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**Testimony for SB 274
Fair Housing and Housing Discrimination - Regulations, Intent, and Discriminatory Effect
Before the: Judicial Proceedings Committee
February 3, 2026**

Good afternoon Chair Smith, members of the committee.

As the current federal administration works to end fair housing protections,¹ it is more important than ever to provide explicit remedies to discrimination in housing. Last July, following a federal Executive Order denouncing disparate impact litigation,² ProPublica reported that the US Department of Housing and Urban Development planned to drop seven major housing discrimination cases. Some of these investigations had already formally found instances of discrimination; all of them made claims of disparate impact discrimination.³

Disparate impact discrimination occurs when a policy or practice disproportionately and unjustifiably harms a protected class, even when the policy or practice doesn't appear to be discriminatory on first glance.⁴ Disparate impact discrimination does not require an individual or entity to intend to discriminate; rather, it uses apparently neutral practices to "freeze the status quo" of prior discriminatory practices.⁵ As the Maryland Supreme Court wrote in the 2024 case *Hare v. David S. Brown Enterprises*, disparate impact theory "recognizes that at times, treating

Commented [CS1]: Why apparently?

Commented [CS2R1]: If a practice has a discriminatory impact it's not actually neutral!

¹ Debra Kamin, *Trump Appointees Roll Back Enforcement of Fair Housing Laws*, New York Times (Sep. 22, 2025), <https://www.nytimes.com/2025/09/22/realestate/trump-fair-housing-laws.html>.

² Exec. Order No. 14,281 of April 23, 2025.

³ Jesse Coburn, *Trump Administration Prepares to Drop Seven Major Housing Discrimination Cases*, ProPublica (Jul. 18, 2025), <https://www.propublica.org/article/trump-hud-drop-housing-discrimination-cases-housing-pollution>

⁴ Congressional Research Service, *What is Disparate Impact Discrimination?*, In Focus (Jul. 9, 2025), <https://www.congress.gov/crs-product/IF13057>.

⁵ *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971).

things that are different in meaningful ways as though they are the same can perpetuate discrimination.”⁶

In a 2015 case in Texas, the United States Supreme Court held that disparate impact could prove housing discrimination under the Fair Housing Act.⁷ The Maryland Supreme Court ruled similarly in *Hare*, concluding that disparate impact was an appropriate framework to consider claims brought under the state’s equivalent of the Fair Housing Act.⁸ Senate Bill 274 codifies in Maryland law these protections against housing discrimination affirmed in both the federal and state courts.

First, SB 321 explicitly empowers our Department of Housing and Community Development to issue regulations that affirmatively further fair housing.⁹ It defines discriminatory effect as an effect that actually or predictable has a disparate impact on a group of people based on a number of protected classes¹⁰ and clarifies that Maryland prohibits disparate impact discrimination in housing.¹¹

Section 20-705(a) of this bill states that the intent of a person accused of housing is irrelevant to determining whether discrimination took place. It also adds a provision prohibiting instances of discrimination that do not fall neatly into the already-listed categories, recognizing that statutes cannot predict every form of housing discrimination.

Additionally § 20-705(b) of the bill allows a person accused of disparate impact discrimination a defense. If the accused can prove their practices, even if their conduct had a disparate impact on a protected class, (1) were not intended to discriminate; (2) achieved a substantial, legitimate, and nondiscriminatory legitimate goal; and (3) were the only way to achieve that acceptable goal, they may not be found liable,

SB 274 enshrines fair housing protections for Marylanders and provides tools for individuals and localities to pursue justice in housing. As such, I am requesting a favorable report on SB 274.

⁶ *Hare v. David S. Brown Enterprises*, 340 A.3d 698, 712 (Md. 2025).

⁷ See *Texas Dep’t of Housing and Community Affairs v. Inclusive Communities Project*, 576 U.S. 519 (2015).

⁸ *Hare v. David S. Brown Enterprises*, *supra*, 712.

⁹ See proposed § 2-402(d) of the Housing and Community Development Article.

¹⁰ See proposed § 20-701(b-1) of the State Government Article.

¹¹ See proposed § 20-702(a)(2) of the State Government Article.