

# Employment Discrimination Based on Sexual Orientation and Gender Identity in Michigan



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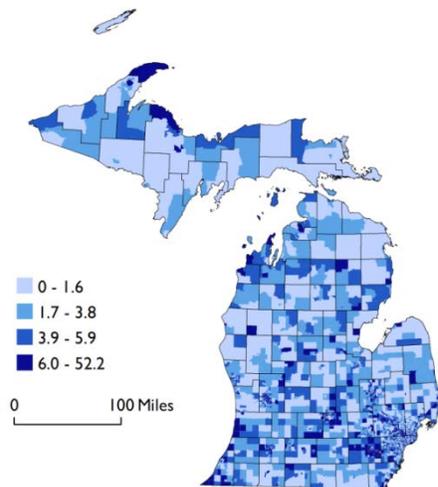
## Executive Summary

More than 4% of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 184,000 of these workers live in Michigan. Michigan does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in both public and private sector employment.

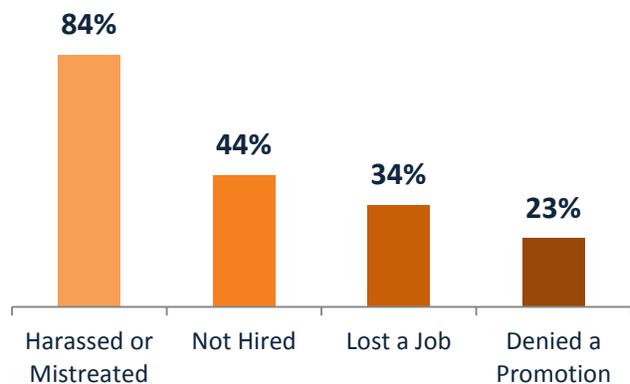
This report summarizes recent evidence of sexual orientation and gender identity employment discrimination, explains the limited current protections from sexual orientation and gender identity employment discrimination in Michigan, and estimates the administrative impact of passing a law prohibiting employment discrimination based on these characteristics in the state.

<b>184,000</b>	<b>32%</b>	<b>84%</b>	<b>65%</b>	<b>16%</b>	<b>86</b>
<b>Number of LGBT Workers</b>	<b>Income Disparity between Straight and Gay Male Workers</b>	<b>Transgender Workers Reporting Workplace Discrimination</b>	<b>Public Support for LGBT Workplace Protections</b>	<b>Workforce Covered by LGBT-Inclusive Local Non-Discrimination Laws</b>	<b>Estimated New Complaints if LGBT Protections are Added to State Laws</b>

Same-sex couples per 1,000 households, by Census tract (adjusted)



Discrimination experienced by transgender workers in Michigan<sup>1</sup>



**Key findings of this report include:**

- In total there are approximately 300,000 LGBT adults in Michigan, including nearly 184,000 who are part of Michigan's workforce.<sup>2</sup>
- Media reports, lawsuits, and complaints to community-based organizations document incidents of sexual orientation and gender identity discrimination against employees in Michigan. These include reports from a CEO, a nursing assistant, and a local government employee.
- Survey data indicate that discrimination against LGBT workers is prevalent across the country. Most recently, a national survey conducted by the Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.
- When transgender people are surveyed separately, they report even higher levels of discrimination. For example, 84% of transgender respondents from Michigan to a 2010 national survey reported experiencing discrimination or harassment at work.
- Census data show that in Michigan, the median income of men in same-sex couples is 32% lower than men in different-sex marriages.
- Two executive directives in Michigan provide protection from sexual orientation and gender identity discrimination for state government employees.
- At least thirty-three municipalities in Michigan provide protection from sexual orientation and gender identity discrimination in employment by local ordinance. Even in those localities that have passed ordinances prohibiting discrimination based on sexual orientation or gender identity, the scope of those protections varies from place to place.
- Approximately 84% of Michigan's workforce is not covered by a local ordinance that prohibits sexual orientation and gender identity discrimination in public and private employment.<sup>3</sup>
- Private companies may adopt internal non-discrimination policies to improve recruitment and retention of talented employees, to increase employee productivity and customer satisfaction, or to attract a larger customer base. Twenty-one Fortune 1000 companies based in Michigan prohibit discrimination in employment based on sexual orientation, and 12 Fortune 1000 companies based in Michigan also prohibit discrimination based on gender identity.
- Public opinion in Michigan supports the passage of legal protections from workplace discrimination for LGBT people. In response to a 2011 survey, 65% of respondents said that they would favor the legislature adding sexual orientation and gender identity to state laws prohibiting discrimination in employment, housing, and access to public accommodations. In addition, other polls find that 80% of Michigan residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.
- Adding sexual orientation and gender identity to the state's current non-discrimination law would result in approximately 86 additional complaints being filed with the Michigan Civil Rights Division each year.
- Because the number of complaints filed annually has fluctuated by an average of 224 complaints over the past five years, with no corresponding variation in the Department's budget, the anticipated new complaints based on sexual orientation and gender identity could likely be absorbed into the existing system with no need for additional staff and negligible costs.

## Evidence of Discrimination

### *Survey Data and Specific Examples of Sexual Orientation and Gender Identity Discrimination in Michigan*

#### Survey Data

Survey research shows the existence of widespread and continuing discrimination against LGBT workers in the U.S. In response to surveys, LGBT workers consistently report having experienced discrimination, and non-LGBT people often report having witnessed discrimination against their LGBT co-workers. For example, a national survey conducted by Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.<sup>4</sup> Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians had experienced workplace harassment in the last five years, and 12% had lost a job because of their sexual orientation.<sup>5</sup> As recently as 2010, 78% of respondents to the largest national survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.<sup>6</sup>

Similar statistics have been found in surveys of LGBT individuals in Michigan. In response to the national survey of transgender people, a significant number of transgender respondents from Michigan reported experiencing adverse treatment at work because of their gender identity or gender expression.<sup>7</sup> More specifically, 84% of the respondents from Michigan reported experiencing harassment or mistreatment at work, 34% reported losing a job, 23% reported being denied a promotion, and 44% reported not being hired.

Additionally, a 2012 survey of 1,000 Michigan residents who identified as LGBT and LGBT allies, found evidence of sexual orientation and gender identity discrimination, generally, in Michigan.<sup>8</sup> In response to the survey, 55% of respondents reported experiencing some form of discrimination or harassment based on their sexual orientation, and 19% reported experiencing some form of discrimination or harassment based on their gender expression. Though the survey did not specifically ask about workplace experiences, the findings indicate the prevalence of negative attitudes toward LGBT people in the state.

#### Complaints to Community-Based Organizations

Employment discrimination against LGBT people in Michigan has also been documented in complaints made to community-based organizations, including Equality Michigan and the ACLU.

Equality Michigan, a non-governmental organization, reports incidences of discrimination and harassment against members of the LGBT community, including employment discrimination, to the National Coalition of Anti-Violence Programs (NCAVP).<sup>9</sup> It has historically tracked at least 50 cases of

employment discrimination based on sexual orientation or gender identity each year.<sup>10</sup> NCAVP reports that the “vast majority” of all incidents reported by Equality Michigan are workplace related.<sup>11</sup>

Additionally, the ACLU LGBT Project of Michigan received 40 reports of discrimination on the basis of sexual orientation and gender identity in the three years from April 2009 to May 2012.<sup>12</sup> Twenty-five of the complaints were related to discrimination based on sexual orientation, and 15 were related to discrimination based on gender identity.<sup>13</sup> The majority of the 40 complaints pertained to employment discrimination, with people reporting being fired, denied promotions, suspended, reprimanded and subjected to hostile work environments.<sup>14</sup>

### Specific Examples of Discrimination

Specific examples of employment discrimination against LGBT people in Michigan have been documented in court cases, law review articles, and anecdotal reports to the Michigan Department of Civil Rights and community-based organizations.<sup>15</sup> Specific recent examples of such documented discrimination include:

- In June 2012, a male oil rigger brought suit against his former employer alleging that he had been fired after he complained about being sexually harassed by a fellow male crew member. The fellow crew member allegedly touched, grabbed, and verbally assaulted the employee. The employee reported the incidents to supervisors who allegedly told him to handle it himself by using violence. He was subsequently terminated. The district court dismissed the claim, and the Sixth Circuit Court of Appeals affirmed, holding that the termination was not related to the employee’s sexual harassment complaints.<sup>16</sup>
- In May 2012, a retail store manager brought suit against his employer for sexual harassment. The employee alleged that his supervisor made comments insinuating that he was a female or had female traits. The employee alleged that the comments were intended to “bring him out of the closet,” although he had never discussed his sexual orientation.<sup>17</sup> The supervisor also allegedly called him a necrophiliac in front of his subordinates. The Sixth Circuit Court of Appeals affirmed the district court’s decision in favor of the store, holding that that the employee’s claims were not actionable under the sexual harassment hostile work environment protections in Michigan law.<sup>18</sup>
- In 2012, a lesbian working in the kitchen at a children’s camp reported that she was fired because of her sexual orientation.<sup>19</sup> According to the employee, she was forced to sign papers documenting that this was the reason for her termination, and was forced off the premises the same day. She filed a complaint with the U.S. Equal Employment Opportunity Commission in August 2012. There is no status update on her claim available from the EEOC at this time.
- A county government employee reported that he was fired after introducing his co-workers to his transgender girlfriend. Prior to the introduction, he had received good reviews for his

performance, but began receiving numerous complaints after the introduction. His employers claimed he was fired for allegedly storing pornography on his work computer. His termination was reversed and he was permitted to retire on the condition that he agreed not to file a wrongful termination suit.<sup>20</sup>

- A chief financial officer, who lives privately as a woman but publicly as a man, reported that she was fired from her job after her employer hired a private investigator to investigate her private life. Before being fired, she received positive reviews on her job performance.<sup>21</sup>
- In the summer of 2004, a lesbian nursing assistant reported that she was fired from her job after residents of the hospital and her co-workers complained about her “lifestyle choices.” She had been employed for only one week and was not out about her sexual orientation at work when terminated, though she reported that her coworkers and supervisors assumed she was a lesbian.<sup>22</sup>
- A former store manager reported in testimony to the Michigan Department of Civil Rights that she was repeatedly ordered by her boss to fire employees and not hire people who her boss “believed to be gay.” Because she refused to comply with her boss’s order, her employment ended with a negotiated resignation where she was permitted to a severance package on the condition that she not discuss the circumstances surrounding her resignation.<sup>23</sup>
- An anonymous man reported in testimony to the Michigan Department of Civil Rights that he was “blackballed by every lab in the city because [he] was gay.”<sup>24</sup>
- A witness reported in testimony to the Michigan Department of Civil Rights that she was fired because of her sexual orientation along with three other employees, two of which were also fired for being gay and one who was fired for vocally supporting the witness.<sup>25</sup>
- A community services coordinator reported in testimony to the Michigan Department of Civil Rights that he was discriminated against after his employer found out that he was gay. The employee stated that he identified as gay to a reporter, who then mentioned it in a news story. The employee reported that after the story was released, his desk was moved out of his office into the hallway, his employer adjusted his schedule so that he could no longer be available for shifts at his second job, and his employer prohibited him from leaving the building in his capacity as an employee. The last restriction was particularly problematic given that part of his job description was to meet with members of the press who did not always come to his place of work.<sup>26</sup>

A 2013 report issued by the Michigan Department of Civil Rights, which provided several of the specific examples above, stated that allegations of discrimination presented to the Department through hearings and written testimony occurred across a diverse range of employment industries. Specifically,

the report mentioned that sexual orientation and gender identity discrimination had been reported by a police officer, a university professor, a school teacher, a store manager, an electrical engineer, a symphony conductor, hotel and food service staff and people working for a major grocery, a pharmacy, an auto company, a telecom company, a manufacturing company, an EMT provider, a security company, and other small businesses.<sup>27</sup> According to the report, much of the testimony provided was submitted anonymously in written form because the people providing the information feared retribution from their employers for discussing the matter openly.<sup>28</sup> Other LGBT people chose not to testify at all, but instead had allies testify on their behalf.<sup>29</sup>

### ***Wage Inequity***

Census data show that men in same-sex couples in Michigan earn less than men married to different-sex partners. On average, men in same-sex couples in Michigan earn \$35,107 each year, significantly less than the \$53,887 for men married to different-sex partners.<sup>30</sup> The median income of men in same-sex couples in Michigan is \$30,000, 32% less than that of married men (\$44,200).<sup>31</sup> Men with same-sex partners earn lower wages, despite the fact that they are more likely to have a college degree than men married to different-sex partners,<sup>32</sup> a comparison that supports the possibility that people in same-sex couples are not treated equally by employers. A 2009 study indicated that the wage gap for gay men is smaller in states that implement non-discrimination laws, suggesting that such laws reduce discrimination against LGBT people.<sup>33</sup>

Women in same-sex couples earn less than married men as well as men in same-sex couples.<sup>34</sup> Women in same-sex couples in Michigan earn an average of \$31,912 per year (with a median of \$28,000), which is more than married women, whose earnings average \$25,854 (with a median of \$21,000).<sup>35</sup>

These findings are not unique to Michigan. Analyses of national data consistently find that men in same-sex couples and gay men earn 10-32% less than similarly qualified men who are married to different-sex partners, or men who identify as heterosexual.<sup>36</sup> Surveys of transgender people find that they have high rates of unemployment and very low earnings.<sup>37</sup>

### **Current Protections from Discrimination**

Michigan does not have a statewide statute that prohibits discrimination based on sexual orientation or gender identity in both public and private sector employment.<sup>38</sup> The first effort to pass a statute prohibiting sexual orientation discrimination was through a House bill introduced in the 1983 legislature.<sup>39</sup> Since then, similar bills to prohibit discrimination based on sexual orientation and gender identity have been introduced in the state legislature, including one in 2009, House Bill 4192,<sup>40</sup> and one in 2012, Senate Bill 1063.<sup>41</sup> In 2009, House Bill 4192 was referred to the Committee on Judiciary, where it was recommended that it pass and was referred for a second reading, but died having never received one.<sup>42</sup> In 2012, Senate Bill 1063 was introduced, but never made it out of committee.<sup>43</sup> The bills would have prohibited employment discrimination based on sexual orientation and gender identity by adding the characteristics to the existing employment discrimination statute, the Elliott-Larsen Civil Rights Act.<sup>44</sup>

Two executive directives in Michigan provide protection from sexual orientation and gender identity discrimination for state government employees. Additionally, several localities, universities, and private corporations in Michigan have adopted local ordinances and internal policies that prohibit discrimination based on sexual orientation and gender identity in employment.

### ***The Elliott-Larsen Civil Rights Act***

Currently, the Elliott-Larsen Civil Rights Act (ELCRA) prohibits employment on the bases of religion, race, national origin, age, sex, height, weight, familial status, and marital status.<sup>45</sup> The Michigan Department of Civil Rights (MDCR) is responsible for administrative enforcement of the ELCRA.<sup>46</sup> The MDCR has the power to receive, initiate, investigate, conciliate, hold hearings on, and issue charges upon complaints alleging discriminatory practice.<sup>47</sup> The MDCR may issue remedies if it finds that discrimination has occurred, including hiring or reinstatement with back pay, damages, costs, and civil fines.<sup>48</sup> In fiscal year 2013, the MDCR received 2,196 discrimination complaints and operated on a budget of \$13.7 million.<sup>49</sup>

### ***Executive Directive Prohibiting Discrimination against State Government Employees***

In 2004, former Governor Jennifer Granholm issued an executive directive banning employment discrimination on the basis of sexual orientation against state government employees.<sup>50</sup> In 2007, Granholm added gender identity to the state non-discrimination clause.<sup>51</sup> The directives require executive agency heads to ensure that the non-discrimination policy is reflected in all agency programs and materials.<sup>52</sup> The directives do not permit employees to file suit in court based on a violation of the non-discrimination requirements.<sup>53</sup> The directives protect approximately 187,000 state government workers from discrimination based on sexual orientation and gender identity.<sup>54</sup>

### ***Local-Level Protections from Discrimination***

At least 33 municipalities in Michigan have adopted non-discrimination ordinances that prohibit employment discrimination based on sexual orientation and gender identity.<sup>55</sup> Of these 33 municipalities, 31 prohibit discrimination based on both sexual orientation and gender identity in public and private sector employment.<sup>56</sup> Grand Ledge prohibits discrimination based on sexual orientation in public and private sector employment, but not discrimination based on gender identity.<sup>57</sup> Muskegon prohibits discrimination based on sexual orientation and gender identity against local government employees, but not in private sector employment.<sup>58</sup> Approximately 84% of Michigan's workforce is not covered by a local ordinance that prohibits sexual orientation and gender identity discrimination in both public and private sector employment.<sup>59</sup>

Some local ordinances prohibiting sexual orientation and gender identity discrimination in Michigan have been vulnerable to repeal efforts following their enactment. For example, Kalamazoo passed a local ordinance prohibiting sexual orientation and gender identity discrimination in 2008, and it was repealed the following month after opponents gathered enough signatures to force a public vote.<sup>60</sup> The

City council then passed a modified version of the ordinance with different wording and a religious exemption.<sup>61</sup> Again, opponents gathered signatures forcing a public vote, but voters approved the ordinance.<sup>62</sup> Additionally, Royal Oak first proposed a sexual orientation and gender identity non-discrimination ordinance in 2001, but it was voted down.<sup>63</sup> In 2013, Royal Oak passed the ordinance.<sup>64</sup> In response, opponents gathered signatures to force a public vote, but were unable to gather enough.<sup>65</sup> Similarly, opponents gathered signatures to force a public vote on Traverse City's sexual orientation and gender identity non-discrimination ordinance shortly after it passed in 2010.<sup>66</sup> The opponents gathered enough signatures for repeal to be on the ballot, however voters approved the ordinance.<sup>67</sup>

According to one Michigan city clerk, an issue with many of these ordinances may be enforcement.<sup>68</sup> The clerk reported that many cities either have not formed the appropriate commissions to enforce the laws, or if they do have a commission, they do not have the resources and the procedures in place to enforce such complaints. This concern has also been expressed by the Farmington Hills City Council which is considering adopting a similar ordinance.<sup>69</sup>

### ***Private Company and University Non-Discrimination Policies***

Private companies adopt internal policies prohibiting discrimination based on sexual orientation and gender identity for a variety of reasons including improved recruitment and retention of talented employees, increasing employee productivity and customer satisfaction, and attracting a larger customer base.<sup>70</sup> One study of corporate motivations behind adopting workplace non-discrimination policies found that 53% of the top companies in the U.S. with LGBT-supportive policies had adopted the policies for economic reasons.<sup>71</sup>

Academic research has found that LGBT-supportive corporate policies are linked to positive business-related outcomes, including greater job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.<sup>72</sup> For example, a 2006 national poll found that 89% of LGBT respondents and 72% of non-LGBT respondents reported that when deciding where to work, it was important that an employer have a written non-discrimination policy that includes race, ethnicity, sex, religion, age, sexual orientation and disability.<sup>73</sup> Research also suggests that employers limit their available talent pool by screening out applicants based on their sexual orientation. One study found that the rate of screening out gay male applicants was twice as high in regions without sexual orientation non-discrimination laws.<sup>74</sup>

Additionally, LGBT-supportive workplace policies can expand opportunities to secure potentially lucrative government contracts for corporate employers. A 2011 study found that 68 local governments had laws requiring contractors to have LGBT-inclusive non-discrimination policies.<sup>75</sup> A number of states have similar laws that apply to state government contracts.<sup>76</sup> Without such policies, companies would not be eligible to bid for contracts with these state and local governments.

Many of Michigan's top companies and employers have adopted internal corporate policies that prohibit sexual orientation and gender identity discrimination. According to the Human Rights

Campaign, at least 58 Michigan-based companies prohibit discrimination based on sexual orientation, including 21 Fortune 1000 companies.<sup>77</sup> Additionally, at least 23 Michigan-based companies have gender identity non-discrimination policies, including 12 Fortune 1000 companies.<sup>78</sup> Further, all 14 public universities in the state prohibit discrimination based on sexual orientation and 11 prohibit discrimination based on gender identity.<sup>79</sup>

## **Public Opinion**

Public opinion in Michigan supports the passage of non-discrimination protections for LGBT people. A 2011 opinion survey found strong support for legal protections from employment discrimination for LGBT people. In response to the poll, 65% of respondents said that they would favor the legislature adding sexual orientation and gender identity to state laws prohibiting discrimination in employment, housing, and access to public accommodations.<sup>80</sup> Similarly, 77% of Michigan respondents to a 2011 national poll said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.<sup>81</sup>

In addition, public opinion data indicate that Michigan residents perceive the state as unfriendly to LGBT people. Aggregated data from two large public opinion polls found that 80% of Michigan residents think that LGBT people experience a moderate amount to a lot of discrimination in the state.<sup>82</sup>

## **Administrative Impact**

### ***Complaint Estimate***

Despite the persistence and pervasiveness of employment discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws has only a minimal burden on state agencies. Complaints of sexual orientation discrimination are filed by LGBT people at approximately the same rate as complaints of race and sex discrimination are filed by people of color and women, respectively.<sup>83</sup> However, because the LGBT population is so small, the absolute number of sexual orientation and gender identity complaints filed under state non-discrimination laws is very low.<sup>84</sup>

We estimate that approximately 86 complaints of sexual orientation or gender identity discrimination would be filed with the Michigan Department of Civil Rights (the Department) each year. To reach this estimate, we drew on Gallup polling data and Census data from Michigan to estimate the size of the LGBT workforce in the state, and applied a national sexual orientation and gender identity complaint rate to that population. We have previously used this methodology to estimate the number of complaints that would be filed on the basis of sexual orientation and gender identity in other states, including South Carolina, Missouri, Ohio, Pennsylvania, South Dakota, Texas, Utah, and West Virginia.<sup>85</sup>

Results from a 2012 Gallup poll show that 3.8% of people in Michigan identify as LGBT.<sup>86</sup> Applying this percentage to the number of people in Michigan’s workforce (4,829,177<sup>87</sup>) indicates that there are 183,509 LGBT workers in Michigan.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Michigan to determine how many complaints will be filed annually if these characteristics are added to the employment non-discrimination law. We used the national average complaint rate from a 2008 study that analyzed administrative complaint data from 17 states that prohibited sexual orientation discrimination at that time.<sup>88</sup> The study found that across these states, the average rate of complaints filed on the basis of sexual orientation was 4.7 per 10,000 LGB workers.<sup>89</sup> There is not sufficient data to make a similar calculation of the average rate of complaints file on the basis of gender identity.<sup>90</sup> Therefore, we assume that this rate is also 4.7 per 10,000 transgender workers.

Applying the national complaint rate (4.7 per 10,000 LGBT workers) to the number of LGBT workers in Michigan (183,509) suggests that 86 complaints of sexual orientation and gender identity discrimination would be filed annually if these characteristics were added to the state’s employment non-discrimination law.

### *Cost of Enforcement*

Available data suggest that the additional 86 complaints could be absorbed into the Department’s exiting budget with minimal impact on staff and resources. According to the Department’s five most recent annual reports (2009 through 2013), the Department received an annual average of 2,330 complaints of employment, housing, public accommodations, and public service discrimination.<sup>91</sup> The annual reports do not provide enough data to determine the cost of enforcement per complaint, so it is not possible to precisely estimate any added expense associated with the additional 86 complaints.

However, the data suggest that the additional complaints would have a minimal impact on the Department. Annual fluctuations in the number of complaints filed with the Department have varied by 224 complaints, on average, over the five fiscal year periods from 2009 through 2013.<sup>92</sup> Over this time period, the Department’s budget varied from \$12,778,700 to \$14,700,000.<sup>93</sup> Changes in the budget did not correspond to fluctuations in the number of complaints filed. For example, there was an increase of 347 complaints handled by the Department from fiscal year 2010 to fiscal year 2011, yet the Department’s 2010 budget was the same as its 2011 budget—\$12,778,700.<sup>94</sup> This information suggests that the additional complaints could be absorbed into the existing budget with minimal impact on the Department.

Fiscal Year <sup>95</sup>	Number of Complaints Handled	Budget <sup>96</sup>
2013	2,196	\$14,700,000
2012	2,022	\$13,700,000

2011	2,169	\$12,778,700
2010	2,516	\$12,778,700
2009	2,745	\$13,739,403

Additionally, the House Fiscal Agency analyzed the fiscal impact of 2009 House Bill 4192, which proposed to add sexual discrimination and gender orientation to the Elliott-Larsen Civil Rights Act.<sup>97</sup> The analysis concluded that most of the costs associated with adding the characteristics to the existing law would be reimbursed by either the United States Department of Housing and Urban Development or the United States Equal Employment Opportunity Commission.

## Conclusion

Documented evidence shows that LGBT people face employment discrimination across the country, including in Michigan. There is currently no statewide law that prohibits public and private sector employment discrimination based on sexual orientation or gender identity in Michigan. Adding these characteristics to the Elliott-Larsen Civil Rights Act would provide protection from discrimination to approximately 184,000 LGBT workers in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 86 complaints of sexual orientation or gender identity employment discrimination would be filed in Michigan annually if the law were amended. Given fluctuations in the annual budget and the number of complaints filed, it is likely that the additional 86 complaints would have no noticeable impact on the Michigan Department of Civil Rights' budget.

## About the Williams Institute

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

### **For more information**

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## Endnotes

<sup>1</sup> FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, MICHIGAN RESULTS, NATIONAL CENTER FOR TRANSGENDER GAY AND LESBIAN TASK FORCE, [http://www.endtransdiscrimination.org/PDFs/ntds\\_state\\_mi.pdf](http://www.endtransdiscrimination.org/PDFs/ntds_state_mi.pdf).

<sup>2</sup> These estimates were reached by applying the percentage of people in Michigan that are LGBT (3.8%) to the population of Michigan aged 16 years and older (7,897,753) and the number of people in the Michigan civilian labor force (4,829,177), respectively. Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>; American Community Survey, U.S. Census Bureau, American FactFinder, 2012 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, *available at* [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_DP03](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP03).

<sup>3</sup> Calculated by authors using data from the American Community Survey, 2010-2012 3-Year-Estimates & 2008-2012 5-Year-Estimates, Select Economic Characteristics tables (civilian labor force numbers) available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited July 30, 2014). The actual percentage of the covered workforce is likely slightly higher than 16%. Workforce data for the following localities were not available, so the percentage of the state's workforce in these localities (which do prohibit sexual orientation and gender identity discrimination) is not included in the calculation: Delhi Township, Delta Charter Township, Meridian Township, Oshtemo Township, and Union Township.

<sup>4</sup> A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times, Pew Research Center, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

<sup>5</sup> BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

<sup>6</sup> JAMIE M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN, & MARA KEISLING, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 51 (2011), [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

<sup>7</sup> NATIONAL CENTER FOR TRANSGENDER EQUALITY AND THE NATIONAL GAY AND LESBIAN TASK FORCE, FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_state/ntds\\_state\\_mi.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_state/ntds_state_mi.pdf).

<sup>8</sup> MICHIGAN DEPARTMENT OF CIVIL RIGHTS, REPORT ON LGBT INCLUSION UNDER MICHIGAN LAW WITH RECOMMENDATIONS FOR ACTION (2013), [http://www.michigan.gov/documents/mdcr/MDCR\\_Report\\_on\\_LGBT\\_Inclusion\\_409727\\_7.pdf](http://www.michigan.gov/documents/mdcr/MDCR_Report_on_LGBT_Inclusion_409727_7.pdf), at 38, *citing* K. MORRISON & S. MCCORNACK, A STATE-WIDE STUDY OF LGBTQ ATTITUDES AND EXPERIENCES: CHALLENGES AND CONCERNS (2012) (presented to the Michigan Fairness Forum).

<sup>9</sup> *Id.* at 50.

<sup>10</sup> Equality Michigan, Issues tab, Discrimination tab, <http://www.equalitymi.org/issues/discrimination>.

<sup>11</sup> NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL TRANSGENDER, QUEER, AND HIV-AFFECTED HATE VIOLENCE IN 2013, 2014 RELEASE EDITION <http://www.equalitymi.org/files/2013-ncavp-hv.pdf>, at 105.

<sup>12</sup> MICHIGAN DEPARTMENT OF CIVIL RIGHTS, *supra* note 8, at 48.

<sup>13</sup> *Id.* at 48-49.

<sup>14</sup> *Id.* at 49.

<sup>15</sup> *Id.* at ii.

<sup>16</sup> *Wasek v. Arrow Energy Services, Inc.*, 682 F.3d 463(6th Cir. 2012).

<sup>17</sup> *Kalich v. AT&T Mobility, LLC*, 679 F.3d 464 (6th Cir. 2012) (quoting Kalich's brief).

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<sup>18</sup> *Id.*

<sup>19</sup> Dawn Wolfe, *Ant-Gay Boy Scout Ban Leads to Employment Discrimination – in Michigan*, Pridesource, Feb. 21, 2013, <http://www.pridesource.com/article.html?article=58611>.

<sup>20</sup> Don't Change Yourself: Change the Law – Anthony, <http://dontchangeyourself.com/anthony/>.

<sup>21</sup> Don't Change Yourself: Change the Law – Denise, <http://dontchangeyourself.com/denise/>.

<sup>22</sup> Don't Change Yourself: Change the Law – Teri, <http://dontchangeyourself.com/cna-dont-be-gay/>.

<sup>23</sup> MICHIGAN DEPARTMENT OF CIVIL RIGHTS, *supra* note 8, at 61.

<sup>24</sup> *Id.* at 62.

<sup>25</sup> *Id.* at 61.

<sup>26</sup> *Id.* at 63.

<sup>27</sup> MICHIGAN DEPARTMENT OF CIVIL RIGHTS, *supra* note 8, at iv and 61.

<sup>28</sup> *Id.* at iv.

<sup>29</sup> *Id.* at 69 (quoting J. Cummings, testimony from Jackson forum meeting).

<sup>30</sup> ADAM P. ROMERO, AMANDA K. BAUMLE, M.V. LEE BADGETT & GARY GATES, CENSUS SNAPSHOT: MICHIGAN 2 (2007), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/MichiganCensus2000Snapshot.pdf>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> GARY J. GATES, CAL. CTR. FOR POP. RESEARCH, THE IMPACT OF SEXUAL ORIENTATION ANTI-DISCRIMINATION POLICIES ON THE WAGES OF LESBIANS AND GAY MEN (2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

<sup>34</sup> ROMERO, ROSKY, BADGETT & GATES, *supra* note 30 at 2.

<sup>35</sup> *Id.*

<sup>36</sup> M.V. Lee Badgett, Holning Lau, Brad Sears & Deborah Ho, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*, 84 CHI.-KENT L. REV. 559, 559-60 (2009).

<sup>37</sup> *Id.*

<sup>38</sup> See JEROME HUNT, CTR. AM. PROG. ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 3 (June 2012), [http://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state\\_nondiscrimination.pdf](http://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf).

<sup>39</sup> MICHIGAN DEPARTMENT OF CIVIL RIGHTS, *supra* note 8, at 15.

<sup>40</sup> HB 4192 (Mich. 2009).

<sup>41</sup> SB 1063 (Mich. 2012).

<sup>42</sup> HB 4192 (Mich. 2009).

<sup>43</sup> SB 1063 (Mich. 2012).

<sup>44</sup> MICH. COMP. LAWS § 37.2101 – 37.2804 (2014).

<sup>45</sup> *Id.* § 37.2102.

<sup>46</sup> *Id.* § 37.2601.

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<sup>47</sup> *Id.* § 37.2602.

<sup>48</sup> *Id.* § 37.2605.

<sup>49</sup> MICH. DEP'T OF CIV. RIGHTS, ANNUAL REPORT FY 2012-2013 3, 5, [http://www.michigan.gov/documents/mdcr/2012-2013AnnRept\\_458366\\_7.pdf](http://www.michigan.gov/documents/mdcr/2012-2013AnnRept_458366_7.pdf) (last visited Aug. 26, 2014).

<sup>50</sup> Mich., Exec. Directive No. 2003-24 (2003), <http://www.michigan.gov/granholm/0,4587,7-168-36898-83560--00.html>.

<sup>51</sup> Mich., Exec. Directive No. 2007-24 (2007), <http://www.michigan.gov/granholm/0,4587,7-168-36898-180697--00.html>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Calculated by authors using data from the American Community Survey, 2012 1-Year-Estimates, Michigan: Sex by Class of Worker for the Civilian Population Aged 16 and Over, available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_1YR\\_B24080&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_B24080&prodType=table) (last visited Aug. 26, 2014).

<sup>55</sup> List of local ordinances prohibiting discrimination in public and private sector employment available at: Movement Advancement Project, Equality Maps, State Profile - Michigan, [http://www.lgbtmap.org/equality\\_maps/profile\\_state/23](http://www.lgbtmap.org/equality_maps/profile_state/23). Additionally, one city, Muskegon, prohibits discrimination in public sector employment only. Muskegon, Mich., Resolution Prohibiting Discrimination on the Basis of Sexual Orientation or Gender Identity, August 14, 2012, <http://www.muskegon-mi.gov/cresources/20120823141013649.pdf>.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Muskegon, Mich., Resolution Prohibiting Discrimination on the Basis of Sexual Orientation or Gender Identity, *supra* note 55.

<sup>59</sup> Calculated by authors using data from the American Community Survey, 2010-2012 3-Year-Estimates & 2008-2012 5-Year-Estimates, Select Economic Characteristics tables (civilian labor force numbers) available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Aug. 26, 2014). The actual percentage of the covered workforce is likely slightly higher than 16%. Workforce data for the following localities were not available, so the percentage of the state's workforce in these localities (which do prohibit sexual orientation and gender identity discrimination) is not included in the calculation: Delhi Township, Delta Charter Township, Meridian Township, Oshtemo Township, and Union Township.

<sup>60</sup> Annette Manwell, *Holland Could Face Long Battle Over Human Rights Changes*, HOLLAND SENTINEL, June 19, 2011, <http://www.hollandsentinel.com/x1425876953/Holland-could-face-long-battle-over-human-rights-changes>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Khalil AlHajal, *Gay Rights Ordinance Passes in Royal Oak*, MICHIGAN LIVE, November 6, 2013, [http://www.mlive.com/news/detroit/index.ssf/2013/11/gay\\_rights\\_ordinance\\_passes\\_in.html](http://www.mlive.com/news/detroit/index.ssf/2013/11/gay_rights_ordinance_passes_in.html).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Traverse City Voters Approve Gay-Rights Law*, MORNING SUN, November 20, 2011, <http://www.themorningsun.com/article/20111110/NEWS/311109993>.

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<sup>67</sup> *Id.*

<sup>68</sup> Telephone interview with city clerk, in Mich. (June 19, 2014). The city clerk's name and jurisdiction is not included in this report out of respect for the clerk's privacy.

<sup>69</sup> Joanne Maliszewski, *Hills Talks LGBT Anti-Discrimination*, Observer & Eccentric, June 27, 2014, <http://www.hometownlife.com/article/20140627/NEWS06/306270032/Hills-talks-LGBT-anti-discrimination>.

<sup>70</sup> See BRAD SEARS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

<sup>71</sup> *Id.*

<sup>72</sup> M.V. LEE BADGETT, LAURA E. DURSO, ANGELIKI KASTANIS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, THE BUSINESS IMPACT OF LGBT-SUPPORTIVE WORKPLACE POLICIES (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf>.

<sup>73</sup> Out & Equal, Harris Interactive & Witeck Combs Commc'n, *Majority of Americans: Companies Not Government Should Decide Benefits Offered to Same-Sex Employees*, OUTANDEQUAL.ORG (May 22, 2006), [http://outandequal.org/documents/2006\\_Workplace\\_Survey052306.pdf](http://outandequal.org/documents/2006_Workplace_Survey052306.pdf).

<sup>74</sup> Andras Tilcsik, *Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States*, 117 AM. J. SOC. 586, 590-93 (2011).

<sup>75</sup> Christy Mallory & Brad Sears, *An Evaluation of Local Laws Requiring Government Contractors to Adopt LGBT-Related Workplace Policies*, 5 ALBANY GOV'T L. REV. 478, 481 (2011).

<sup>76</sup> For example, California (CAL. GOV. CODE § 12990 (2013)), Delaware (DEL. CODE ANN. tit., 29 § 6962(d)(7) (2013)), and Maryland (MD. CODE ANN., STATE FIN. & PROC. § 19-101 (LexisNexis 2013)), among others.

<sup>77</sup> Human Rights Campaign, Corporate Employer Database, [http://asp.hrc.org/issues/workplace/search.asp?form=private\\_detailed\\_search.aspx](http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx) (search for Headquarters State: Michigan; Key Policies: Sexual Orientation in Non-discrimination Policy; and Includes Policy: Yes).

<sup>78</sup> Human Rights Campaign, Corporate Employer Database, [http://asp.hrc.org/issues/workplace/search.asp?form=private\\_detailed\\_search.aspx](http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx) (search for Headquarters State: Michigan; Key Policies: Gender Identity in Non-Discrimination Policy; and Includes Policy: Yes).

<sup>79</sup> Policies available on schools' websites and in the Human Rights Campaign's employer database. Employer Database, HRC, [http://asp.hrc.org/issues/workplace/search.asp?form=private\\_detailed\\_search.aspx](http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx) (last visited May 29, 2014).

<sup>80</sup> *Michigan Voters Back Ban on LGBT Discrimination: Survey Findings*, GREENBERG, QUINLAN, ROSNER RESEARCH, Feb. 22, 2011, available at <http://dontchangeyourself.com/wp-content/uploads/2011/09/Quinlan2011.pdf>.

<sup>81</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Public Religion Research Institute Survey (2011) (data and calculations on file with author).

<sup>82</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with author).

<sup>83</sup> M.V. LEE BADGETT, CHRISTOPHER RAMOS & BRAD SEARS, WILLIAMS INST., EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Ramos-Emply-Discrim-1999-2007-Nov-08.pdf>; William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 66, 79-81 (2001).

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<sup>84</sup> *Id.*

<sup>85</sup> See *Workplace*, THE WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Dec. 10, 2013).

<sup>86</sup> Gary J. Gates & Frank Newport, *supra* note 2.

<sup>87</sup> American Community Survey, U.S. Census Bureau, American FactFinder, 2012 ACS Table DP03: Selected Economic Characteristics, 1-Year Estimates, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_1YR\\_DP03](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03).

<sup>88</sup> “National average” refers to the average of the complaint rates in 17 states across the country that prohibited sexual orientation discrimination in 2008. BADGETT, RAMOS & SEARS, *supra* note 83.

<sup>89</sup> The data gathered for the 2008 study included all employment discrimination complaints filed on the basis of sexual orientation; it was not limited to complaints filed by LGB employees. Heterosexual employees may also file complaints under sexual orientation non-discrimination laws if they were discriminated against because of their heterosexuality or because they were perceived to be LGB. However, we use the LGB workforce as the underlying population for purposes of our analysis because LGB employees likely file the vast majority of sexual orientation discrimination complaints. See Rubenstein, *supra* note 83.

<sup>90</sup> BADGETT, RAMOS & SEARS, *supra* note 83, at 5.

<sup>91</sup> See data on complaint filings as reported in MICH. DEP’T OF CIV. RIGHTS, ANNUAL REPORT FY 2012-2013 3, 5, [http://www.michigan.gov/documents/mdcr/2012-2013AnnIRept\\_458366\\_7.pdf](http://www.michigan.gov/documents/mdcr/2012-2013AnnIRept_458366_7.pdf) (last visited Aug. 26, 2014); MICH. DEP’T OF CIV. RIGHTS, ANNUAL REPORT 2011 2, [http://www.michigan.gov/documents/mdcr/2011annualrpt\\_380368\\_7.pdf](http://www.michigan.gov/documents/mdcr/2011annualrpt_380368_7.pdf) (last visited Aug. 26, 2014); MICH. DEP’T OF CIV. RIGHTS, ANNUAL REPORT 2010 4, [http://www.michigan.gov/documents/mdcr/2010annualreport\\_356081\\_7.pdf](http://www.michigan.gov/documents/mdcr/2010annualreport_356081_7.pdf) (last visited Aug. 26, 2014); MICH. DEP’T OF CIV. RIGHTS, ANNUAL REPORT 2009 13, [http://www.michigan.gov/documents/mdcr/AnnualReport2009\\_318265\\_7.pdf](http://www.michigan.gov/documents/mdcr/AnnualReport2009_318265_7.pdf) (last visited Aug. 26, 2014).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> MICH. DEP’T OF CIV. RIGHTS, ANNUAL REPORT 2011, *supra* note 91 at 2, 3; MICH. DEP’T OF CIV. RIGHTS, ANNUAL REPORT 2011, *supra* note 91 at 4, 6.

<sup>95</sup> Data in this table can be found in the annual reports from fiscal year 2009 through 2013, *supra* note 91.

<sup>96</sup> Annual budgets reported here include state and federal funds. See, e.g., MICH. DEP’T OF CIV. RIGHTS, ANNUAL REPORT FY 2012-2013, *supra* note 91 at 3.

<sup>97</sup> HOUSE FISCAL AGENCY, LEGISLATIVE ANALYSIS, CIVIL RIGHTS: SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION, HOUSE BILL 4192 (2008), <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/pdf/2009-HLA-4192-1.pdf>. According to the MDCR ANNUAL REPORT, *supra* note 8 at 3:

MDCR is recognized by EEOC as the Fair Employment Practice Agency for Michigan. This permits EEOC to authorize state and/or local government to assist it in meeting its statutory mandate. EEOC supports MDCR’s enforcement of Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act (ADEA) of 1967, as amended; the Americans with Disabilities Act (ADA) of 1990, as amended; and the Genetic Information Nondiscrimination Act of 2008.

MDCR is also a HUD-designated Fair Housing Assistance Program Agency. Under 24 CFR 85, HUD provides funds to MDCR to process complaints under the Fair Housing Act, provide training under the Fair Housing Act about state or

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local fair housing law and cover administrative costs associated with complaint processing, creation and maintenance of data and information systems, and fair housing education and outreach.