

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 364 (Senator Lee)
Judicial Proceedings

Maryland Commission on Civil Rights - Civil Penalties

This bill alters statutory provisions that authorize the Maryland Commission on Civil Rights (MCCR) to seek civil penalties if it finds that a respondent has engaged in a discriminatory act regarding public accommodations or specified actions of persons licensed or regulated by the Maryland Department of Labor (MDL). In addition to authorizing increased civil penalties under specified circumstances, the bill prohibits MCCR from seeking civil penalties under other circumstances and sets forth factors for administrative law judges (ALJ) to consider when determining the amount of civil penalties. The bill also establishes that any civil penalties collected are to be paid to the complainant, instead of the general fund. Lastly, the bill creates reporting requirements for MCCR.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources. The bill does not materially impact general fund revenues.

Local Effect: The bill does not materially impact local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/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.

A person that is licensed or regulated by MDL may not refuse, withhold from, or deny any person any of the accommodations, advantages, facilities, privileges, sales, or services of the licensed or regulated person or discriminate because of a person's race, sex, creed, color, national origin, marital status, sexual orientation, age, gender identity, or disability.

On a finding that a respondent has engaged in a discriminatory act in relation to the prohibitions against discrimination specified above, MCCR may issue an order for nonmonetary relief and/or assess a civil penalty against a respondent. Under current law, civil penalties collected are paid to the general fund; however, pursuant to the bill, collected civil penalties are paid to the complainant.

Under current law, if a respondent has not been adjudicated to have committed any prior discriminatory act, the civil penalty may not exceed \$500. If the respondent has been adjudicated to have committed one other discriminatory act during a specified five-year period, the civil penalty may not exceed \$1,000. If the respondent has been adjudicated to have committed two or more discriminatory acts during a specified seven-year period, the amount may not exceed \$2,500.

The bill adds the following provisions regarding civil penalties:

- If the discriminatory act is committed by the agent or employee of a respondent, the maximum amounts regarding repeat violations do not apply and MCCR may seek an order assessing a civil penalty in an amount up to \$25,000, provided that (1) the discriminatory act committed by the agent or employee is determined to be malicious and (2) the respondent has not reasonably mitigated harm caused by the discriminatory act.

- The maximum amounts regarding repeat offenders do not apply if the discriminatory act is found to be malicious.
- MCCR may not seek an order assessing a civil penalty against a respondent if (1) the discriminatory act was limited to a violation relating to accessibility; (2) the respondent, after being served, takes prompt corrective action; and (3) the respondent has not previously been the subject of a complaint regarding an alleged discriminatory act.
- If MCCR seeks an order assessing a civil penalty before an ALJ, as specified, in determining the amount of the civil penalty to be imposed, the ALJ must consider (1) the seriousness of the discriminatory act; (2) the good faith of the respondent; (3) the harmful effect to the public of the discriminatory act; (4) the harmful effect of the respondent's actions on the investigatory process of MCCR; and (5) the respondent's assets.

By July 1, 2021, and annually thereafter for the following four years, MCCR must submit a report to the Governor and the General Assembly regarding the effect the bill has had on persons against whom complaints have been filed under Title 20 of the State Government Article.

Background: MCCR received 48 complaints of discrimination in public accommodations in fiscal 2019. In its annual report, MCCR noted that public accommodations complaints represent only 5% of the total complaints MCCR received in 2019. 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, as any civil penalties collected are deposited into the State's general fund. It also notes that many places of public accommodation have refused to comply with existing law, which is one of the primary reasons MCCR has consistently supported efforts to improve its enforcement authority and remedies.

State Expenditures: Although the enhanced remedies allowed by the bill may result in more individuals pursuing claims of discrimination, any additional workload for MCCR can be handled with existing budgeted resources.

State Revenues: MCCR advises that most public accommodations cases are settled administratively or with a finding of no probable cause; it is also unaware of any recent cases where a civil penalty was assessed against a respondent. Accordingly, any potential minimal decrease in general fund revenues does not materially impact State finances.

Small Business Impact: Small businesses held liable for discriminatory acts under specified conditions are subject to higher penalties. Conversely, small businesses may benefit from the prohibition against MCCR seeking civil penalties in specified circumstances regarding accessibility.

Additional Information

Prior Introductions: SB 271 of 2019, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 317, passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. SB 823 of 2018, a similar bill, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 935, was withdrawn.

Designated Cross File: HB 579 (Delegate Cullison) - Health and Government Operations.

Information Source(s): Maryland Commission on Civil Rights; Maryland Department of Labor; Department of Legislative Services

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