

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 678

(Senator Raskin, *et al.*)

Judicial Proceedings

Health and Government Operations

Maryland Human Relations Commission - Hearings and Civil Actions - Relief

This bill clarifies and alters procedures regarding hearings and relief under the Maryland Human Relations Commission (MHRC), and expands relief for discriminatory employment practices. The bill expands the relief available to a complainant for a complaint in front of an MHRC administrative judge, and creates a new cause of action for employment discrimination which may be filed by a complainant after filing for a hearing with MHRC, or filed by MHRC on behalf of the complainant.

The bill permits any party to seek a jury trial, sets a cap on compensatory damages in all cases, and authorizes the awarding of punitive damages in certain circumstances.

Fiscal Summary

State Effect: Any increase in workload for MHRC or the courts could be handled with existing resources.

Local Effect: Any increase in circuit court cases could be handled with existing resources.

Small Business Effect: Potentially meaningful.

Analysis

Bill Summary: The bill authorizes a MHRC administrative law judge to award reinstatement, back pay, compensatory damages, or appropriate equitable relief. Noneconomic compensatory damages are capped at an amount depending on the size of

the employer, ranging from \$50,000 for employers with 15 to 100 employees, to \$300,000 for employers with more than 500 employees.

The bill also creates a civil cause of action for employment discrimination complainants.

This cause of action is available when:

- a complaint is brought under § 11 of the Human Relations Commission subtitle;
- MHRC found the respondent engaged in a discriminatory act; and
- the parties fail to reach an agreement on remedy.

In such cases, the complainant may elect to have the claims asserted in the complaint determined in a civil action brought by MHRC on the complainant's behalf. Additionally, the commission can elect to bring a civil action asserting these claims on the commission's own behalf if the complainant does not elect to do so.

Also, a complainant may file a civil action if:

- the complainant initially filed a complaint or charge alleging discrimination under MHRC or other federal, State, or local law; and
- at least 180 days have elapsed since the filing of this complaint or charge.

This action can be filed no matter the outcome of this initial complaint.

In all cases, this action is filed in circuit court. Punitive damages are available when the respondent is not a government entity, and engaged in an unlawful practice with actual malice. The caps on noneconomic compensatory damages mentioned above also apply to this cause of action. Any party may demand a jury trial where the complainant seeks compensatory or punitive damages. The court may also award attorneys' fees, expert witness fees, and costs at its discretion. The bill provides for appropriate circumstances for intervention by a party into such an action.

The bill may not be construed to limit the local provisions for civil relief in Montgomery County, Prince George's County, Howard County, or Baltimore County under §§ 40 through 43 of Article 49B.

Current Law: Under the Fair Employment Practices Act, MHRC has jurisdiction over employers with 15 employees or more. Complainants must have their complaint heard by an administrative judge, and no compensatory damages, attorneys' fees, or expert witness fees may be awarded. No private cause of action in State court is available,

although a federal cause of action under Title VII of the Civil Rights Act may be available. Employees who work for an employer with fewer than 15 employees may only file a civil claim in State court and may be awarded compensatory damages.

Under § 42 of Article 49B, a person in Montgomery County, Prince George's County, or Howard County who is subjected to an act of discrimination prohibited by the county code may bring a civil action against the person who committed the act for damages, injunctive relief, or other civil relief. Under § 43 of Article 49B, a person in Baltimore County employed by an employer with less than 15 employees who is subjected to an act of discrimination prohibited by the county code may bring a civil action against the employer for injunctive relief, compensatory damages, and attorney's fees.

Background: Maryland is 1 of 11 states that does not allow for a private cause of action under Fair Employment Practice law. The statutory caps on compensatory damages included in this bill are the same as those for a federal cause of action.

State Expenditures: MHRC advises that it can handle any increased workload created by this bill with existing resources. This bill's civil action provisions would also marginally increase the workload of the courts, but the Judiciary advises that this can also be handled with existing resources.

Small Business Effect: Small businesses held liable for employment discrimination may be subject to compensatory damages, and, in court cases, attorneys' fees, expert witness fees, and punitive damages. Compensatory damages for noneconomic damages such as emotional pain, suffering, inconvenience, and mental anguish are capped at \$50,000 to \$300,000 depending on the size of the employer.

Additional Information

Prior Introductions: SB 104 of 2001, a similar bill, received an unfavorable report in the Senate Judicial Proceedings Committee.

Cross File: HB 314 (Delegate Rosenberg, *et al.*) – Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts), Human Relations Commission, Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2007
ncs/jr Revised - Senate Third Reader - March 23, 2007

Analysis by: Nicholas M. Goedert

Direct Inquiries to:
(410) 946-5510
(301) 970-5510