

CHAPTER 176

(Senate Bill 678)

AN ACT concerning

Maryland Human Relations Commission – Hearings and Civil Actions – Relief

FOR the purpose of altering various provisions of the Maryland Human Relations Commission law; ~~providing that an administrative law judge oversees certain proceedings before the Commission; providing~~ requiring certain cases to be heard by an administrative law judge, rather than a hearing examiner; requiring that a complaint of discrimination and certain documents shall be certified to the general counsel of the Commission rather than the Commission chairman; altering the circumstances under which a certification is required to be made; requiring that the Executive Director of the Commission, rather than the Commission chairman, cause a certain notice to be issued and served; providing a process for electing to file a civil action rather than an administrative hearing concerning certain acts of discrimination; authorizing a complainant to bring a civil action alleging a discriminatory act or elect to have a civil action brought by the Commission; providing a process for the filing of a civil action by the Commission or a complainant; expanding the relief available for certain acts of discrimination to include an award of certain compensatory damages, punitive damages, and attorney attorney's fees and expert witness fees under certain circumstances; ~~establishing that certain limitations on compensatory and punitive damages shall increase by a certain amount each year;~~ authorizing a complainant to demand a trial by jury under certain circumstances; providing a process for a certain person or the Commission to intervene in ~~a civil action brought by the Commission~~ certain civil actions; authorizing the court to award certain relief to an intervening ~~person~~ party; making stylistic and conforming changes; repealing certain obsolete provisions; providing for the construction of this Act; providing for the application of this Act; and generally relating to hearings and relief under the Maryland Human Relations Commission law.

BY repealing and reenacting, with amendments,
 Article 49B – Human Relations Commission
 Section 11
 Annotated Code of Maryland
 (2003 Replacement Volume and 2006 Supplement)

BY adding to

Article 49B – Human Relations Commission
Section 11A through 11D
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)

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

Article 49B – Human Relations Commission

11.

(a) (1) In case of failure to reach an agreement for the **REMEDY AND** elimination of the acts of discrimination and upon the entry of findings to that effect, the entire file including the complaint and any and all findings made shall be certified to **THE GENERAL COUNSEL OF THE COMMISSION.**

(2) The [Chairman] **EXECUTIVE DIRECTOR OF THE COMMISSION** shall cause a written notice to be issued and served in the name of the Commission together with a copy of the complaint requiring the respondent to answer the charges of the complaint at a public hearing [before a hearing examiner at a time and place certified in the notice]:

(I) **BEFORE AN ADMINISTRATIVE LAW JUDGE AT A TIME AND PLACE CERTIFIED IN THE NOTICE; OR**

(II) **IN A CIVIL ACTION ELECTED UNDER § 11A OF THIS SUBTITLE BY A COMPLAINANT.**

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

(4) A transcript of all testimony at the hearing shall be made.

(5) The case in support of the complaint shall be presented at the hearing by the general counsel of the Commission.

(b) (1) The respondent may file a written answer to the complaint and appear at the hearing in person, or otherwise, with or without counsel.

(2) The respondent may submit testimony and shall be fully heard.

(3) [He] **THE RESPONDENT** may examine and cross-examine witnesses.

(c) (1) The Commission may permit reasonable amendment to be made to any complaint or answer.

(2) Testimony taken at the hearing shall be under oath and recorded.

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

(i) Administer oaths and to issue subpoenas;

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

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

(2) Any subpoena shall be served by:

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

(ii) Personal service of process by:

1. An employee of the Commission;

2. Any person who is not a party and is not less than 18 years of age; or

3. The sheriff or deputy sheriff of the political subdivision in which is located the residence of the person or the main office of the firm, association, partnership or corporation against whom or which the subpoena is issued.

(3) (i) In case of disobedience to a subpoena, the Commission may apply to a circuit court in any county for an order requiring the attendance and testimony of witnesses and the production of books, papers, records, and documents.

(ii) In case of contumacy or refusal to obey a subpoena for the attendance of a witness or the production of books, papers, records, and documents, after notice to the person subpoenaed as a witness or directed to produce books, papers, records and documents, and upon a finding that the attendance and testimony of the witness or the production of the books, papers, records and documents is relevant or necessary for the proceedings of the Commission, the court may issue an order requiring the attendance and testimony of the witness and the production of the books, papers, records and documents.

(iii) Any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(iv) An order issued by the court under this subsection shall be served on the person to whom it is directed by the sheriff or deputy sheriff of the political subdivision where the residence or main office of the person is located.

(e) (1) If [upon], **AFTER REVIEWING** all **OF** the evidence, the [hearing examiner] **ADMINISTRATIVE LAW JUDGE** finds that the respondent has engaged in any discriminatory act within the scope of [any of these subtitles] **THIS ARTICLE**, the [hearing examiner] **ADMINISTRATIVE LAW JUDGE** shall so state the findings.

(2) The [hearing examiner] **ADMINISTRATIVE LAW JUDGE** shall issue and cause to be served upon the respondent an order requiring the respondent to cease and desist from the discriminatory acts and to take affirmative action to effectuate the purposes of the particular subtitle.

(3) If the respondent is found to have engaged in or to be engaging in an unlawful employment practice charged in the complaint, the remedy may include[, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief that is deemed appropriate.]:

(I) **ENJOINING THE RESPONDENT FROM ENGAGING IN THE DISCRIMINATORY ACT;**

(II) ORDERING APPROPRIATE AFFIRMATIVE RELIEF, INCLUDING THE REINSTATEMENT OR HIRING OF EMPLOYEES, WITH OR WITHOUT BACK PAY;

(III) AWARDING COMPENSATORY DAMAGES; OR

(IV) ORDERING ANY OTHER EQUITABLE RELIEF THE COURT CONSIDERS APPROPRIATE.

(4) COMPENSATORY DAMAGES AWARDED UNDER THIS SUBSECTION ARE IN ADDITION TO:

(I) BACK PAY OR INTEREST ON BACK PAY THAT THE COMPLAINANT MAY RECOVER UNDER ANY OTHER PROVISION OF LAW; AND

(II) ANY OTHER EQUITABLE RELIEF THAT A COMPLAINANT MAY RECOVER UNDER ANY OTHER PROVISION OF LAW.

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

(I) \$50,000 IF THE RESPONDENT EMPLOYS NOT FEWER THAN 15 AND NOT MORE THAN 100 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR;

(II) \$100,000, IF THE RESPONDENT EMPLOYS NOT FEWER THAN 101 AND NOT MORE THAN 200 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR;

(III) \$200,000, IF THE RESPONDENT EMPLOYS NOT FEWER THAN 201 AND NOT MORE THAN 500 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR; AND

(IV) \$300,000, IF THE RESPONDENT EMPLOYS NOT FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR.

~~(6) (I) THE LIMITATIONS ON COMPENSATORY DAMAGES PROVIDED UNDER PARAGRAPH (5) OF THIS SUBSECTION SHALL INCREASE BY \$15,000 ON JANUARY 1 OF EACH YEAR BEGINNING JANUARY 1, 2009.~~

~~(H) THE INCREASED AMOUNT APPLIES TO CAUSES OF ACTION ARISING BETWEEN JANUARY 1 AND DECEMBER 31 OF THE YEAR THE INCREASE TAKES EFFECT.~~

~~(7) (6)~~ [The] **IN CASE OF AN** award of [monetary relief shall be limited to a 36-month period. The complainant may not be awarded monetary relief for losses incurred between the time of the Commission's final determination and the final determination by the circuit court or higher appellate court, as the case may be. Interim] **BACK PAY UNDER PARAGRAPH (3) OF THIS SUBSECTION, INTERIM** earning or amounts [earnable] **EARNED** with reasonable diligence by the person or persons discriminated against shall operate to reduce the [monetary relief] **BACK PAY** otherwise allowable.

~~(8) (7)~~ In cases of discrimination other than those involving employment, in addition to the award of civil penalties as specifically provided in this article, nonmonetary relief may be granted to the complainant, except that in no event shall an order be issued that substantially affects the cost, level, or type of any transportation services.

~~(9) (8)~~ In cases involving transportation services which are supported fully or partially with funds from the Maryland Department of Transportation, no order may be issued which would require costs, level, or type of transportation services different from or in excess of those required to meet U.S. Department of Transportation regulations adopted pursuant to Section 504 of the Rehabilitation Act of 1973, codified as 29 U.S.C. § 794, nor would any such order be enforceable under [Section 12(a)] **§ 12(A)** of this subtitle.

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

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

11A.

(A) (1) WHEN A COMPLAINT IS FILED UNDER § 11 OF THIS SUBTITLE, A COMPLAINANT MAY ELECT TO HAVE THE CLAIMS ASSERTED IN THE COMPLAINT DETERMINED IN A CIVIL ACTION BROUGHT BY THE COMMISSION ON THE COMPLAINANT'S BEHALF, IF:

(I) THE COMMISSION FINDS THE RESPONDENT HAS ENGAGED IN, OR IS ENGAGING IN A DISCRIMINATORY ACT; AND

(II) THERE IS A FAILURE TO REACH AN AGREEMENT FOR THE REMEDY AND ELIMINATION OF THE DISCRIMINATORY ACT.

(2) THE ELECTION AUTHORIZED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE MADE NOT LATER THAN 30 DAYS AFTER THE COMPLAINANT OR RESPONDENT RECEIVES SERVICE UNDER § 11(A)(2) OF THIS SUBTITLE.

(3) IF AN ELECTION IS NOT MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSION SHALL PROVIDE AN OPPORTUNITY FOR A HEARING AS PROVIDED UNDER § 11(A)(3) OF THIS SUBTITLE.

(B) WHEN A COMPLAINT IS FILED UNDER § 11 OF THIS SUBTITLE, THE COMMISSION MAY ELECT TO HAVE THE CLAIMS ASSERTED IN THE COMPLAINT DETERMINED IN A CIVIL ACTION BROUGHT ON THE COMMISSION'S OWN BEHALF, IF:

(1) THE COMMISSION FINDS THE RESPONDENT HAS ENGAGED IN, OR IS ENGAGING IN A DISCRIMINATORY ACT; AND

(2) THERE IS A FAILURE TO REACH AN AGREEMENT FOR THE REMEDY AND ELIMINATION OF THE DISCRIMINATORY ACT.

(C) (1) IF A COMPLAINANT MAKES AN ELECTION UNDER SUBSECTION (A) OF THIS SECTION, THAT INDIVIDUAL SHALL GIVE NOTICE OF THE ELECTION TO THE COMMISSION AND TO ALL OTHER COMPLAINANTS AND RESPONDENTS.

(2) IF THE COMMISSION MAKES AN ELECTION UNDER SUBSECTION (B) OF THIS SECTION, THE COMMISSION SHALL GIVE NOTICE OF THE ELECTION TO ALL COMPLAINANTS AND RESPONDENTS.

(3) NOT LATER THAN 60 DAYS AFTER THE ELECTION IS MADE BY ANY PARTY, THE COMMISSION SHALL FILE A CIVIL ACTION IN THE COURT OF THE COUNTY WHERE THE ALLEGED ACT OF DISCRIMINATION TOOK PLACE.

(D) IF THE COURT FINDS THAT A DISCRIMINATORY ACT TOOK PLACE, THE COURT MAY PROVIDE THE REMEDIES SPECIFIED IN § 11(E)(3) THROUGH (6) OF THIS SUBTITLE.

(E) IF THE COMMISSION SEEKS COMPENSATORY DAMAGES UNDER THIS SECTION:

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

(2) THE COURT MAY NOT INFORM THE JURY OF THE LIMITATIONS ON COMPENSATORY DAMAGES IMPOSED UNDER § 11(E)(5) OF THIS SUBTITLE.

11B.

(A) IN ADDITION TO THE RIGHT TO MAKE AN ELECTION AUTHORIZED UNDER § 11A OF THIS SUBTITLE, A COMPLAINANT MAY BRING A CIVIL ACTION AGAINST THE RESPONDENT ALLEGING A DISCRIMINATORY ACT IF:

(1) THE COMPLAINANT INITIALLY FILED AN ADMINISTRATIVE CHARGE OR A COMPLAINT UNDER FEDERAL, STATE, OR LOCAL LAW ALLEGING A DISCRIMINATORY ACT BY THE RESPONDENT; AND

(2) AT LEAST 180 DAYS HAVE ELAPSED SINCE THE FILING OF THE ADMINISTRATIVE CHARGE OR COMPLAINT.

(B) A CIVIL ACTION UNDER THIS SECTION MAY BE FILED IN THE CIRCUIT COURT OF THE COUNTY WHERE THE ALLEGED ACT OF DISCRIMINATION TOOK PLACE.

(C) IN ADDITION TO THE RELIEF AUTHORIZED UNDER SUBSECTIONS (D) AND (E) OF THIS SECTION, THE COURT MAY AWARD PUNITIVE DAMAGES IF:

(1) THE RESPONDENT IS NOT A GOVERNMENT ENTITY OR POLITICAL SUBDIVISION; AND

(2) THE COURT FINDS THAT THE RESPONDENT HAS ENGAGED IN OR IS ENGAGING IN AN UNLAWFUL EMPLOYMENT PRACTICE WITH ACTUAL MALICE.

(D) COMPENSATORY DAMAGES AWARDED UNDER THIS SECTION ARE IN ADDITION TO:

(1) BACK PAY OR INTEREST ON BACK PAY THAT THE COMPLAINANT IS ENTITLED TO RECOVER UNDER ANY OTHER PROVISION OF LAW; AND

(2) ANY OTHER EQUITABLE RELIEF THE COMPLAINANT IS ENTITLED TO RECOVER UNDER ANY OTHER PROVISION OF LAW.

(E) THE SUM OF THE AMOUNT OF COMPENSATORY DAMAGES AWARDED TO EACH COMPLAINANT UNDER THIS SECTION, FOR FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES, AND THE AMOUNT OF ~~PUNATIVE~~ PUNITIVE DAMAGES AWARDED UNDER THIS SECTION MAY NOT EXCEED:

(1) \$50,000 IF THE RESPONDENT EMPLOYS NOT FEWER THAN 15 AND NOT MORE THAN 100 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR;

(2) \$100,000, IF THE RESPONDENT EMPLOYS NOT FEWER THAN 101 AND NOT MORE THAN 200 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR;

(3) \$200,000, IF THE RESPONDENT EMPLOYS NOT FEWER THAN 201 AND NOT MORE THAN 500 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR; AND

(4) \$300,000, IF THE RESPONDENT EMPLOYS NOT FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR.

~~**(F) (1) THE LIMITATIONS ON COMPENSATORY AND PUNATIVE DAMAGES PROVIDED UNDER SUBSECTION (E) OF THIS SECTION SHALL**~~

~~INCREASE BY \$15,000 ON JANUARY 1 OF EACH YEAR BEGINNING JANUARY 1, 2009.~~

~~(2) THE INCREASED AMOUNT APPLIES TO CAUSES OF ACTION ARISING BETWEEN JANUARY 1 AND DECEMBER 31 OF THE YEAR THE INCREASE TAKES EFFECT.~~

~~(G)~~ (F) IF A COMPLAINANT SEEKS COMPENSATORY OR PUNITIVE DAMAGES UNDER THIS SECTION:

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

(2) THE COURT MAY NOT INFORM THE JURY OF THE LIMITATIONS IMPOSED UNDER SUBSECTION (E) OF THIS SECTION.

~~(H)~~ (G) WHEN APPROPRIATE AND TO THE EXTENT AUTHORIZED UNDER LAW, IN A DISPUTE ARISING UNDER THIS SUBTITLE, IN WHICH THE COMPLAINANT SEEKS COMPENSATORY OR PUNITIVE DAMAGES, THE PARTIES ARE ENCOURAGED TO USE ALTERNATIVE MEANS OF DISPUTE RESOLUTION, INCLUDING SETTLEMENT NEGOTIATIONS OR MEDIATION.

11C.

(A) A PERSON MAY INTERVENE IN A CIVIL ACTION BROUGHT BY THE COMMISSION UNDER THIS SUBTITLE, IF THE ACTION INVOLVES:

(1) AN ALLEGED ACT OF DISCRIMINATION TO WHICH THE PERSON IS A PARTY; OR

(2) A CONCILIATION AGREEMENT TO WHICH THE PERSON IS A PARTY.

(B) THE COMMISSION MAY INTERVENE IN A CIVIL ACTION BROUGHT UNDER THIS SUBTITLE, IF:

(1) THE COMMISSION CERTIFIES THAT THE CASE IS OF GENERAL PUBLIC IMPORTANCE; AND

(2) TIMELY APPLICATION IS MADE.

(C) THE COURT MAY GRANT ANY APPROPRIATE RELIEF TO AN INTERVENING PARTY THAT IS AUTHORIZED TO BE GRANTED TO A PLAINTIFF IN A CIVIL ACTION UNDER § 11A OF THIS SUBTITLE.

11D.

(A) IN AN ACTION BROUGHT UNDER THIS SECTION, THE COURT, IN ITS DISCRETION, MAY AWARD THE PREVAILING PARTY REASONABLE ATTORNEY'S FEES, EXPERT WITNESS FEES, AND COSTS.

(B) THIS SUBTITLE, INCLUDING THE LIMITATIONS ON DAMAGES, MAY NOT BE CONSTRUED TO LIMIT THE SCOPE OF ~~OR THE~~, OR THE ADMINISTRATIVE PROCEDURES OR RELIEF AVAILABLE UNDER, ANY OTHER PROVISION OF FEDERAL, STATE, OR LOCAL LAW.

(C) THIS SUBTITLE MAY NOT BE CONSTRUED TO LIMIT §§ 40 THROUGH 43 OF THIS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

Approved by the Governor, April 24, 2007.