

# HOUSE BILL 1561

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By: **Delegate Rosenberg**

Introduced and read first time: February 7, 2020

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Discriminatory Housing Practices – Intent**

3 FOR the purpose of prohibiting a person from acting in a manner, regardless of intent, that  
4 has a certain discriminatory effect against any person in certain housing  
5 transactions; providing that a person who unintentionally violates a certain  
6 provision has not committed a discriminatory housing practice under certain  
7 circumstances; altering a certain policy of the State related to discriminatory  
8 housing practices; making a conforming change; and generally relating to intent and  
9 discriminatory housing practices.

10 BY repealing and reenacting, without amendments,  
11 Article – State Government  
12 Section 20–701(a)  
13 Annotated Code of Maryland  
14 (2014 Replacement Volume and 2019 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – State Government  
17 Section 20–701(c), 20–702, and 20–705  
18 Annotated Code of Maryland  
19 (2014 Replacement Volume and 2019 Supplement)

20 Preamble

21 WHEREAS, On August 19, 2019, the Department of Housing and Urban  
22 Development proposed significant changes to the Fair Housing Act’s Disparate Impact  
23 Standard; and

24 WHEREAS, Under the current rule, the party making the accusation of  
25 discrimination has to prove that a policy is causing a discriminatory effect, even if the policy  
26 is facially neutral. The burden of proof shifts to the defendant, who must prove that the

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 policy is necessary for legitimate, nondiscriminatory results. If the defendant is able to  
 2 prove those elements, the plaintiff must then prove that the defendant's interests could be  
 3 achieved with a policy or practice that is less discriminatory; and

4 WHEREAS, Under the Department of Housing and Urban Development's proposed  
 5 rule, however, this three-step burden-shifting process is altered to a standard in which the  
 6 burden of proof falls almost entirely on the plaintiff, who would have to show that the policy  
 7 is "arbitrary, artificial, and unnecessary", has a "robust causal link" with disparate impact  
 8 on a protected class, causes a "significant" adverse effect on members of a protected class,  
 9 and is directly linked to the disparate impact in the plaintiff's "alleged injury"; and

10 WHEREAS, Under this Act, in order to provide for fair housing throughout the State,  
 11 a person is prohibited from acting in a manner, regardless of intent, that has a  
 12 discriminatory effect against any person in certain housing transactions; and

13 WHEREAS, Under this Act, it is not a discriminatory housing practice if the policy  
 14 was justified by a legitimate business necessity and there was no other less discriminatory  
 15 means of accomplishing that business necessity; now, therefore,

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

### 18 Article – State Government

19 20-701.

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

21 (c) "Discriminatory housing practice" means an act that is prohibited under [§  
 22 20-705] **§ 20-705(A)**, § 20-706, § 20-707, or § 20-708 of this subtitle.

23 20-702.

24 (a) It is the policy of the State:

25 (1) to provide for fair housing throughout the State to all, regardless of  
 26 race, color, religion, sex, familial status, national origin, marital status, sexual orientation,  
 27 gender identity, or disability; and

28 (2) to that end, to prohibit discriminatory practices **OR ACTS THAT HAVE**  
 29 **A DISCRIMINATORY EFFECT, REGARDLESS OF THE ACTOR'S INTENT**, with respect to  
 30 residential housing by any person, in order to protect and ensure the peace, health, safety,  
 31 prosperity, and general welfare of all.

32 (b) This subtitle:

33 (1) is an exercise of the police power of the State for the protection of the

1 people of the State; and

2 (2) shall be administered and enforced by the Commission and, as provided  
3 in this title, enforced by the appropriate State court.

4 20–705.

5 (A) Except as provided in §§ 20–703 and 20–704 of this subtitle, a person may not:

6 (1) refuse to sell or rent after the making of a bona fide offer, refuse to  
7 negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any  
8 person because of race, color, religion, sex, disability, marital status, familial status, sexual  
9 orientation, gender identity, or national origin;

10 (2) discriminate against any person in the terms, conditions, or privileges  
11 of the sale or rental of a dwelling, or in the provision of services or facilities in connection  
12 with the sale or rental of a dwelling, because of race, color, religion, sex, disability, marital  
13 status, familial status, sexual orientation, gender identity, or national origin;

14 (3) make, print, or publish, or cause to be made, printed, or published, any  
15 notice, statement, or advertisement with respect to the sale or rental of a dwelling that  
16 indicates any preference, limitation, or discrimination based on race, color, religion, sex,  
17 disability, marital status, familial status, sexual orientation, gender identity, or national  
18 origin, or an intention to make any preference, limitation, or discrimination;

19 (4) represent to any person, because of race, color, religion, sex, disability,  
20 marital status, familial status, sexual orientation, gender identity, or national origin, that  
21 any dwelling is not available for inspection, sale, or rental when the dwelling is available;  
22 [or]

23 (5) for profit, induce or attempt to induce any person to sell or rent any  
24 dwelling by representations regarding the entry or prospective entry into the neighborhood  
25 of a person of a particular race, color, religion, sex, disability, marital status, familial status,  
26 sexual orientation, gender identity, or national origin; **OR**

27 **(6) SUBJECT TO SUBSECTION (B) OF THIS SECTION, ACT IN A MANNER,**  
28 **REGARDLESS OF INTENT, THAT HAS A DISCRIMINATORY EFFECT AGAINST ANY**  
29 **PERSON IN THE TERMS, CONDITIONS, OR PRIVILEGES OF THE SALE OR RENTAL OF A**  
30 **DWELLING, OR IN THE PROVISION OF SERVICES OR FACILITIES IN CONNECTION**  
31 **WITH THE SALE OR RENTAL OF A DWELLING, BECAUSE OF RACE, COLOR, RELIGION,**  
32 **SEX, DISABILITY, MARITAL STATUS, FAMILIAL STATUS, SEXUAL ORIENTATION,**  
33 **GENDER IDENTITY, OR NATIONAL ORIGIN.**

34 **(B) A PERSON WHO, WITHOUT DISCRIMINATORY INTENT, VIOLATES**  
35 **SUBSECTION (A)(6) OF THIS SECTION HAS NOT COMMITTED A DISCRIMINATORY**  
36 **HOUSING PRACTICE IF:**

1           **(1) THE VIOLATION WAS JUSTIFIED BY A LEGITIMATE BUSINESS**  
2 **NECESSITY; AND**

3           **(2) THERE WAS NO OTHER LESS DISCRIMINATORY MEANS OF**  
4 **ACCOMPLISHING THAT BUSINESS NECESSITY.**

5           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2020.