

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 1034 (Delegate Rosenberg, *et al.*)  
Health and Government Operations

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**Civil Rights Preservation Act of 2006**

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This bill allows a person aggrieved by a discriminatory public accommodation practice or a discriminatory employment practice to bring a civil action in court. A person aggrieved by a discriminatory employment practice must first file a complaint with the Commission on Human Relations and allow 45 days to pass, unless the commission dismisses the complaint. The aggrieved person may be appointed an attorney and have court fees, costs, and security waived if he or she is financially unable to bear the cost.

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**Fiscal Summary**

**State Effect:** None. The bill would not significantly affect State operations or finances.

**Local Effect:** Potential significant effect on circuit court operations and finances.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** In a civil action involving an alleged discriminatory public accommodation practice, a court may grant injunctive or equitable relief; the court or jury may award compensatory or punitive damages; or the court may award reasonable attorney's fees and costs, including expert witness fees. In a civil action involving an alleged discriminatory employment practice, the court may grant injunctive relief or order affirmative action, including reinstatement of the employee; the court or jury may award compensatory or punitive damages; or the court may award reasonable attorney's fees and costs, including expert witness fees.

The bill is not intended to interfere with or abrogate a city or county ordinance that affords the same or greater rights.

### **Current Law:**

#### *Discriminatory Public Accommodation Practices*

An owner or operator of a place of public accommodation may not refuse, withhold from, or deny a person any of the accommodations, advantages, facilities, and privileges of a place of public accommodation because of the race, creed, sex, age, color, national origin, marital status, sexual orientation, or disability of the person. Places of public accommodation generally include places of lodging for transient guests such as an inn, motel, or hotel; any place selling food or alcoholic beverages; and any special event location such as a theater, concert hall, or stadium. A person who has engaged in a discriminatory practice is subject to civil penalties of up to \$1,000 for committing one discriminatory practice within five years of the filing of the complaint and up to \$2,500 for committing two or more discriminatory practices within seven years of the filing of the complaint.

A person aggrieved by an alleged discriminatory public accommodation practice may file a complaint under oath with the Human Relations Commission. The commission may also file a complaint based on information from the public, upon action of not less than three commissioners, which has the same effect as if a complaint had been filed by an individual.

The commission must investigate the complaint and issue findings. If probable cause for believing a discriminatory act has occurred is found, the commission attempts to resolve the complaint by agreement between the two parties. A denial of a request for reconsideration after a finding of no probable cause is a final order that may be appealed to a circuit court, provided the federal Equal Employment Opportunity Commission does not have jurisdiction over the complaint. Proceedings in circuit court involving State agency final decisions of a contested case are conducted without a jury.

If no agreement is reached after a finding of probable cause, a hearing is held. If the hearing examiner finds that a person has engaged in a discriminatory act under State law, the hearing examiner must issue an order to the respondent to cease and desist and take affirmative action to fulfill the purposes of State law governing discriminatory practices. Nonmonetary relief may be awarded, in addition to the civil penalties described above; however, no order issued by the hearing examiner may affect the cost, level, or type of any transportation services. If the hearing examiner finds that a person has not engaged in a discriminatory act under State law, the hearing examiner must issue findings of fact and an order dismissing the complaint. A dismissal may be appealed to circuit court.

### *Discriminatory Employment Practices*

State law sets out numerous unlawful employment practices applicable to employers, employment agencies, labor organizations, and joint labor-management committees, generally prohibiting discrimination in the context of employment based on an individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability.

“Employer” is defined as a person engaged in an industry or business who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person. “Employer” includes the State to the extent provided, but does not include a private membership club, other than a labor organization, that is exempt from taxation under § 501(c) of the Internal Revenue Code.

Complaints are handled by the commission according to the same process applicable to discriminatory public accommodation practices; however, in a discriminatory employment practice hearing, the hearing examiner may order a person reinstated or hired, with or without back pay, or any other equitable relief. A monetary award representing lost earnings must be limited to a 36-month period. Earnings during the time period the complainant is to be compensated for, or amounts earnable with due diligence, reduce the amount the complainant may recover.

### *Equal Employment Opportunity Commission*

The Human Relations Commission has a work-sharing agreement with the U.S. Equal Employment Opportunity Commission (EEOC) in which complaints filed with either agency are dual-filed (the agency the complaint was initially filed with also files it with the opposite agency). The EEOC will investigate complaints if the commission finds sufficient evidence to support a claim after an interview with the complainant. Complaints may be referred to the EEOC's mediation program if both parties consent. Otherwise, if evidence of discrimination is found, the EEOC will issue a letter of determination to the respondent party and seek to resolve the complaint through agreement.

If the EEOC is unable to bring the case to an agreement, it will either bring suit in federal court, or if it decides not to sue, issue a notice to the complainant, closing the case, giving the complainant 90 days to file a lawsuit on his or her own behalf. At any time during the above process, the EEOC may dismiss the complaint, allowing the complainant to sue within 90 days. Under specific federal laws, a complainant also may request a notice of a “right to sue” from the EEOC once a certain amount of time has passed since the complaint was filed. Under Title VII of the Civil Rights Act of 1964 or the Americans

with Disabilities Act, the time period is 180 days, and under the Age Discrimination in Employment Act, the time period is 60 days. The same 90-day time period, in which the complainant may file suit, applies.

### *Local Laws*

In Montgomery, Prince George's, and Howard counties a person who is subject to an act of discrimination prohibited by the county code may file a lawsuit for damages, injunctive relief, or other civil relief. The court, at its discretion, may award attorney's fees.

In Baltimore County, a person employed by an employer with fewer than 15 employees (exempt under State law) may file a lawsuit for an act of discrimination prohibited by the county code for injunctive relief and compensatory damages, but not punitive damages. The court, at its discretion, may award attorney's fees.

**Background:** The Maryland Commission on Human Relations consists of nine members appointed by the Governor to six-year terms, by and with the advice and consent of the Senate. The commission has the stated mission of ensuring equal opportunity to all through the enforcement of State laws against discrimination in employment, housing, and public accommodations; providing educational and outreach services related to State laws against discrimination; and promoting and improving human relations in Maryland.

In fiscal 2005, the commission received 943 complaints of discrimination, 710 of which involved discriminatory employment practices, and 80 of which involved discriminatory public accommodation practices. The commission generally has less than 10 complaints proceed to a hearing each year.

**State Fiscal Effect:** The bill's changes would not significantly affect the operations or finances of the commission.

**Local Fiscal Effect:** The Administrative Office of the Courts advises that discrimination cases can be complex and a significant increase in cases being brought in circuit court could have a significant fiscal and operational effect on local court systems. However, it cannot be predicted how many additional civil cases would be filed as a result of the bill's changes. Circuit courts, statewide, handle roughly 164,000 civil cases annually. The number of additional cases brought would likely be 790 at most – the number of complaints filed with the commission in 2005.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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