COMMONWEALTH OF MASSACHUSETTS

By His Excellency

FRANCIS W. SARGENT
Governor

EXECUTIVE ORDER NO. 74

GOVERNOR'S CODE OF FAIR PRACTICES

Preamble

The Commonwealth of Massachusetts has led this nation since its birth in protecting the rights and privileges of individuals. The Massachusetts Constitution of 1780, which has been a model for other states, is based on a belief in freedom and equality for all mankind and the duty of government to safeguard and foster for its people the enjoyment of these rights.

Our continued commitment to this principle is demonstrated by our strong laws prohibiting discrimination because of race, color, creed, national origin, military status, sex and age in the areas of employment, education, private and public housing units, commercial property and public accommodations. By requiring the elimination and prevention of racial imbalance in public schools, we have begun to end existing de facto segregation that denies equal educational opportunity to tens of thousands of children.

But in spite of these accomplishments, much remains to be done. Many families presently suffer from inadequate incomes, sub-standard and overcrowded housing and inferior education because discrimination and de facto segregation bar them from the better jobs, dwellings and schools.

We have made a beginning, but if we are to finish the job we have begun, all branches of our state government must take the lead in the struggle for human rights and must exert their authority and exercise their talents for the enforcement of our anti-discrimination laws and the promotion of equal opportunities for all persons.

In order to meet this obligation, I, Francis W. Sargent, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution and by the statutes of the Commonwealth, do hereby adopt the following Governor's Code of Fair Practices and hereby order and direct that the said Code be the governing and guiding policy of the Executive Branch of the Government of the Commonwealth of Massachusetts.

ARTICLE I Declaration of Policy

Non-discrimination and equal employment opportunity are the policy of the Executive Department of the Commonwealth of Massachusetts in all of its decisions, programs and activities. To that end, all state employees shall rigorously take affirmative action steps to insure equality of opportunity in the internal affairs of state government, as well as in their relations with the public, including those persons and organizations doing business with the Commonwealth.
Affirmative action requires more than vigilance in the elimination of discriminatory barriers to employment on the grounds of race, color, creed, national origin, age and sex. It must also entail positive and aggressive measures to insure equal opportunity in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or termination, rate of compensation, and inservice or apprenticeship training programs. This affirmative action should include efforts required to remedy the effects of present and past discriminatory patterns and practices and any action necessary to guarantee equal employment opportunity for all people.

All agencies and appointing authorities of the Commonwealth shall initiate affirmative action programs designed to conform with this policy. All such affirmative action programs shall be subject to review by the Massachusetts Commission Against Discrimination. Any program deemed inadequate by said Commission shall be re-drawn by the Massachusetts Commission Against Discrimination in order to attain positive measures for compliance.

All powers, functions and duties granted to the Massachusetts Commission Against Discrimination under Chapter 151B, Chapter 151C and Chapter 272 of the General Laws shall apply also to this Code of Fair Practices and shall be construed liberally for the accomplishment of the purposes thereof.

ARTICLE II Employment Policies of State Agencies

State officials and supervisory employees shall appoint, assign, train, evaluate, compensate, and promote state personnel on the basis of merit and fitness, without regard to race, color, religion, national origin, ancestry, age or sex, unless a preference, limitation or specification based upon sex, age, military service or otherwise is required by law, or unless sex or age is deemed by the Massachusetts Commission Against Discrimination to be a bona fide occupational qualification for employment.

All appointing authorities and state agencies shall promulgate clear, written directives to carry out an affirmative action policy designed to guarantee equal employment opportunities at all levels of state government. They shall regularly review their personnel practices to assure compliance.

Each appointing authority shall designate an Equal Employment Opportunity Officer(s). The officer(s) must be so placed within the agency's organizational structure as to emphasize the priority and importance of the Equal Opportunity Program.

Where existing staffing patterns indicate less than complete adherence to the above policy, the Equal Employment Opportunity Officer shall monitor the affirmative action programs designed to correct the situation. The Massachusetts Commission Against Discrimination shall review these affirmative action programs. If any program is deemed to be inadequate by the Massachusetts Commission Against Discrimination that agency, within the limits of its statutory power, shall implement positive measures for compliance with this policy. Each appointing authority shall at the request of the Massachusetts Commission Against Discrimination, conduct continuing orientation and training programs with emphasis on human relations, sensitivity training and fair employment practices. All state agencies shall take positive steps to insure that the entire examination process, including the development of the job specifications and employment qualifications, are free from either conscious or inadvertent bias. All examination requirements for entry and promotion shall be for the purpose of determining the fitness of applicants, shall be practical and shall clearly and
demonstrably test the fitness of the applicant's actual ability to discharge the duties of the position for which he seeks appointment.

The Massachusetts Commission Against Discrimination is directed to initiate complaints against those agencies, and their agents and employees and any individuals within state government who fail to comply with directives required to implement the equal opportunity directives as outlined in Article I of this Code. Those individuals within state government who are found to be in non-compliance with this Code, or Chapter 151B of the General Laws, shall be subject to such sanctions as are consistent with the General Laws and applicable rules and regulations of that agency.

Each appointing authority shall report annually to the Massachusetts Commission Against Discrimination, between December 15 and January 1, and whenever requested by said Commission, all programs undertaken during the past year to implement this Code of Fair Practices. The report, on forms furnished by the Massachusetts Commission Against Discrimination, shall describe both internal activities and external relations with the public and with other state agencies.

ARTICLE III State Services and Facilities

All services of every state agency shall be performed without discrimination based on race, color, religion, national origin, ancestry, age or sex. No state facility shall be used in furtherance of any discriminatory pattern or practice nor shall any state agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning such patterns or practices.

Each appointing authority shall at the request of the Massachusetts Commission Against Discrimination critically analyze all of its operations to ascertain possible instances of non-compliance with this policy, and shall instigate sustained, comprehensive programs based on Massachusetts Commission Against Discrimination guidelines to remedy any defects found to exist.

ARTICLE IV State Contracts

Every state contract for public buildings and public works or for goods or services shall contain an article prohibiting discriminatory employment practices by contractors and suppliers of goods or services based on race, color, religion, national origin, ancestry, age or sex. The nondiscrimination article shall include a provision requiring contractors and suppliers of goods or services to give written notice of their commitments under this article to any labor union-association or brotherhood with which they have a collective bargaining or other agreement.

It is the policy of the Commonwealth of Massachusetts to require that every contract for public buildings and public works and for goods and services which exceeds $100,000 shall contain an article requiring the contractor, and his subcontractors, to pledge to undertake in good faith the affirmative action required by the Equal Employment Opportunity Clause set forth in Article I of the Governor's Code of Fair Practices, with the objective that, (1) all present and past effects of discrimination in employment because of race, color, religion, sex, age or national origin shall be eliminated, and (2) to promote the full realization of equal employment opportunity and minority manpower utilization through positive and continuing programs.

Such contractual provisions shall be fully and effectively enforced and any breach
of them shall be regarded as a material breach of the contract subject to appropriate sanctions. The Massachusetts Commission Against Discrimination shall be responsible for determining compliance with the non-discrimination and affirmative action section of state contracts. In the event of a finding of non-compliance with these provisions, the contracting agency shall impose such contract sanctions consistent with the law and contractual agreements, as it may deem appropriate to attain full and effective enforcement.

In implementing this policy of non-discrimination and affirmative action, all appointing authorities and state agencies shall cooperate with and utilize the expertise of the Massachusetts Commission Against Discrimination. As part of its annual report, each state agency and appointing authority shall submit to the Massachusetts Commission Against Discrimination documentation of its actions and programs to insure compliance with these provisions by all contractors, subcontractors and suppliers of goods and services.

ARTICLE V  State Employment Services

All state agencies including educational institutions, which provide employment referral or placement services to public or private employers shall accept job orders, refer for employment, test, classify, counsel, and train only on a nondiscriminatory basis. They shall refuse to fill any job order which has the effect of excluding any person because of race, color, religion, national origin, ancestry, age or sex, unless a preference, limitation, or specification based upon age or sex is deemed by the Massachusetts Commission Against Discrimination to be a bona fide occupational qualification for employment.

Such agencies shall advise the Massachusetts Commission Against Discrimination promptly of any employers, employment agencies, or unions suspected of practicing unlawful discrimination. They shall assist employers and unions seeking to broaden their recruitment programs to include qualified applicants from minority groups. In addition, the Division of Employment Security, Division of Apprenticeship Training, Division of Vocational Education, the Department of Youth Services, the Department of Community Affairs and the Department of Commerce and Development shall fully utilize their knowledge of the labor market and economic conditions of the state, and their contacts with job applicants, employers, and unions to promote equal employment opportunities and shall cause all persons (as defined in Chapter 151B of the General laws) within their jurisdiction to initiate action to remedy any situations or programs which may have a disparate effect on a minority group within the population.

ARTICLE VI. Massachusetts Commission Against Discrimination

The Massachusetts Commission Against Discrimination shall have the full co-operation of all state agencies. They shall comply with its requests for information concerning practices inconsistent with the state policy of nondiscrimination and affirmative action, and they shall follow its lawful directives for giving effect to that policy.

The Commission shall develop guidelines and regulations aiding the implementation and enforcement of this policy. These shall place emphasis on programs of affirmative action in the field of human rights and employment.

ARTICLE VII State Education, Counseling, and Training Programs
All educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs of state agencies, or in which state agencies participate, shall be open to all qualified persons, without regard to race, color religion, national origin, age, sex or ancestry. Such programs shall be conducted to encourage the fullest development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons.

Those state agencies responsible for educational, counseling, and training programs shall take positive steps to insure that all such programs are free from either conscious or inadvertent bias.

Expansion of training opportunities under these programs shall also be encouraged with a view toward involving larger numbers of participants from those segments of the labor force where the need for upgrading levels of skill is greatest.

ARTICLE VIII Health Care

All private health care facilities licensed or chartered by the State, including hospitals, nursing homes, convalescent homes, rest homes, and clinics shall be required to comply with the state policy of nondiscrimination in their patient admissions and in health care service as a condition of continued participation in any state program, or in any educational program licensed or accredited by the State, or to be eligible to receive any form of assistance.

ARTICLE IX Private Educational Institutions

All private educational institutions licensed or chartered by the State, including professional, business, and vocational training schools, shall at the request of the Massachusetts Commission Against Discrimination be required to show compliance with the state policy of nondiscrimination and affirmative action in their student admissions and other practices as a condition of continued participation in any state program or eligibility to receive any form of state assistance.

ARTICLE X State Licensing and Regulatory Agencies

State agencies shall not discriminate by considering race, color, religion, national origin, or ancestry in granting, denying or revoking a license or charter, nor shall any person, corporation, or business firm which is licensed or chartered by the State unlawfully discriminate against or segregate any person on such grounds. All businesses licensed or chartered by the State shall operate on a nondiscriminatory basis, according equal treatment and access to their services to all persons.

Any licensee or charter holder who fails to comply with this policy shall be subject to such disciplinary action as is consistent with the legal authority and rules and regulations of the appropriate licensing or regulatory agency. State agencies which have the authority to grant, deny, or revoke licenses or charters, must actively utilize their authority to prevent any person, corporation, or business firm from discriminating because of race, color, religion, national origin, sex, age or ancestry or from participating in any practice which may have a disparate effect on any minority group within the population. The Massachusetts Commission Against Discrimination shall review and approve all procedures, rules and regulations used to implement this policy.

ARTICLE XI Housing Accommodations
No person, corporation, or firm which is licensed or chartered by the State to engage in the business of selling, leasing, renting, financing, building, or developing housing accommodations shall discriminate against any prospective buyer, lessee, or tenant because of race, color, religion, national origin, ancestry, membership in the armed forces, or veterans status nor shall any licensee or charter holder seek to promote the sale or lease of any residential property on the ground that a person of minority racial, religious, or ethnic background has established or will establish residence in the neighborhood.

Any real estate broker or salesman, corporate owner, lending institution, homebuilder, or developer who fails to comply with this policy shall be subject to such disciplinary action as is consistent with the legal authority and rules and regulations of the appropriate licensing or regulatory agency, and state statute.

There shall be no segregation or discrimination in any publicly assisted housing based upon race, color, creed, military or veterans status, or national origin. The prevention and elimination of racial, ethnic and religious segregation shall be an objective in all decisions involving the selection of new publicly assisted housing sites, the development and execution of urban renewal plans and the management of and placement of tenants in public housing. The Department of Community Affairs, Massachusetts Housing Finance Agency and the Massachusetts Commission Against Discrimination shall assist local authorities in promoting integrated housing in state supported or state supervised projects.

ARTICLE XII Public Schools

By law, it is the policy of the Commonwealth of Massachusetts to encourage all school committees to adopt as educational objectives the promotion of equal and integrated education and the correction of existing racial imbalance in the public schools. The prevention or elimination of racial imbalance shall be an objective in all decisions involving the drawing of or altering of school attendance lines and the selection of new school sites. The Department of Education shall also pursue a program of promoting fair employment practices for certified teachers and shall periodically examine its publications and educational materials to assure that they are a realistic representation of the world peoples and their contributions to history and culture.

The Massachusetts Commission Against Discrimination shall intervene and act to develop affirmative action programs in order to remedy existing patterns or practices of discrimination which may have a disparate effect on the education of minority groups as defined by the Massachusetts Commission Against Discrimination.

ARTICLE XIII State Financial Assistance

State agencies disbursing financial assistance, including but not limited to loans and grants, shall encourage recipient organizations and agencies to undertake affirmative action programs designed to eliminate patterns and practices of discrimination. At the request of the Massachusetts Commission Against Discrimination, State agencies disbursing such assistance shall develop in conjunction with the Massachusetts Commission Against Discrimination rules, regulations and procedures necessary to implement the goals of nondiscrimination and affirmative action.

ARTICLE XIV State Forms
All state agencies shall exclude from forms of requests for information any item or inquiry expressing any limitation or specification as to race, color, creed, national origin, sex or age, unless the item or inquiry is expressly required by statute or is deemed by the Massachusetts Commission Against Discrimination to be a bona fide occupational qualification. However, if such an item or inquiry is required in good faith for a proper purpose, and prior written permission for its use has been given to the agency or appointing authority by the Massachusetts Commission Against Discrimination, then such a practice may be allowed.

Given at the Executive Chamber in Boston this twentieth day of July in the year of Our Lord one thousand nine hundred and seventy and of the Independence of the United States of America, one hundred and ninety-fourth.

FRANCIS W. SARGENT
Acting Governor
COMMONWEALTH OF MASSACHUSETTS

JOHN F. X. DAVOREN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS