

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 834

(Senator Lee, *et al.*)

Judicial Proceedings

Human Relations - Discrimination by a Place of Public Accommodation -
Enforcement and Remedies

This bill establishes a process by which a respondent or a complainant may elect to have a claim asserting discrimination by a place of public accommodation determined in a civil action. The bill also expands the remedies available for discrimination by a place of public accommodation.

Fiscal Summary

State Effect: Any additional workload for the Maryland Commission on Civil Rights (MCCR), the Judiciary, or the Office of Administrative Hearings can be handled with existing budgeted resources. Any potential minimal decrease in civil penalty revenues or potential minimal increase in fee revenues for additional cases filed in the circuit courts does not materially impact State finances.

Local Effect: Any additional workload for the circuit courts can be handled with existing budgeted resources.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill expands the remedies available for discrimination by a place of public accommodation to 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 and nonpecuniary losses; and (4) ordering any other equitable relief that the administrative law

judge (ALJ) considers appropriate. The sum of the amount of compensatory damages awarded to each complainant may not exceed \$50,000. The bill repeals a provision that allows MCCR to seek an order assessing a civil penalty against a respondent for engaging in a discriminatory act relating to public accommodations.

A complainant or a respondent may elect to have the claims asserted in a complaint alleging discrimination by a place of public accommodation determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in discrimination by a place of public accommodation and (2) there is a failure to reach an agreement to remedy and eliminate the discrimination. If an election for a civil action is made, MCCR must file, within 60 days after the election, a civil action in the circuit court for the county where the alleged discrimination occurred. On a finding that discrimination occurred, the court may provide the remedies specified above.

A complainant may file a private civil action against the respondent if (1) the complainant initially filed a timely complaint with MCCR; (2) at least 180 days have elapsed since the filing of this complaint or charge; and (3) the civil action is filed within two years and 180 days after the administrative charge or complaint is filed. In addition to the remedies specified above, the court may award punitive damages if (1) the respondent is not a governmental unit or political subdivision and (2) the court finds that the respondent has engaged or is engaging in discrimination by a place of public accommodation with actual malice. If the court awards punitive damages, such damages are not subject to the \$50,000 limit specified above and may not exceed three times the sum of the amount of compensatory damages awarded to each complainant. The filing of a private cause of action automatically terminates any proceeding before MCCR based on the underlying administrative complaint and any amendment to the complaint. Any party may demand a jury trial if a complainant seeks compensatory or punitive damages. Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party in a civil action reasonable attorney's fees, expert witness fees, and costs.

In addition, the bill repeals a provision that prohibits an ALJ from issuing – with regard to a respondent found to have engaged in a discriminatory act other than an unlawful employment practice – an order that substantially affects the cost, level, or type of transportation services.

Current Law: A “place of public accommodation” includes (1) an inn, hotel, motel, or other lodging establishment; (2) a facility serving food or alcoholic beverages, including facilities on the premises of a retail establishment or gasoline station; (3) entertainment, sports, or exhibition venues; and (4) a public or privately operated retail establishment offering goods, services, entertainment, recreation, or transportation. A separate establishment that holds itself out as serving patrons of one of the above establishments is

also included if (1) it is physically located within the premises of one of the above establishments or (2) it is within the premises of which one of the above establishments is physically located.

Under State law, an owner or operator of a place of public accommodation, or an agent or employee of the owner, may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person's race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity, or disability. Governmental units, officers, and employees are prohibited from discrimination in public accommodations. Any structural changes, modifications, or special equipment that are necessary to accommodate an individual with a disability must be reasonable. A reasonable accommodation is defined as making a place of public accommodation suitable for access, use, and patronage by an individual with a disability without danger to the individual's health or safety and undue hardship or expense to the person making the accommodation.

On a finding that a respondent has engaged in a discriminatory act in relation to the prohibition against discrimination in public accommodations, MCCR may issue an order for nonmonetary relief and/or assess a civil penalty against a respondent. Maximum civil penalties range from \$500 to \$2,500 depending on whether or not the respondent committed prior discriminatory acts. However, an order may not be issued that substantially affects the cost, level, or type of any transportation services.

Background: MCCR received 68 complaints of discrimination in public accommodations in fiscal 2016. In its annual report, MCCR noted that public accommodations complaints have always represented a low percentage of the total complaints received annually. It has previously indicated that one of the major factors contributing to the consistently low number of complaints is that the statute does not mandate any type of financial relief for the complainant. Although MCCR can assess a civil penalty, the penalty is deposited into the State's general fund.

Small Business Impact: Small businesses held liable for discrimination in public accommodations may be subject to additional penalties, including compensatory and punitive damages as well as reasonable attorney's fees, expert witness fees, and costs.

Additional Information

Prior Introductions: SB 223 of 2016, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 1269, received a hearing in the House Health and Government Operations Committee but was subsequently withdrawn. SB 642 of 2011, a similar bill, was recommitted to the Senate Judicial Proceedings Committee. Its cross file, HB 285, passed the House as amended but received no further action.

Cross File: HB 1175 (Delegate Cullison, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Department of Legislative Services

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