

HOUSE BILL 183

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CF 2lr1544

By: **Delegates Rosenberg, Carter, Cullison, Elliott, Frank, Gutierrez, Love, Luedtke, Mizeur, Oaks, Summers, and Tarrant**

Introduced and read first time: January 25, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

State Government – Human Relations – Discrimination in Housing, Employment, and Places of Public Accommodation

FOR the purpose of making certain provisions of law related to discrimination by a place of public accommodation applicable to a certain Internet Web site of a certain business entity; prohibiting an owner or operator of a place of public accommodation from refusing, withholding from, or denying to any person the services of the place of public accommodation because of certain characteristics of the person; providing that each time a person is affected by a certain discriminatory act is a separate violation; making certain provisions of law related to enforcement applicable to alleged discrimination by a place of public accommodation; authorizing certain remedies for discrimination by a place of public accommodation; clarifying the remedies available for an unlawful employment practice; repealing a prohibition against issuing certain orders affecting the cost, level, or type of transportation services; authorizing a complainant alleging discrimination by a place of public accommodation to bring a civil action under certain circumstances; providing for the venue of and remedies in a certain civil action; repealing the authority of the Commission on Civil Rights to seek an order assessing a civil penalty for discrimination by a place of public accommodation; altering the definition of “disability” for purposes of provisions of law relating to discrimination in employment and housing; defining certain terms; requiring an Internet Web site created and made available to the public before a certain date to be made accessible to the blind and visually impaired on or before a certain date; requiring an Internet Web site created or substantially revised on or after a certain date to be accessible to the blind and visually impaired on or before a certain date; making conforming changes; and generally relating to discrimination in housing, employment, and places of public accommodation.

BY renumbering

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Government
 Section 20–101(e) and (f), respectively
 to be Section 20–101(f) and (g), respectively
 Annotated Code of Maryland
 (2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
 Article – State Government
 Section 20–101(a), 20–601(a), and 20–701(a)
 Annotated Code of Maryland
 (2009 Replacement Volume and 2011 Supplement)

BY adding to
 Article – State Government
 Section 20–101(e)
 Annotated Code of Maryland
 (2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
 Article – State Government
 Section 20–301, 20–304, 20–601(b), 20–701(b), 20–1001, 20–1006(b), 20–1007(a)
 and (b), 20–1009, 20–1012(a) and (b), 20–1013, 20–1016(a), and 20–1017
 Annotated Code of Maryland
 (2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 20–101(e) and (f), respectively, of Article – State Government of the Annotated Code of Maryland be renumbered to be Section(s) 20–101(f) and (g), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – State Government

20–101.

(a) In Subtitles 1 through 11 of this title the following words have the meanings indicated.

(E) “INTERNET WEB SITE” MEANS A COLLECTION OF ALL RELATED WEB PAGES CONSISTING OF HYPERTEXT MARKUP LANGUAGE (HTML) DOCUMENTS AND RELATED FILES, SCRIPTS, AND DATABASES RETRIEVABLE BY A WEB BROWSER OR ANY OTHER ELECTRONIC DEVICE.

20–301.

In this subtitle, “place of public accommodation” means:

(1) an inn, hotel, motel, or other establishment that provides lodging to transient guests;

(2) a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food or alcoholic beverages for consumption on or off the premises, including a facility located on the premises of a retail establishment or gasoline station;

(3) a motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment;

(4) [a retail] AN establishment that:

(i) is operated by a public or private entity; and

(ii) offers goods, services, entertainment, recreation, or transportation; [and]

(5) an establishment:

(i) 1. that is physically located within the premises of any other establishment covered by this subtitle; or

2. within the premises of which any other establishment covered by this subtitle is physically located; and

(ii) that holds itself out as serving patrons of the covered establishment; AND

(6) THE INTERNET WEB SITE OF ANY BUSINESS ENTITY:

(I) 1. DESCRIBED IN ITEMS (1) THROUGH (5) OF THIS SECTION; OR

2. THAT PROVIDES GOODS, SERVICES, ENTERTAINMENT, RECREATION, OR TRANSPORTATION TO ANY PERSON IN THE STATE THROUGH THE INTERNET; AND

(II) THAT HAD GROSS REVENUE OF AT LEAST \$1,000,000 IN THE BUSINESS ENTITY’S MOST RECENTLY COMPLETED FISCAL YEAR.

(A) An owner or operator of a place of public accommodation or an agent or employee of the owner or operator may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, **SERVICES**, or privileges of the place of public accommodation because of the person's race, sex, age, color, creed, national origin, marital status, sexual orientation, or disability.

(B) **EACH TIME A PERSON IS AFFECTED BY A DISCRIMINATORY ACT PROHIBITED UNDER THIS SECTION CONSTITUTES A SEPARATE VIOLATION.**

20-601.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Disability" means:

(i) 1. a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; or

2. a mental impairment or deficiency;

(ii) a record of having a physical or mental impairment as otherwise defined under this subsection; or

(iii) being regarded as having a physical or mental impairment as otherwise defined under this subsection.

(2) "Disability" includes:

(i) 1. any degree of paralysis, amputation, or lack of physical coordination;

2. blindness or visual impairment;

3. deafness or hearing impairment;

4. muteness or speech impediment; and

5. physical reliance on a service animal, wheelchair, or other remedial appliance or device; and

(ii) **[retardation] INTELLECTUAL DISABILITY, AS DEFINED IN § 7-101 OF THE HEALTH - GENERAL ARTICLE**, and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.

20–701.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Disability” means:

[(i) a physical or mental impairment that substantially limits one or more of an individual’s major life activities;

(ii) a record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or

(iii) being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.]

(I) 1. A PHYSICAL DISABILITY, INFIRMITY, MALFORMATION, OR DISFIGUREMENT THAT IS CAUSED BY BODILY INJURY, BIRTH DEFECT, OR ILLNESS, INCLUDING EPILEPSY; OR

2. A MENTAL IMPAIRMENT OR DEFICIENCY;

(II) A RECORD OF HAVING A PHYSICAL OR MENTAL IMPAIRMENT AS OTHERWISE DEFINED UNDER THIS SUBSECTION; OR

(III) BEING REGARDED AS HAVING A PHYSICAL OR MENTAL IMPAIRMENT AS OTHERWISE DEFINED UNDER THIS SUBSECTION.

(2) “DISABILITY” INCLUDES:

(I) 1. ANY DEGREE OF PARALYSIS, AMPUTATION, OR LACK OF PHYSICAL COORDINATION;

2. BLINDNESS OR VISUAL IMPAIRMENT;

3. DEAFNESS OR HEARING IMPAIRMENT;

4. MUTENESS OR SPEECH IMPEDIMENT; AND

5. PHYSICAL RELIANCE ON A SERVICE ANIMAL, WHEELCHAIR, OR OTHER REMEDIAL APPLIANCE OR DEVICE; AND

(II) INTELLECTUAL DISABILITY, AS DEFINED IN § 7–101 OF THE HEALTH – GENERAL ARTICLE, AND ANY OTHER MENTAL IMPAIRMENT OR

DEFICIENCY THAT MAY HAVE NECESSITATED REMEDIAL OR SPECIAL EDUCATION AND RELATED SERVICES.

[(2)] (3) “Disability” does not include the current illegal use of or addiction to:

(i) a controlled dangerous substance, as defined in § 5–101 of the Criminal Law Article; or

(ii) a controlled substance, as defined in 21 U.S.C. § 802.

20–1001.

(A) In this part[, “unlawful] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(B) “DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION” MEANS AN ACT THAT IS PROHIBITED UNDER § 20–304 OF THIS TITLE.

(C) “UNLAWFUL employment practice” means an act that is prohibited under § 20–606 of this title.

20–1006.

(b) The 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:

(1) before an administrative law judge at a time and place certified in the notice; or

(2) if the complaint alleges an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**, in a civil action elected under § 20–1007 of this subtitle.

20–1007.

(a) (1) When a complaint alleging an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** is issued and served under § 20–1006 of this subtitle, a complainant or respondent 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 has found probable cause to believe the respondent has engaged in or is engaging in an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**; and

(ii) there is a failure to reach an agreement to remedy and eliminate the unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**.

(2) An election under paragraph (1) of this subsection shall be made within 30 days after the complainant or respondent receives service under § 20–1006(b) 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 § 20–1008(a) of this subtitle.

(b) When a complaint alleging an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** is issued and served under § 20–1006 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 has found probable cause to believe the respondent has engaged in or is engaging in an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**; and

(2) there is a failure to reach an agreement to remedy and eliminate the unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**.

20–1009.

(a) If, after reviewing all of the evidence, the administrative law judge finds that the respondent has engaged in a discriminatory act, the administrative law judge shall:

(1) issue a decision and order stating the judge's findings of fact and conclusions of law; and

(2) issue and cause to be served on the respondent an order requiring the respondent to:

(i) cease and desist from engaging in the discriminatory acts;
and

(ii) take affirmative action to effectuate the purposes of the applicable subtitle of this title.

(b) (1) 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:

(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] AND

(iv) ordering any other equitable relief that the administrative law judge considers appropriate.

(2) 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.

(3) The sum of the amount of compensatory damages awarded to each complainant under this subsection 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.

(4) If back pay is awarded under paragraph (1) of this subsection, the award shall be reduced by any interim earnings or amounts earnable with reasonable diligence by the person discriminated against.

(5) In addition to any other relief authorized by this subsection, a complainant may recover back pay for up to 2 years preceding the filing of the complaint, where the unlawful employment practice that has occurred during the complaint filing period is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a complaint.

(C) IF THE RESPONDENT IS FOUND TO HAVE ENGAGED IN OR TO BE ENGAGING IN DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION AS CHARGED IN THE COMPLAINT, THE REMEDY MAY INCLUDE:

(1) ENJOINING THE RESPONDENT FROM ENGAGING IN THE DISCRIMINATORY ACT;

(2) ORDERING APPROPRIATE AFFIRMATIVE RELIEF, INCLUDING THE PROVISION OF A REASONABLE ACCOMMODATION;

(3) AWARDING COMPENSATORY DAMAGES FOR PECUNIARY LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES; AND

(4) ORDERING ANY OTHER EQUITABLE RELIEF THAT THE ADMINISTRATIVE LAW JUDGE CONSIDERS APPROPRIATE.

[(c)] (D) (1) **[(i)]** Except as provided in subparagraph (ii) of this paragraph, **if] IF** the respondent is found to have engaged in or to be engaging in a discriminatory act other than an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**, in addition to an award of civil penalties as provided in § 20–1016 of this subtitle, nonmonetary relief may be granted to the complainant.

[(ii)] An order may not be issued that substantially affects the cost, level, or type of any transportation services.]

(2) (i) In cases involving transportation services that are supported fully or partially with funds from the Maryland Department of Transportation, an order may not be issued that would require costs, level, or type of transportation services different from or exceeding those required to meet U.S. Department of Transportation regulations adopted under 29 U.S.C. § 794.

(ii) An order issued in violation of subparagraph (i) of this paragraph is not enforceable under § 20–1011 of this subtitle.

[(d)] (E) If, after reviewing all of the evidence, the administrative law judge finds that the respondent has not engaged in an alleged discriminatory act, the administrative law judge shall:

- (1) state findings of fact and conclusions of law; and
- (2) issue an order dismissing the complaint.

[(e)] (F) Unless a timely appeal is filed with the Commission in accordance with the Commission's regulations, a decision and order issued by the administrative law judge under this section shall become the final order of the Commission.

20–1012.

(a) Within 60 days after an election is made under § 20–1007 of this subtitle, the Commission shall file a civil action in the circuit court for [the] ANY county where [the] AN alleged unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred.

(b) If the court finds that an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred, the court may provide the remedies specified in § 20–1009(b) **OR (C)** of this subtitle, **AS APPROPRIATE**.

20–1013.

(a) In addition to the right to make an election under § 20–1007 of this subtitle, a complainant may bring a civil action against the respondent alleging an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**, if:

(1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** by the respondent;

(2) at least 180 days have elapsed since the filing of the administrative charge or complaint; and

(3) the civil action is filed within 2 years after the alleged unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred.

(b) A civil action under this section shall be filed in [the] **ANY** circuit court for the county where [the] **AN** alleged unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred.

(c) The filing of a civil action under this section automatically terminates any proceeding before the Commission based on the underlying administrative complaint and any amendment to the complaint.

(d) If the court finds that an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred, the court may provide the remedies specified in § 20–1009(b) **OR (C)** of this subtitle.

(e) (1) In addition to the relief authorized under subsection (d) of this section, the court may award punitive damages, if:

(i) the respondent is not a governmental unit or political subdivision; and

(ii) the court finds that the respondent has engaged in or is engaging in an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** with actual malice.

(2) If the court awards punitive damages **FOR AN UNLAWFUL EMPLOYMENT PRACTICE**, the sum of the amount of compensatory damages awarded to each complainant under subsection (d) of this section and the amount of punitive damages awarded under this subsection may not exceed the applicable limitation established under § 20–1009(b)(3) of this subtitle.

(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 on compensatory and punitive damages imposed under § 20–1009(b)(3) of this subtitle.

(g) When appropriate and to the extent authorized under law, in a dispute arising under this part, 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.

20–1016.

(a) Except as provided in subsection (b) of this section, in addition to any other relief authorized, if the Commission finds that a respondent has engaged in a

discriminatory act under [Subtitle 3 or] Subtitle 4 of this title, the Commission may seek an order assessing a civil penalty against the respondent:

(1) if the respondent has not been adjudicated to have committed any prior discriminatory act, in an amount not exceeding \$500;

(2) if the respondent has been adjudicated to have committed one other discriminatory act during the 5-year period ending on the date of the filing of the current charge, in an amount not exceeding \$1,000; and

(3) if the respondent has been adjudicated to have committed two or more discriminatory acts during the 7-year period ending on the date of the filing of the current charge, in an amount not exceeding \$2,500.

20-1017.

(a) At any time after a complaint has been filed, if the Commission believes that a civil action is necessary to preserve the status of the parties or to prevent irreparable harm from the time the complaint is filed until the time of the final disposition of the complaint, the Commission may bring an action to obtain a temporary injunction.

(b) The action shall be brought in the circuit court for [the] ANY county where:

(1) [the place of public accommodation that is the subject of the alleged discriminatory act is located;

(2)] the unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** is alleged to have occurred or to be occurring; or

[3] (2) the dwelling that is the subject of the alleged discriminatory housing practice is located.

SECTION 3. AND BE IT FURTHER ENACTED, That an Internet Web site described under § 20-301(6) of the State Government Article, as enacted by Section 2 of this Act, that was created and made available to the public before October 1, 2012, shall be made accessible to the blind and visually impaired on or before October 1, 2013. An Internet Web site described under § 20-301(6) of the State Government Article, as enacted by Section 2 of this Act, that is created or substantially revised on or after October 1, 2012, shall be made accessible to the blind and visually impaired on or before January 1, 2013.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

