffs, concerned with problems of children and youth through the establishment of committees or other appropriate means;
- (n) Formulate bylaws and operating procedures necessary to carry out responsibilities;
- (o) Supervise and coordinate activities of the Youth Advisory Committee as a subcommittee of the Commission; and
- (p) Advise the County Council, County Executive, Department of Health and Human Services, and Board of Education in matters relating to children, youth, and families. (1979 L.M.C., ch. 4, § 1; FY 1991 L.M.C., ch. 5, § 1; 1995 L.M.C., ch. 13, § 1; 1995 L.M.C., ch. 21, § 2.)

Editor's note—Section 5 of 1995 L.M.C., ch. 13, reads as follows: “Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 LMC ch. 13 continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services.”

Sec. 27-49A. Citizens Review Panel for Children.

- (a) *Creation.* The Citizens Review Panel for Children is established.
- (b) *Appointment.* The County Executive must appoint the members of the Citizens Review Panel, subject to County Council confirmation. The Executive must appoint the chair and vice-chair of the Citizens Review Panel, subject to Council confirmation. A member of the Citizens Review Panel may recommend individuals to the Executive to serve as the chair and vice-chair.
- (c) *Membership.*
 - (1) The Citizens Review Panel has 9 to 14 members.
 - (A) The Executive must appoint 7 members. No more than 3 members may be members of the Commission on Children and Youth who are separately confirmed by the Council as Panel members.
 - (B) One member each must be a County resident selected under State law by:
 - (1) the State Citizens Review Board for Children; and
 - (2) the State Council on Child Abuse and Neglect.
 - (C) The Executive may appoint, subject to confirmation by the Council, not more than 5 additional non-voting members to provide technical and professional advice to the Panel about child protective services. These members must have experience in preventing and treating child abuse and neglect, such as child advocates, volunteers of the court-appointed special advocate program, attorneys who represent children, parents and consumer representatives, and health and human services professionals. These members each serve a term of 3 years. A panel member should consider the advice of these members, but must exercise independent judgment in evaluating their advice.
 - (2) Each member of the Panel must be a volunteer who:
 - (A) exercises the member's own free will in all deliberations of the Panel;
 - (B) acts independently of any outside influence, particularly the member's employer;
 - (C) does not represent any agency or organization; and

- (D) is not a County or State employee, or spouse or domestic partner of an employee, whose participation would be inconsistent with County Council policies regarding appointment of government employees to boards, committees, and commissions.
- (d) *Duties.* The Citizens Review Panel must:
 - (1) implement State law regarding local citizens review boards;
 - (2) examine the policies and procedures of State and local agencies and, where appropriate, specific cases to evaluate the extent to which these agencies in the County are effectively fulfilling their responsibilities to implement the child protection standards and State plan under 42 U.S.C. § 5106a(b) and any other criteria that the panel considers important for the protection of children;
 - (3) report the Panel's findings to the Executive, the Council, the State Citizens Review Board for Children, and the State Council on Child Abuse and Neglect;
 - (4) within 60 days after the end of each fiscal year, prepare and make available to the public a report summarizing the Panel's activities during the fiscal year; and
 - (5) carry out other duties as requested to assist the County Department of Health and Human Services, the State Citizens Review Board for Children, and the State Council on Child Abuse and Neglect.
- (e) *Terms of office.* The term of a Panel member is 3 years.
- (f) *Compensation.* Members of the Panel must not receive compensation for their services. A member may receive reimbursement for expenses incurred in connection with the member's service on the Panel, subject to appropriations.
- (g) *Meetings.* The Citizens Review Panel must meet at least once every 3 months at the call of the chair.
- (h) *Access to information.* Federal law requires the State to provide any case information requested by the Panel that is necessary for the Panel to carry out its functions. County agencies and employees must provide any case or other information that the Panel decides is necessary or useful to carry out its functions. Each member of the Panel is subject to State laws that restrict or prohibit disclosure of:

- (A) identifying information about a specific child protection case; or
- (B) certain other information.
- (i) *Staff.* Federal law requires the State to provide staff support to the Citizens Review Panel. The County Department of Health and Human Services may provide staff support to the Panel if the State reimburses the County for the full cost of the support. (2001 L.M.C., ch. 5, § 1; 2005 L.M.C., ch. 24, § 1.)

Editor's note—2001 L.M.C., ch. 5, § 2, states:
Transition.

(a) When making initial appointments to the Citizens Review Panel, the County Executive must appoint 2 members to a one-year term, 2 members to a two-year term, and 3 members to a three-year term.

(b) The Executive must appoint the members of the Advisory Group under Code Section 27-49A(j), as added by this Act, to initial terms of 1, 2, or 3 years, coincident with the term of a Panel member, so that the terms of no more than 2 members of the group expire in the same calendar year.

(c) A member who serves for 18 months or less in a Panel or Advisory Group position during the position's initial term of one or two years is eligible for reappointment as if the member had not previously served in the position.

ARTICLE VI. COMMISSION ON PEOPLE WITH DISABILITIES.*

Sec. 27-50. Statement of policy.

A Commission on People with Disabilities is necessary to advise the County government on the coordination and development of policies for people with disabilities. The County government adopts the policy that no qualified person with a disability should, on the basis of their disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the County government. The County government endorses Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794, and agrees to comply with federal regulations implementing Section 504. (1979 L.M.C., ch. 4, § 2; FY 1991 L.M.C., ch. 6, § 2.)

Editor's note—See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People with Disabilities and the role of the County Attorney as the legal advisor for the County.

Sec. 27-51. Commission—Composition and appointments; meetings; staff.

- (a) *Composition and appointment.* There is a Commission on People with Disabilities. The Commission has 25 voting members, and at least 5 nonvoting members, including:
- (1) 13 voting members who are people with a disability;
 - (2) 3 voting members who are parents of people with disabilities;
 - (3) 9 voting members who represent organizations and agencies that provide services or represent people with disabilities;

***Editor's note**—FY 1991 L.M.C., ch. 6, § 2, changed the title of this article from “Commission on Handicapped Individuals” to “Commission on People With Disabilities.”

Cross reference—Boards and commissions generally, § 2-141 et seq.

- (4) one nonvoting member from the:
 - (A) Department of Recreation;
 - (B) Department of Transportation; and
 - (C) Human Rights Commission; and
- (5) two nonvoting members from the Department of Health and Human Services.

The County Executive appoints Commission members. The County Executive appoints voting members subject to confirmation by the County Council. The County Executive may appoint additional nonvoting members from other governmental agencies. All appointments are for a 3 year term beginning October 1, except appointments to fill unexpired terms. If a vacancy occurs on the Commission, the County Executive should appoint a successor to complete the unexpired term within 60 days of the occurrence of the vacancy. After receiving recommendations of Commission members, the County Executive must appoint the chairperson and vice chairperson of the Commission, subject to confirmation by the County Council.

- (b) *Compensation.* Members of the Commission receive no compensation for their services.
- (c) *Meetings.* The Commission meets on the call of the chairperson as frequently as required to perform its duties, but not less than 6 times each year.
- (d) *Staff support.* The Department of Health and Human Services must provide the staff support necessary for the Commission to perform its duties. (1979 L.M.C., ch. 4, § 2; 1979 L.M.C., ch. 20, § 2; FY 1991 L.M.C., ch. 6, § 2; 1995 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 4, § 1; 2008 L.M.C., ch. 5, § 1.)

Editor's note—2008 L.M.C., ch. 5, § 3, states: Sec. 3. Any regulation in effect when this Act takes effect that implements a function transferred to another Department or Office under Section 1 of this Act continues in effect, but any reference in any regulation to the Department from which the function was transferred must be treated as referring to the Department to which the function is transferred. The transfer of a function under this Act does not affect any right of a party to any legal proceeding begun before this Act took effect.

1995 L.M.C., ch. 13, § 5, states: Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 LMC ch. 13 continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services.

Sec. 27-52. Duties.

The Commission has the following duties:

- (a) review programs and services for people with disabilities, including identifying unmet needs and gaps in services;

- (b) identify, analyze, and evaluate barriers to programs and services for people with disabilities;
- (c) review reports and publications of government agencies providing services to people with disabilities;
- (d) review federal, state and local legislation that concerns or would affect people with disabilities;
- (e) study ways to maximize the use of facilities and services available to people with disabilities;
- (f) conduct open meetings to provide direct communication among people with disabilities, private and public organizations, and the general public regarding programs and services for people with disabilities;
- (g) initiate conferences of interagency planning group and create special task forces to identify and assess needs and promote the coordination of services among public and private agencies, departments, and organizations that provide services and programs for people with disabilities;
- (h) identify and recommend to the County Executive and the County Council appropriate sources of state and federal funding for services and programs for people with disabilities;
- (i) make recommendations for procedures, programs, and legislation to promote the well-being of people with disabilities;
- (j) submit an annual report by November 1 each year to the County Council and the County Executive that includes:
 - (1) the status of services and programs for people with disabilities in the County;
 - (2) recommendations for the more effective delivery of services and programs to people with disabilities; and
 - (3) annual budget and policy priorities for delivery of services to people with disabilities;
- (k) advise the Department of Health and Human Services in carrying out the duties and responsibilities imposed by federal laws affecting people with disabilities; and

- (l) make recommendations to the Department of Health and Human Services about the County's contribution to programs and services for people with disabilities. (1979 L.M.C., ch. 4, § 2; 1979 L.M.C., ch. 20, § 3; FY 1991 L.M.C., ch. 6, § 2; 1995 L.M.C., ch. 13, § 1.)

Editor's note—See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People with Disabilities and the role of the County Attorney as the legal advisor for the County.

Section 5 of 1995 L.M.C., ch. 13, reads as follows: "Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 LMC ch. 13 continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services."

ARTICLE VII. COMMITTEE FOR ETHNIC AFFAIRS.

Sec. 27-53. Committee for Ethnic Affairs—Established; membership; terms of membership; chairperson.

- (a) *Establishing the Committee.* The Committee for Ethnic Affairs is established for an indefinite term.
- (b) *Membership.*
 - (1) All members must be appointed by the County Executive and confirmed by the County Council.
 - (2) There must be 26 members, of whom:
 - (A) 14 are identified with ethnic groups in the County; and
 - (B) 12 are identified with the general public, including the business and education communities.
- (c) *Terms of members.* Each member must be appointed for a 3-year term that begins on April 1, except for a member appointed to complete an unexpired term.
- (d) *Chairperson.* The Committee must elect a chairperson. The chairperson serves a one-year term, unless reelected. (1985 L.M.C., ch. 43, § 1; 1990 L.M.C., ch. 47, § 1; FY 1991 L.M.C., ch. 23, § 1.)

Sec. 27-54. Responsibilities of the Committee.

The Committee should:

- (a) create a forum for all ethnic groups in the County, help to integrate diverse communities in the County, and identify existing and potential problems and possible solutions.

- (b) advise the County Executive, County Council, and the Office of Minority and Multicultural Affairs on public policy that relates to ethnic affairs;
- (c) emphasize the richness of the lingual and cultural diversity in the County, including the promotion of interaction and interchange among ethnic groups;
- (d) advise the Office of Minority and Multicultural Affairs about the organization of an annual heritage festival to celebrate ethnic diversity in the County;
- (e) advise the Office of Minority and Multicultural Affairs about ways of introducing and welcoming permanent and temporary residents from other countries to the County and integrating them into the community;
- (f) advise the Office of Minority and Multicultural Affairs about special needs of ethnic groups for public services, including interpreters, health, housing, employment, and education, and monitor any programs that provide these services;
- (g) advise the Office of Minority and Multicultural Affairs about providing information in as many languages as possible;
- (h) advise the Office of Minority and Multicultural Affairs about promoting involvement of all ethnic groups in the government, business, and community affairs of the County; and
- (i) communicate with the Maryland State Ethnic Heritage Commission and other comparable public and private organizations. (1985 L.M.C., ch. 43, § 1; 1990 L.M.C., ch. 47, § 1; FY 1991 L.M.C., ch. 23, § 1; 2005 L.M.C., ch. 24, § 1.)

Sec. 27-55. Annual ethnic heritage festival.

- (a) The Office of Minority and Multicultural Affairs must:
 - (1) organize an annual ethnic heritage festival; and
 - (2) provide for citizen participation in the festival planning.
- (b) The Committee should assist the Office of Minority and Multicultural Affairs in planning the festival. (1985 L.M.C., ch. 43, § 1; 1990 L.M.C., ch. 47, § 1; FY 1991 L.M.C., ch. 23, § 1.)

Sec. 27-56. Reports.

- (a) By December 1 each year, the Committee must report to the County Executive, the County Council, and the Office of Minority and Multicultural Affairs.

- (b) The report must include a summary of the activities, accomplishments, plans, and objectives of the Committee. (1985 L.M.C., ch. 43, § 1; 1990 L.M.C., ch. 47, § 1; FY 1991 L.M.C., ch. 23, § 1.)

Sec. 27-57. Committee support.

The Office of Minority and Multicultural Affairs must provide appropriate support to assist the Committee in its work. (1985 L.M.C., ch. 43, § 1; 1990 L.M.C., ch. 47, § 1; FY 1991 L.M.C., ch. 23, § 1.)

Sec. 27-58. Meetings.

- (a) *Frequency.* The committee meets at the direction of the chairperson at least 6 times each year.
- (b) *Procedures.*
 - (1) A majority of the members of the Committee must be present for the Committee to conduct any official business.
 - (2) If a majority of members attending a meeting agree, the Committee may take an action. (1985 L.M.C., ch. 43, § 1; FY 1991 L.M.C., ch. 23, § 1.)

Sec. 27-59. Compensation of members.

Members do not receive compensation for serving on the committee. (1985 L.M.C., ch. 43, § 1; FY 1991 L.M.C., ch. 9, § 1.)

Sec. 27-60. Committee in advisory category.

The committee is in the advisory category established in section 2-143 of this Code. (1985 L.M.C., ch. 43, § 1.)

Sec. 27-61. Reserved.

Editor's note—Section 27-61, providing a sunset date, derived from 1985 L.M.C., ch. 43, § 1, and 1990 L.M.C., ch. 47, § 1, was repealed by FY 1991 L.M.C., ch. 23, § 1.

ARTICLE VIII. RESERVED.*

Sec. 27-62. Reserved.

ARTICLE IX. COMMITTEE ON HATE/VIOLENCE.

Sec. 27-63. Committee on Hate/Violence.

- (a) *Members.* The County Executive must appoint, subject to confirmation by the County Council, a Committee on Hate/Violence. The Committee consists of 15 voting members and 6 ex-officio nonvoting members. Each voting member must, when appointed, reside in the County.
 - (1) *Voting members.* The voting members must broadly reflect the geographic, economic, and social diversity of the County.
 - (A) At least 9 voting members should be identified with ethnic or other groups in the County frequently subject to acts of hate/violence.
 - (B) At least 2 voting members should be parents of school-age children.
 - (C) At least one voting member should be identified with the County business community.
 - (2) *Nonvoting members.* The County Council, County Executive, Department of Police, Commission on Human Rights, Montgomery County Public Schools, and Montgomery College, should each designate an ex-officio nonvoting member of the Committee.

*Editor's note—2015 L.M.C., ch. 24, § 4, states: "Article VIII of Chapter 27 (Sections 27-62 and 27-62A) is renumbered and moved to Chapter 10A, as Articles 3 and 4 of Chapter 10A (Sections 10A-4 and 10A-5)."

- (3) *Term.* Each voting member serves a 3-year term. A voting member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.
- (4) *Compensation.* Voting members receive no compensation for their services.
- (5) *Removal.* The County Executive, with the consent of the County Council, may remove a voting member for neglect of or inability to perform the duties of the office, misconduct in office, or serious violation of law. Before the Executive removes a member, the Executive must give the member notice of the reason for removal and a fair opportunity to reply. Section 2-148(c) applies only to voting members of the Commission.
- (b) *Chair and Vice Chair.* The Committee must annually elect one voting member as chair and another as vice chair, and may elect other officers.
- (c) *Meetings.* The Committee meets at the call of the chair as often as required to perform its duties, but at least 10 times each year. The Committee must also meet if a majority of the voting members file a written request for a meeting with the chair at least 7 days before the proposed meeting. A majority of the voting members are a quorum for the transaction of business, and a majority of the voting members present at any meeting may take any official action.
- (d) *Staff.* The Office of the Commission on Human Rights must provide the Committee with staff, offices, and supplies as are appropriated for it.
- (e) *Duties.* The Committee must:
 - (1) adopt rules and procedures as necessary to perform its functions;
 - (2) keep a record of its activities and minutes of all meetings, which must be kept on file and open to the public during business hours upon request;
 - (3) develop and distribute information about hate/violence in the County;
 - (4) promote educational activities that demonstrate the positive value of ethnic and social diversity in the County;
 - (5) advise the County Council, the County Executive, and County agencies about hate/violence in the County, and recommend policies, programs, legislation, or regulations necessary to reduce the incidence of acts of hate/violence;

- (6) submit an annual report by October 1 to the Executive and Council on the activities of the Committee, including the source and amount of any contribution received to support the activities of the Committee; and
 - (7) establish a subcommittee, with members designated by the Executive under Section 27-26(a)(4), to manage the Partnership Fund for Victims of Hate/Violence.
- (f) *Contributions.* The Committee may solicit and accept contributions from public and private sources to support the activities of the Committee notwithstanding any provision of Chapter 19A to the contrary. Committee staff must not solicit or accept contributions for the Committee, but may be assigned administrative tasks related to Committee fundraising. (CY 1991 L.M.C., ch. 27, § 1; 2005 L.M.C., ch.24, § 1; 2006 L.M.C., ch. 33, § 1.)

Editor's note—See County Attorney Opinion dated 4/13/99-A discussing what should occur when an Ethics Commission member holds over as a result of the Council not having confirmed a newly appointed member.

ARTICLE X. DISPLACED SERVICE WORKERS PROTECTION ACT.

Sec. 27-64. Definitions.

- (a) As used in this Article:

Awarding authority means any person that awards or enters into a service contract or subcontract with a contractor to be performed in the County. *Awarding authority* includes the County, but does not include a Federal, State, or municipal government, or a common ownership community, as defined in Section 10B-2(b).

Contractor means any person, including a subcontractor, which enters into a service contract to be performed in the County and employs more than 20 service employees in the entire company.

Director means the Executive Director of the Office of Human Rights and includes the Executive Director's designee.

Person means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ persons or enter into a service contract.

Service contract means a contract between an awarding authority and a contractor to provide security, janitorial, building maintenance, food preparation, or non-professional health care services in a facility located in the County which is used as a:

- (1) private school;
- (2) hospital, nursing care facility, or other health care provider;
- (3) institution, such as a museum, convention center, arena, airport, or music hall;
- (4) multi-family residential building or complex with more than 30 units; or
- (5) commercial building or office building occupying more than 75,000 square feet.

Service employee means an individual employed on a full or part-time basis by a contractor as a:

- (1) building service employee, including a janitor, security officer, groundskeeper, door staff, maintenance technician, handyman, superintendent, elevator operator, window cleaner, or building engineer;
- (2) food service worker, including a cafeteria attendant, line attendant, cook, butcher, baker, server, cashier, catering worker, dining attendant, dishwasher, or merchandise vendor;
- (3) non-professional employee performing health care or related service.

Service employee does not include:

- (1) a managerial or confidential employee;
- (2) an employee who works in an executive, administrative, or professional capacity;
- (3) an employee who earns more than \$30 per hour; or
- (4) an employee who is regularly scheduled to work less than 10 hours per week.

Successor contractor means a contractor that:

- (1) is awarded a service contract to provide, in whole or in part, services that are substantially similar to those provided at any time during the previous 90 days;
 - (2) has purchased or acquired control of a property located in the County where service employees were employed at any time during the previous 90 days; or
 - (3) terminates a service contract and hires service employees as its direct employees to perform services that are substantially similar, within 90 days after a service contract is terminated or cancelled.
- (b) This Article does not limit the ability of an awarding authority to terminate a service contract or replace a contractor with another contractor. (2012 L.M.C., ch. 18, § 1)

Sec. 27-65. Transition employment period.

- (a) *Awarding authority.* At least 15 days before a service contract is terminated, an awarding authority must:
- (1) request the terminated contractor to give the successor contractor a complete list of the name, date of hire, and job classification of each service employee working on the service contract;
 - (2) give the successor contractor a complete list of the name, date of hire, and job classification of each service employee of the terminated contractor working on the service contract;
 - (3) notify the collective bargaining representative, if any, of the affected service employees of the pending termination of the service contract; and
 - (4) ensure that the terminated contractor conspicuously posts, at any affected work site, a written notice to all affected service employees describing the pending termination of the service contract and the employee rights provided by this Article.
 - (5) Where the County is the awarding authority in this Section:
 - (A) *terminated or cancelled* means a termination for default, termination for convenience, or mutual termination as defined in Chapter 11B and the County procurement regulations; and

- (B) this Section does not apply to a County service contract awarded by an emergency procurement or direct purchase as defined in Chapter 11B and the County procurement regulations.
- (b) *Successor contractor.*
- (1) Subject to paragraph (3), each successor contractor must offer to retain each affected service employee at an affected site for 90 days or until the successor contract is terminated, whichever is earlier.
 - (2) Each successor contractor must give each affected service employee a written offer of employment for the 90 day transition period and send a copy to the employee's collective bargaining representative, if any. Each offer must:
 - (A) state the date by which the service employee must accept the offer; and
 - (B) allow the employee at least 10 days after receiving the notice to accept the offer.
 - (3) Each successor contractor may:
 - (A) offer employment to less than all of the affected service employees during the 90 day transition period if the successor contractor:
 - (i) finds that fewer service employees are required to perform the work than the terminated contractor had employed;
 - (ii) maintains a preferential hiring list of those employees not retained; and
 - (iii) hires any additional service employees from the list until all affected service employees have been offered employment; and
 - (B) refuse to retain a service employee who fails a pre-employment ineligibility test administered by the successor contractor if the successor contractor:
 - (i) routinely requires all service employees to undergo the ineligibility test as a condition of employment; and
 - (ii) adopted the ineligibility test as part of a written employment policy prior to bidding on the successor contract.

- (4) Each successor contractor must not discharge a service employee retained under this Section without just cause during the transition period. (2012 L.M.C., ch. 18, § 1)

Sec. 27-66. Enforcement.

A service employee who was not offered employment or who was discharged during the transition period in violation of this Article, may file a complaint with the Director under Section 27-7. (2012 L.M.C., ch. 18, § 1)

ARTICLE XI. COUNTY MINIMUM WAGE.

Sec. 27-67. Findings and definitions.

(a) *Findings.*

- (1) Many persons employed in the County are paid wages which are insufficient to sustain minimum standards of living in the County.
- (2) Minimum standards of living in the County are higher than the minimum standards of living in many other areas of the State.
- (3) Minimum wage standards in the County are necessary to:
 - (A) promote the health and welfare of County residents;
 - (B) safeguard employers and employees against unfair competition;
 - (C) increase the stability of industry in the County;
 - (D) increase the buying power of employees in the County; and
 - (E) decrease the need for the County to spend public money for the relief of employees who also live in the County.

(b) *Definitions.* As used in this Article:

Director means the Executive Director of the Office of Human Rights and includes the Executive Director's designee.

Employ means to engage a person to work for compensation.

Employee means any person permitted or instructed to work or be present by an employer in the County and who is an employee subject to the minimum wage requirements of the Federal Act or the State Act.

Employer means any person, individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity operating and doing business in the County that employs 2 or more persons in the County. Employer includes the County government, but does not include the United States, any State, or any other local government.

Federal Act means the federal Fair Labor Standards Act of 1938, as amended.

State Act means the Maryland Wage and Hour Law, as amended.

Wage means all compensation that is due to an employee for employment. (2013 L.M.C., ch. 34, § 1.)

Sec. 27-68. Minimum wage required.

- (a) *County minimum wage.* Except as provided in Subsection (b), an employer must pay wages to each employee for work performed in the County at least the greater of:
 - (1) the minimum wage required for that employee under the Federal Act;
 - (2) the minimum wage required for that employee under the State Act; or
 - (3) \$11.50 per hour.
- (b) *Exclusions.* The County minimum wage does not apply to an employee who:
 - (1) is exempt from the minimum wage requirements of the State or Federal Act;
 - (2) is under the age of 19 years and is employed no more than 20 hours per week; or
 - (3) is subject to an opportunity wage under the State or Federal Act.
- (d) *Retaliation prohibited.* A person must not:
 - (1) retaliate against any person for:
 - (A) lawfully opposing any violation of this Article; or

- (B) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this Article; or
- (2) obstruct or prevent enforcement or compliance with this Article. (2013 L.M.C., ch. 34, § 1.)

Sec. 27-69. Tipped employees.

- (a) *Definition.* As used in this Section, *tipped employee* means:
 - (1) an employee who:
 - (A) is engaged in an occupation in which the employee customarily and regularly receives more than \$30 each month in tips;
 - (B) has been informed by the employer about the provisions of this Section; and
 - (C) has kept all of the tips that the employee received.
 - (2) Notwithstanding paragraph (1)(C), this Section does not prohibit the pooling of tips.
- (b) *Computation of wage.* Except as provided in subsection (c), an employer may include, as part of the wage of a tipped employee:
 - (1) an amount that the employer sets to represent the tips of the employee; or
 - (2) if the employee or representative of the employee satisfies the Director that the employee received a lesser amount in tips, the lesser amount.
- (c) *Limit.* The tip credit amount that the employer may include under subsection (b) must not exceed the County minimum wage less \$4.00 per hour.
- (d) *Reports.* An employer who employs a tipped employee in the County must submit a quarterly wage report within 30 days after the end of each quarter to the Director certifying that each tipped employee was paid the minimum wage required by this Section.
- (e) *Online reporting system.* The executive must establish an internet based reporting system as an optional method for an employer of a tipped employee to submit the quarterly wage report required by subsection (d). (2013 L.M.C., ch. 34, § 1; 2015 L.M.C., ch. 30, § 1.)

Sec. 27-70. Enforcement.

- (a) A covered employee who was paid a wage rate less than the County minimum wage in violation of this Article may file a complaint with the Director under Section 27-7.
- (b) The County Executive must delegate the authority to enforce this Article to a State agency that:

- (1) enforces the State Act; and
- (2) is legally authorized to enforce the County minimum wage. (2013 L.M.C., ch. 34, § 1.)

Editor's note—2015 L.M.C., ch. 6, § 1, amends 2013 L.M.C., ch. 34, § 2, to state: "Transition. Notwithstanding Section 27-68, as added in Section 1, the County minimum wage, until July 1, 2017, must be the greater of the minimum wage required under the Federal or State Act or:

- (a) effective October 1, 2014, \$8.40 per hour;
- (b) effective October 1, 2015, \$9.55 per hour; and
- (c) effective July 1, 2016, \$10.75 per hour."

2013 L.M.C., ch. 34, § 2, states: "Transition. Notwithstanding Section 27-68, as added in Section 1, the County minimum wage, until October 1, 2017, must be the greater of the minimum wage required under the Federal or State Act or:

- (a) effective October 1, 2014, \$8.40 per hour;
- (b) effective October 1, 2015, \$9.55 per hour; and
- (c) effective October 1, 2016, \$10.75 per hour."

ARTICLE XII. FAIR CRIMINAL RECORD SCREENING STANDARDS.

Sec. 27-71. Findings and purpose; definitions.

- (a) *Findings.*
 - (1) The U.S. Department of Justice's Bureau of Justice Statistics (BJS) estimates that over 92 million Americans, roughly one in three adults, have a criminal history record involving an arrest or conviction.
 - (2) According to the BJS, nearly 700,000 people a year return to their communities from incarceration, and many are job seekers who are ready and able to become part of the work force.
 - (3) Studies indicate that job applicants are often precluded from even getting an interview when applications require disclosure of whether the applicant has a criminal record.
 - (4) Lack of employment is a significant cause of recidivism, which threatens public safety and disrupts the financial and general stability of affected families and communities.
 - (5) Increased government expenditures on law enforcement and social programs, necessitated by the inability of people with criminal records to find gainful employment, are an impediment to the County reaching its potential for economic growth.

- (6) Increasing employment of people with criminal records improves public safety and reduces the financial burden on government.
- (7) In 2012, the United States Equal Employment Opportunity Commission (EEOC) issued enforcement guidance regarding employers' use of criminal background information in making employment-related decisions, recommending that the use of such information is job related and consistent with business necessity.

(b) *Purpose.* It is the purpose of this Article to:

- (1) assist in the successful reintegration into the workforce of people with criminal records by removing improper barriers to employment; and
- (2) enhance the health and safety of the community by assisting people with criminal records to lawfully provide for themselves and their families.

(c) *Definitions.* As used in this Article:

Applicant means a person who is considered or who requests to be considered for employment in the County by an employer or a current employee who requests to be considered for a promotion.

Arrest record means information indicating that a person has been apprehended, detained, taken into custody, held for investigation, or otherwise restrained by a law enforcement agency or military authority due to an accusation or suspicion that the person committed a crime.

Conditional offer means an offer of employment or an offer of a promotion that is conditioned solely on:

- (1) the results of the employer's later inquiry into the applicant's criminal record; or
- (2) another contingency expressly communicated to the applicant at the time of the offer.

Conviction record means information regarding a sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a fine, a suspended sentence, and a sentence of probation.

Criminal record report means a record of a person's arrest and conviction history obtained from any source.

Director means the Executive Director of the Office of Human Rights and includes the Executive Director's designee.

Employee means a person permitted or instructed to work or be present by an employer in the County.

Employer means any person, individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity operating and doing business in the County that employs 15 or more persons full-time in the County. Employer includes the County government, but does not include the United States, any State, or any other local government.

Employment means:

- (1) any work for compensation; and
- (2) any form of vocational or educational training, with or without compensation.

Inquiry or *Inquire* means any direct or indirect conduct intended to gather information, using any mode of communication.

Inquiry or *Inquire* does not include:

- (1) a question about an applicant's conviction record or arrest record when the existence of the record is voluntarily disclosed by the applicant; or
- (2) a question about an applicant's employment history shown on the application or the applicant's resume.

Interview means any direct contact by the employer with the applicant, whether in person or by telephone or internet communication, to discuss:

- (1) the employment being sought; or
- (2) the applicant's qualifications.

Interview does not include:

- (1) written correspondence or email; or
- (2) direct contact made for the purpose of scheduling a discussion.

Vulnerable adult means an adult who lacks the physical or mental capacity to provide for his or her own daily needs. (2014 L.M.C., ch. 36, § 1.)

Sec. 27-72. Prohibited inquiries; retaliation.

- (a) *Inquiry on application.* An employer must not require an applicant or potential applicant to disclose on an employment application the existence or details of the applicant's or potential applicant's arrest record or conviction record.
- (b) *Preliminary inquiry into criminal record.* In connection with the proposed employment of an applicant, an employer must not, at any time before the conclusion of a first interview:
 - (1) require the applicant to disclose whether the applicant has an arrest record or conviction record, or otherwise has been accused of a crime;
 - (2) conduct a criminal record check on the applicant; or
 - (3) inquire of the applicant or others about whether the applicant has an arrest record or conviction record or otherwise has been accused of a crime.
- (c) *Retaliation.* An employer must not:
 - (1) retaliate against any person for:
 - (A) lawfully opposing any violation of this Article;
 - (B) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this Article; or
 - (2) obstruct or prevent enforcement or compliance with this Article. (2014 L.M.C., ch. 36, § 1.)

Sec. 27-73. Rescission of a conditional offer based on criminal record.

- (a) If an employer intends to rescind a conditional offer based on an item or items in the applicant's arrest record or conviction record, before rescinding the conditional offer the employer must:
 - (1) provide the applicant with a copy of any criminal record report;
 - (2) notify the applicant of the intention to rescind the conditional offer and the items that are the basis for the intention to rescind the conditional offer; and
 - (3) delay rescinding the conditional offer for 7 days to permit the applicant to give the employer notice of inaccuracy of an item or items on which the intention to rescind the conditional offer is based.

- (b) If an employer decides to rescind a conditional offer based on the arrest record or conviction record of an applicant, the employer must notify the applicant of the rescission of the conditional offer in writing.
- (c) Except as provided in this Section regarding the rescission of a conditional offer, nothing in this Article requires an employer to give notice to an applicant of any action of the employer or the basis for any action. (2014 L.M.C., ch. 36, § 1.)

Sec. 27-74. Exemptions.

- (a) The prohibitions and requirements of this Article do not apply if the inquiries prohibited by this Article are expressly authorized by an applicable federal, State, or County law or regulation.
- (b) The prohibitions and requirements of this Article do not apply to the County Police Department, the County Fire and Rescue Service, or the County Department of Corrections and Rehabilitation.
- (c) The prohibitions and requirements of this Article do not apply to an employer that provides programs, services, or direct care to minors or vulnerable adults.
- (d) The prohibitions and requirements of this Article do not apply to an employer hiring for a position that requires a federal government security clearance. (2014 L.M.C., ch. 36, § 1.)

Sec. 27-75. Enforcement.

A person aggrieved by an alleged violation of this Article may file a complaint with the Director under Section 27-7. (2014 L.M.C., ch. 36, § 1.)

