
By: **Chairman, Commerce and Government Matters Committee**
(Departmental - Human Relations Commission)

Introduced and read first time: January 21, 2000
Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Human Relations Commission - Hearings - Relief**

3 FOR the purpose of altering various provisions relating to the Maryland Human
4 Relations Commission; clarifying that certain documents shall be certified to the
5 general counsel; specifying that the Executive Director, rather than the
6 Chairman, shall cause a certain notice to be issued and served; specifying that
7 an administrative law judge, rather than a hearing examiner, shall hear certain
8 cases including civil actions and an election process for hearing cases; expanding
9 relief to include compensatory damages for an individual, subject to certain
10 limitations; authorizing the award of attorney fees and expert witness fees to
11 the Commission; altering the jurisdiction of the Commission over certain
12 employers; permitting the Commission to defer to local agencies in certain cases;
13 making stylistic changes; and generally relating to hearings and relief under the
14 Human Relations Commission law.

15 BY repealing and reenacting, with amendments,
16 Article 49B - Human Relations Commission
17 Section 11 and 15(b)
18 Annotated Code of Maryland
19 (1998 Replacement Volume and 1999 Supplement)

20 BY adding to
21 Article 49B - Human Relations Commission
22 Section 11A, 11B, 11C, and 11D
23 Annotated Code of Maryland
24 (1998 Replacement Volume and 1999 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article 49B - Human Relations Commission**

28 11.

29 (a) (1) In case of failure to reach an agreement for the elimination of the acts
30 of discrimination and upon the entry of findings to that effect, the entire file including
31 the complaint and any and all findings made shall be certified to THE GENERAL
32 COUNSEL. The [Chairman] EXECUTIVE DIRECTOR shall cause a written notice to be
33 issued and served in the name of the Commission together with a copy of the
34 complaint requiring the respondent to answer the charges of the complaint at a public
35 hearing before [a hearing examiner at a time and place certified in the notice] AN
36 ADMINISTRATIVE LAW JUDGE OR IN A CIVIL ACTION ELECTED UNDER § 11A OF THIS
37 SUBTITLE BY A COMPLAINANT, RESPONDENT, OR AGGRIEVED PARTY ON WHOSE
38 BEHALF THE COMPLAINT WAS FILED.

39 (2) [The] IF A CIVIL ACTION IS NOT ELECTED UNDER § 11A OF THIS
40 SUBTITLE, THE case shall [thereupon] be heard by [a hearing examiner] AN
41 ADMINISTRATIVE LAW JUDGE and the hearing shall be held in the county where the
42 alleged act of discrimination took place. A transcript of all testimony at the hearing

43 shall be made. The case in support of the complaint shall be presented at the hearing
44 by the general counsel of the Commission.

45 (b) The respondent may file a written answer to the complaint and appear at
46 the hearing in person, or otherwise, with or without counsel. The respondent may
47 submit testimony and shall be fully heard. [He] THE RESPONDENT may examine and
48 cross-examine witnesses.

49 (c) The Commission may permit reasonable amendment to be made to any
50 complaint or answer. Testimony taken at the hearing shall be under oath and
51 recorded.

52 (d) (1) In the administration and enforcement of the provisions of these
53 several subtitles, the Commission has power to:

54 (i) Administer oaths and to issue subpoenas;

55 (ii) Compel the attendance and testimony of witnesses; and

56 (iii) Compel the production of books, papers, records and documents
57 relevant or necessary for proceedings under the particular subtitle.

58 (2) Any subpoena shall be served by:

59 (i) Certified mail, requesting restricted delivery - Show to whom,
60 date, address of delivery; or

61 (ii) Personal service of process by:

62 1. An employee of the Commission;

1 EQUITABLE RELIEF THAT THE COMPLAINING PARTY IS ENTITLED TO RECOVER
2 UNDER ANY OTHER PROVISION OF LAW.

3 (4) THE SUM OF THE AMOUNT OF COMPENSATORY DAMAGES AWARDED
4 UNDER THIS SECTION FOR FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN,
5 SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, OR
6 NONPECUNIARY LOSSES, MAY NOT EXCEED, FOR EACH COMPLAINING PARTY:

7 (I) IN THE CASE OF A RESPONDENT WHO HAS 15 OR FEWER
8 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
9 PRECEDING CALENDAR YEAR, \$25,000;

10 (II) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 15 AND
11 FEWER THAN 101 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
12 CURRENT OR PRECEDING CALENDAR YEAR, \$50,000;

13 (III) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 100 AND
14 FEWER THAN 201 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
15 CURRENT OR PRECEDING CALENDAR YEAR, \$100,000;

16 (IV) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 200 AND
17 FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
18 CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

19 (V) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 500
20 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
21 PRECEDING CALENDAR YEAR, \$300,000.

22 (5) The award of [monetary] BACK PAY relief UNDER PARAGRAPH (2) OF
23 THIS SUBSECTION shall be limited to a 36-month period. The complainant may not be
24 awarded [monetary] BACK PAY relief for losses incurred between the time of the
25 Commission's final determination and the final determination by the circuit court or
26 higher appellate court, as the case may be. Interim earning or amounts [earnable]
27 EARNED with reasonable diligence by the person or persons discriminated against
28 shall operate to reduce the [monetary] BACK PAY relief otherwise allowable. THE
29 ADMINISTRATIVE LAW JUDGE MAY ALSO AWARD ATTORNEY FEES AND EXPERT
30 WITNESS FEES TO THE COMMISSION. In cases of discrimination other than those
31 involving employment, in addition to the award of civil penalties as specifically
32 provided in this article, nonmonetary relief may be granted to the complainant,
33 except that in no event shall an order be issued that substantially affects the cost,
34 level, or type of any transportation services. In cases involving transportation services
35 which are supported fully or partially with funds from the Maryland Department of
36 Transportation, no order may be issued which would require costs, level, or type of
37 transportation services different from or in excess of those required to meet U.S.
38 Department of Transportation regulations adopted pursuant to Section 504 of the
39 Rehabilitation Act of 1973, codified as 29 U.S.C. § 794, nor would any such order be
40 enforceable under Section 12(a) of this subtitle.

1 (f) The provisions of subsection (e) granting the authority to award monetary
2 relief to a complainant shall apply only to those complaints filed with the Commission
3 on or after July 1, 1977.

4 (g) If upon all the evidence, the [hearing examiner] ADMINISTRATIVE LAW
5 JUDGE or the Commission finds that the respondent has not engaged in any alleged
6 discriminatory act within the scope of the particular subtitle, it shall state its findings
7 of fact and shall similarly issue and file an order dismissing the complaint.

8 11A.

9 (A) (1) WHEN A CHARGE IS FILED UNDER § 11 OF THIS SUBTITLE, A
10 COMPLAINANT, RESPONDENT, OR AGGRIEVED PERSON ON WHOSE BEHALF THE
11 COMPLAINT WAS FILED MAY ELECT TO HAVE THE CLAIMS ASSERTED IN THE
12 CHARGE DECIDED IN A CIVIL ACTION UNDER SUBSECTION (B) OF THIS SECTION
13 INSTEAD OF A HEARING UNDER § 11 OF THIS SUBTITLE.

14 (2) THE ELECTION AUTHORIZED UNDER PARAGRAPH (1) OF THIS
15 SUBSECTION SHALL BE MADE NO LATER THAN 20 DAYS AFTER THE COMPLAINANT,
16 RESPONDENT, OR AGGRIEVED PERSON ON WHOSE BEHALF THE COMPLAINT WAS
17 FILED RECEIVES SERVICE UNDER § 11 OF THIS SUBTITLE OR, IN THE CASE OF THE
18 COMMISSION, NO LATER THAN 20 DAYS AFTER SERVICE UNDER § 11 OF THIS
19 SUBTITLE IS MADE TO ALL PARTIES.

20 (B) (1) A PERSON WHO MAKES AN ELECTION UNDER SUBSECTION (A) OF
21 THIS SECTION SHALL GIVE NOTICE OF THE ELECTION TO THE COMMISSION AND TO
22 ALL OTHER COMPLAINANTS, RESPONDENTS, AND AGGRIEVED PERSONS ON WHOSE
23 BEHALF THE COMPLAINTS WERE FILED TO WHOM THE CHARGE RELATES.

24 (2) IF AN ELECTION IS NOT MADE UNDER SUBSECTION (A) OF THIS
25 SECTION, THE COMMISSION SHALL PROVIDE AN OPPORTUNITY FOR A HEARING ON
26 THE RECORD WITH RESPECT TO A CHARGE ISSUED UNDER § 11 OF THIS SUBTITLE.

27 (3) IF AN ELECTION IS MADE TO PURSUE JUDICIAL ACTION UNDER
28 SUBSECTION (A) OF THIS SECTION, THE COMMISSION SHALL COMMENCE AND
29 MAINTAIN, NO LATER THAN 60 DAYS AFTER THE ELECTION IS MADE, A CIVIL ACTION
30 IN THE COUNTY WHERE THE DISCRIMINATORY EMPLOYMENT PRACTICE IS ALLEGED
31 TO HAVE OCCURRED.

32 (C) IN A CIVIL ACTION UNDER THIS SECTION, IF THE COURT FINDS THAT A
33 DISCRIMINATORY EMPLOYMENT PRACTICE HAS OCCURRED, THE COURT MAY:

34 (1) ENJOIN THE RESPONDENT FROM ENGAGING IN THE UNLAWFUL
35 EMPLOYMENT PRACTICE;

36 (2) ORDER APPROPRIATE AFFIRMATIVE RELIEF, INCLUDING
37 REINSTATEMENT OR HIRING OF EMPLOYEES WITH OR WITHOUT BACK PAY PAYABLE
38 BY THE RESPONDENT RESPONSIBLE FOR THE UNLAWFUL EMPLOYMENT PRACTICE;

39 (3) ORDER COMPENSATORY DAMAGES;

1 (4) AWARD ATTORNEY FEES AND WITNESS FEES, WHICH MAY INCLUDE
2 REASONABLE EXPERT WITNESS FEES, TO THE COMMISSION; OR

3 (5) ORDER ANY OTHER EQUITABLE RELIEF THAT THE COURT DEEMS
4 APPROPRIATE.

5 (D) (1) COMPENSATORY DAMAGES AWARDED UNDER THIS SECTION ARE IN
6 ADDITION TO ANY BACK PAY, OR INTEREST ON THE BACK PAY, AND ANY OTHER
7 EQUITABLE RELIEF THAT THE COMPLAINING PARTY IS ENTITLED TO RECOVER
8 UNDER ANY OTHER PROVISION OF LAW.

9 (2) THE SUM OF THE AMOUNT OF COMPENSATORY DAMAGES AWARDED
10 UNDER THIS SECTION FOR FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN,
11 SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, OR
12 NONPECUNIARY LOSSES, MAY NOT EXCEED, FOR EACH COMPLAINING PARTY:

13 (I) IN THE CASE OF A RESPONDENT WHO HAS 15 OR FEWER
14 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
15 PRECEDING CALENDAR YEAR, \$25,000;

16 (II) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 15 AND
17 FEWER THAN 101 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
18 CURRENT OR PRECEDING CALENDAR YEAR, \$50,000;

19 (III) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 100 AND
20 FEWER THAN 201 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
21 CURRENT OR PRECEDING CALENDAR YEAR, \$100,000;

22 (IV) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 200 AND
23 FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
24 CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

25 (V) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 500
26 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
27 PRECEDING CALENDAR YEAR, \$300,000.

28 (E) IF A COMPLAINING PARTY SEEKS COMPENSATORY DAMAGES UNDER THIS
29 SECTION:

30 (1) ANY PARTY MAY DEMAND A TRIAL BY JURY; AND

31 (2) THE COURT SHALL NOT INFORM THE JURY OF THE LIMITATIONS
32 DESCRIBED IN SUBSECTION (D) OF THIS SECTION.

33 (F) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE SCOPE OF, OR THE
34 RELIEF AVAILABLE UNDER, ANY OTHER PROVISION OF STATE OR FEDERAL LAW.

1 11B.

2 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
3 COMPLAINING PARTY MAY BRING A CIVIL ACTION ALLEGING AN UNLAWFUL
4 EMPLOYMENT PRACTICE AGAINST A RESPONDENT IF:

5 (I) THE COMPLAINANT INITIALLY FILED A COMPLAINT WITH THE
6 COMMISSION AGAINST THE RESPONDENT ALLEGING THE UNLAWFUL EMPLOYMENT
7 PRACTICE; AND

8 (II) AT LEAST 180 DAYS HAVE ELAPSED SINCE THE FILING OF THE
9 COMPLAINT.

10 (2) (I) A COMPLAINING PARTY MAY NOT COMMENCE A CIVIL ACTION
11 UNDER THIS SUBSECTION FOR AN UNLAWFUL EMPLOYMENT PRACTICE THAT FORMS
12 THE BASIS OF A CHARGE ISSUED BY THE COMMISSION IF A HEARING ON THE
13 RECORD UNDER THIS SUBTITLE WITH RESPECT TO THE CHARGE HAS BEEN
14 COMMENCED BY AN ADMINISTRATIVE LAW JUDGE.

15 (II) AFTER THE BEGINNING OF THE TRIAL OF A CIVIL ACTION THAT
16 IS COMMENCED BY THE COMPLAINANT UNDER AN ACT OF CONGRESS OR THIS
17 SUBTITLE AND THAT SEEKS RELIEF FOR AN ALLEGED UNLAWFUL EMPLOYMENT
18 PRACTICE, AN ADMINISTRATIVE LAW JUDGE MAY NOT CONTINUE ADMINISTRATIVE
19 PROCEEDINGS UNDER THIS SUBTITLE FOR THE SAME ALLEGED UNLAWFUL
20 EMPLOYMENT PRACTICE.

21 (3) UPON TIMELY APPLICATION, THE COURT MAY PERMIT THE
22 COMMISSION TO INTERVENE IN THE CIVIL ACTION UPON CERTIFICATION THAT THE
23 CASE IS OF IMPORTANCE TO THE GENERAL PUBLIC.

24 (B) THE CIVIL ACTION MAY BE BROUGHT IN THE CIRCUIT COURT OF THE
25 COUNTY:

26 (1) WHERE THE UNLAWFUL EMPLOYMENT PRACTICE IS ALLEGED TO
27 HAVE BEEN COMMITTED; OR

28 (2) WHERE THE RECORDS RELEVANT TO THE UNLAWFUL EMPLOYMENT
29 PRACTICE ARE MAINTAINED AND ADMINISTERED.

30 (C) IF THE COURT FINDS THAT THE RESPONDENT HAS ENGAGED IN OR IS
31 ENGAGING IN AN UNLAWFUL EMPLOYMENT PRACTICE CHARGED IN THE
32 COMPLAINT, THE COURT MAY GRANT:

33 (1) ANY RELIEF THAT A COURT COULD GRANT IN A CIVIL ACTION UNDER
34 § 11A OF THIS SUBTITLE; AND

35 (2) PUNITIVE DAMAGES AGAINST THE RESPONDENT OTHER THAN A
36 GOVERNMENT, GOVERNMENT AGENCY, OR A POLITICAL SUBDIVISION.

1 (D) COMPENSATORY DAMAGES AWARDED UNDER THIS SUBSECTION ARE IN
2 ADDITION TO ANY BACK PAY, OR ANY INTEREST ON THE BACK PAY, AND ANY OTHER
3 EQUITABLE RELIEF THAT THE COMPLAINING PARTY IS ENTITLED TO RECOVER
4 UNDER ANY OTHER PROVISION OF LAW.

5 (E) THE SUM OF THE AMOUNT OF COMPENSATORY DAMAGES AWARDED
6 UNDER THIS SECTION FOR FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN,
7 SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE,
8 AND OTHER NONPECUNIARY LOSSES, AND THE AMOUNT OF THE PUNITIVE DAMAGES
9 AWARDED UNDER THIS SECTION, MAY NOT EXCEED, FOR EACH COMPLAINING
10 PARTY:

11 (1) IN THE CASE OF A RESPONDENT WHO HAS 15 OR FEWER EMPLOYEES
12 IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING
13 CALENDAR YEAR, \$25,000;

14 (2) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 15 AND
15 FEWER THAN 101 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
16 CURRENT OR PRECEDING CALENDAR YEAR, \$50,000;

17 (3) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 100 AND
18 FEWER THAN 201 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
19 CURRENT OR PRECEDING CALENDAR YEAR, \$100,000;

20 (4) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 200 AND
21 FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
22 CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

23 (5) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 500
24 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
25 PRECEDING CALENDAR YEAR, \$300,000.

26 (F) IF A COMPLAINING PARTY SEEKS COMPENSATORY OR PUNITIVE DAMAGES
27 UNDER THIS SECTION:

28 (1) ANY PARTY MAY DEMAND A TRIAL BY JURY; AND

29 (2) THE COURT SHALL NOT INFORM THE JURY OF THE LIMITATIONS
30 DESCRIBED IN SUBSECTION (E) OF THIS SECTION.

31 (G) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE SCOPE OF, OR THE
32 RELIEF AVAILABLE UNDER, ANY OTHER PROVISION OF STATE OR FEDERAL LAW.

33 11C.

34 (A) WHENEVER THE COMMISSION, PURSUANT TO §§ 9A AND 10 OF THIS
35 SUBTITLE, HAS FOUND PROBABLE CAUSE TO BELIEVE THAT A PERSON OR GROUP OF
36 PERSONS IS ENGAGED IN A PATTERN OR PRACTICE OF RESISTANCE TO FULL
37 ENJOYMENT OF ANY OF THE RIGHTS GRANTED BY THIS SUBTITLE, OR THAT ANY
38 GROUP OF PERSONS HAS BEEN DENIED ANY RIGHTS GRANTED BY THIS SUBTITLE

1 AND THAT THE DENIAL OR RESISTANCE RAISES AN ISSUE OF GENERAL PUBLIC
2 IMPORTANCE, THE COMMISSION MAY COMMENCE A CIVIL ACTION IN THE
3 APPROPRIATE CIRCUIT COURT.

4 (B) (1) IN A CIVIL ACTION UNDER SUBSECTION (A) OF THIS SECTION, THE
5 COURT MAY:

6 (I) AWARD PREVENTIVE RELIEF, INCLUDING A PERMANENT OR
7 TEMPORARY INJUNCTION, RESTRAINING ORDER, OR OTHER ORDER AGAINST THE
8 PERSON RESPONSIBLE FOR A VIOLATION OF THIS SUBTITLE AS IS NECESSARY TO
9 ASSURE FULL ENJOYMENT OF THE RIGHTS GRANTED BY THIS SUBTITLE;

10 (II) AWARD OTHER RELIEF AS THE COURT DEEMS APPROPRIATE,
11 INCLUDING MONETARY DAMAGES TO PERSONS AGGRIEVED; AND

12 (III) TO VINDICATE THE PUBLIC INTEREST, ASSESS A CIVIL
13 PENALTY AGAINST THE RESPONDENT:

14 1. IN AN AMOUNT NOT EXCEEDING \$50,000 FOR A FIRST
15 VIOLATION; AND

16 2. IN AN AMOUNT NOT EXCEEDING \$100,000 FOR ANY
17 SUBSEQUENT VIOLATION.

18 (2) IN A CIVIL ACTION UNDER THIS SECTION, THE COURT MAY ALLOW
19 THE COMMISSION REASONABLE ATTORNEY AND EXPERT WITNESS FEES AND COSTS.

20 (C) (1) UPON TIMELY APPLICATION, A PERSON MAY INTERVENE IN A CIVIL
21 ACTION COMMENCED BY THE COMMISSION UNDER SUBSECTION (A) OF THIS
22 SECTION IF THE ACTION INVOLVES:

23 (I) AN ALLEGED DISCRIMINATORY EMPLOYMENT PRACTICE TO
24 WHICH THE PERSON IS A PARTY; OR

25 (II) A CONCILIATION AGREEMENT TO WHICH THE PERSON IS A
26 PARTY.

27 (2) THE COURT MAY GRANT APPROPRIATE RELIEF TO ANY
28 INTERVENING PARTY AS IS AUTHORIZED TO BE GRANTED TO A PLAINTIFF IN A CIVIL
29 ACTION UNDER § 11A OF THIS SUBTITLE.

30 11D.

31 IN CASES AGAINST EMPLOYERS WITH FEWER THAN 15 EMPLOYEES, THE
32 COMMISSION MAY DEFER TO ANY LOCAL AGENCY WITH SUBSTANTIALLY
33 EQUIVALENT ENFORCEMENT POWERS AND REMEDIES, UNLESS THE COMPLAINING
34 PARTY OBJECTS TO THE REFERRAL.

1 15.

2 (b) The term "employer" means a person engaged in an industry or business
3 who has [fifteen] ONE or more employees for each working day in each of twenty or
4 more calendar weeks in the current or preceding calendar year, and any agent of such
5 a person; such term does include the State of Maryland to the extent as may be
6 provided in this article but such term does not include a bona fide private
7 membership club (other than a labor organization) which is exempt from taxation
8 under § 501(c) of the Internal Revenue Code.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2000.