

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 808 (Delegates Benson and Rosenberg)
Commerce and Government Matters

Equal Opportunity Act of 2002

This bill alters procedures regarding hearings and relief under the Human Relations Commission law, and expands relief for discriminatory employment practices to include compensatory damages.

The bill applies to complaints filed with the Maryland Human Relations Commission (MHRC) on or after October 1, 2002.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues as a result of the attorney and expert witness fee award provisions. No effect on expenditures.

Local Effect: Any increase in circuit court cases could be handled with existing resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary: If the parties fail to reach an agreement to eliminate prohibited acts of discrimination, the bill requires a hearing to be held before an administrative law judge (ALJ). The ALJ must issue a cease and desist order if, after reviewing all of the evidence, the ALJ finds that the respondent has engaged in any discriminatory act within the scope of Maryland antidiscrimination laws.

In an administrative hearing, 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 the reinstatement or hiring of employees, with or without back pay, compensatory damages, or any other equitable relief. Compensatory damages are in addition to back pay or interest on the back pay and any equitable relief recovered. The bill limits compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses, depending on the number of employees in each of 20 or more calendar weeks in the current or preceding calendar year to: (1) \$50,000 for an employer with at least 15 and up to 100 employees; (2) \$100,000 for employers with at least 101 and up to 200 employees; (3) \$200,000 for employers with at least 201 and up to 500 employees; and (4) \$300,000 for employers with at least 501 employees.

The award of back pay is limited to a 36-month period. The complainant may not be awarded back pay for losses incurred between the commission's final determination and the final determination in the courts. Amounts earned in the interim reduce back pay otherwise allowable. The ALJ may also award expert witness fees to the commission.

The bill authorizes a complainant to bring a civil action alleging an unlawful employment practice if the complainant initially filed a complaint with the commission and at least 180 days have elapsed since the complaint was filed. However, a complaining party may not commence such a civil action for an unlawful employment practice that forms the basis of an order issued by the commission if an ALJ has commenced a hearing on the record. Once a trial in a civil action under Maryland or federal law has begun, an ALJ may not continue administrative proceedings for the same alleged unlawful employment practice. In a civil trial under the bill, the court may allow the commission to intervene by certifying that the case is of importance to the general public. The action may be filed in the circuit court of the county where the action is alleged to have occurred or the relevant records are kept.

Compensatory damages in a civil action are subject to the same caps as are applicable to administrative hearings. If a complainant seeks compensatory damages, any party may demand a jury trial. In a jury trial, the court may not inform the jury of the statutory caps on compensatory damages. The court may award reasonable attorney's fees and costs, including expert witness fees, to the prevailing party.

Where appropriate and to the extent authorized under the law, the parties to a dispute in which the complainant seeks compensatory damages are encouraged to use alternative dispute resolution.

Current Law: Generally, it is an unlawful employment practice to discriminate against an individual because of that individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability. Under Maryland's unlawful employment practices law, the Human Relations Commission has jurisdiction over employers with 15 or more employees. Complainants must have their complaint heard by a hearing examiner, and no compensatory damages, attorney's fees, or expert witness fees may be awarded. Cases are presented by the general counsel of the Human Relations Commission. The commission has the power to administer oaths; issue subpoenas; compel the attendance and testimony of witnesses; and compel the production of books, papers, records, and documents relevant or necessary for proceedings.

Upon finding a respondent to have engaged in a discriminatory act under Maryland's antidiscrimination laws, a hearing examiner must issue a cease and desist order against the respondent. 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 reinstatement or hiring of employees with or without back pay or any other appropriate equitable relief. The award of monetary relief is limited to a 36-month period. The complainant may not be awarded monetary relief for losses incurred between the commission's final determination and the final determination in the courts. Amounts earned in the interim reduce monetary relief otherwise allowable.

State Revenues: General fund revenues could increase minimally due to attorneys' and expert witness fee awards to MHRC. Any increase in revenues would be used to offset existing litigation expenses (e.g., the cost of transcripts, filing fees, etc.) and costs associated with hiring expert witnesses, including traveling and lodging expenses.

MHRC has approximately 20 employment discrimination cases annually, in which the commission finds probable cause that discrimination occurred. Of these, approximately ten cases are litigated, either at the Office of Administrative Hearings (OAH) or in State circuit court. Hearings or trials generally last approximately three days. MHRC budgets approximately \$50,000 annually for expert witness fees. Witness fees range from \$500 - \$2,000 an hour, and MHRC must pay travel and accommodation expenses for out-of-state witnesses.

State Expenditures: Any increase in the number of cases MHRC may have to investigate as a result of the bill's provisions can be handled with existing budgeted resources. MHRC estimates that the number of cases that are litigated under the bill's provisions will be split equally between administrative hearings and the circuit court.

Small Business Effect: Small businesses held liable for employment discrimination may be subject to compensatory damages and, in court cases, attorneys' and expert witness

fees and civil penalties. Compensatory damages for noneconomic damages such as emotional pain, suffering, inconvenience, and mental anguish are capped at \$50,000 for employers with 100 or fewer employees. The bill would not affect employers with fewer than 15 employees.

Additional Information

Prior Introductions: Similar bills were introduced in the 2001 session as SB 104 and in the 2000 session as HB 208. SB 104 received an unfavorable report from the Senate Judicial Proceedings Committee, and HB 208 received an unfavorable report from the House Commerce and Government Matters Committee. Similar bills, SB 140 and HB 786, were introduced in the 1999 session and were referred to interim study by the Senate Judicial Proceedings Committee. Similar bills were also introduced during the 1995 - 1998 sessions.

Cross File: SB 479 (Senator Kelley) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Human Relations Commission, Office of Administrative Hearings, Department of Legislative Services

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Analysis by: Ryan Wilson

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510