

HOUSE BILL 580

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CF SB 596

By: **Delegates Rosenberg, Cullison, Elliott, Frank, Oaks, Pena-Melnyk, and Tarrant**

Introduced and read first time: February 9, 2011
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Human Relations – Discrimination in Housing,**
3 **Employment, and Places of Public Accommodation**

4 FOR the purpose of making certain provisions of law related to discrimination by a
5 place of public accommodation applicable to a certain Internet Web site of a
6 certain business entity; prohibiting an owner or operator of a place of public
7 accommodation from refusing, withholding from, or denying to any person the
8 services of the place of public accommodation because of certain characteristics
9 of the person; providing that each time a person is affected by a certain
10 discriminatory act is a separate violation; making certain provisions of law
11 related to enforcement applicable to alleged discrimination by a place of public
12 accommodation; authorizing certain remedies for discrimination by a place of
13 public accommodation; clarifying the remedies available for an unlawful
14 employment practice; repealing a prohibition against issuing certain orders
15 affecting the cost, level, or type of transportation services; establishing the
16 venue for certain actions; altering the definition of “disability” for purposes of
17 provisions of law relating to discrimination in employment and housing;
18 defining certain terms; requiring an Internet Web site created and made
19 available to the public before a certain date to be made accessible to the blind
20 and visually impaired on or before a certain date; requiring an Internet Web
21 site created or substantially revised on or after a certain date to be accessible to
22 the blind and visually impaired on or before a certain date; making conforming
23 changes; and generally relating to prohibiting discrimination in housing,
24 employment, and places of public accommodation.

25 BY renumbering

26 Article – State Government
27 Section 20–101(e) and (f), respectively
28 to be Section (f) and (g), respectively
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2009 Replacement Volume and 2010 Supplement)

2 BY repealing and reenacting, without amendments,
 3 Article – State Government
 4 Section 20–101(a), 20–601(a), and 20–701(a)
 5 Annotated Code of Maryland
 6 (2009 Replacement Volume and 2010 Supplement)

7 BY adding to
 8 Article – State Government
 9 Section 20–101(e)
 10 Annotated Code of Maryland
 11 (2009 Replacement Volume and 2010 Supplement)

12 BY repealing and reenacting, with amendments,
 13 Article – State Government
 14 Section 20–301, 20–304, 20–601(b), 20–701(b), 20–1001, 20–1006(b), 20–1007(a)
 15 and (b), 20–1009, 20–1012(a) and (b), and 20–1017
 16 Annotated Code of Maryland
 17 (2009 Replacement Volume and 2010 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 19 MARYLAND, That Section(s) 20–101(e) and (f), respectively, of Article – State
 20 Government of the Annotated Code of Maryland be renumbered to be Section(s)
 21 20–101(f) and (g), respectively.

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 23 read as follows:

24 **Article – State Government**

25 20–101.

26 (a) In Subtitles 1 through 11 of this title the following words have the
 27 meanings indicated.

28 **(E) “INTERNET WEB SITE” MEANS A COLLECTION OF ALL RELATED**
 29 **WEB PAGES CONSISTING OF HYPERTEXT MARKUP LANGUAGE (HTML)**
 30 **DOCUMENTS AND RELATED FILES, SCRIPTS, AND DATABASES RETRIEVABLE BY**
 31 **A WEB BROWSER OR ANY OTHER ELECTRONIC DEVICE.**

32 20–301.

33 In this subtitle, “place of public accommodation” means:

34 (1) an inn, hotel, motel, or other establishment that provides lodging
 35 to transient guests;

1 (2) a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or
2 other facility principally engaged in selling food or alcoholic beverages for consumption
3 on or off the premises, including a facility located on the premises of a retail
4 establishment or gasoline station;

5 (3) a motion picture house, theater, concert hall, sports arena,
6 stadium, or other place of exhibition or entertainment;

7 (4) [a retail] AN establishment that:

8 (i) is operated by a public or private entity; and

9 (ii) offers goods, services, entertainment, recreation, or
10 transportation; [and]

11 (5) an establishment:

12 (i) 1. that is physically located within the premises of any
13 other establishment covered by this subtitle; or

14 2. within the premises of which any other establishment
15 covered by this subtitle is physically located; and

16 (ii) that holds itself out as serving patrons of the covered
17 establishment; AND

18 **(6) THE INTERNET WEB SITE OF ANY BUSINESS ENTITY:**

19 **(I) 1. DESCRIBED IN ITEMS (1) THROUGH (5) OF THIS**
20 **SECTION; OR**

21 **2. THAT PROVIDES GOODS, SERVICES,**
22 **ENTERTAINMENT, RECREATION, OR TRANSPORTATION TO ANY PERSON IN THE**
23 **STATE THROUGH THE INTERNET; AND**

24 **(II) THAT HAD GROSS REVENUE OF AT LEAST \$1,000,000 IN**
25 **THE BUSINESS ENTITY'S MOST RECENTLY COMPLETED FISCAL YEAR.**

26 20-304.

27 **(A)** An owner or operator of a place of public accommodation or an agent or
28 employee of the owner or operator may not refuse, withhold from, or deny to any
29 person any of the accommodations, advantages, facilities, **SERVICES**, or privileges of
30 the place of public accommodation because of the person's race, sex, age, color, creed,
31 national origin, marital status, sexual orientation, or disability.

1 **(B) EACH TIME A PERSON IS AFFECTED BY A DISCRIMINATORY ACT**
 2 **PROHIBITED UNDER THIS SECTION CONSTITUTES A SEPARATE VIOLATION.**

3 20–601.

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

5 (b) (1) “Disability” means:

6 (i) 1. a physical disability, infirmity, malformation, or
 7 disfigurement that is caused by bodily injury, birth defect, or illness, including
 8 epilepsy; or

9 2. a mental impairment or deficiency;

10 (ii) a record of having a physical or mental impairment as
 11 otherwise defined under this subsection; or

12 (iii) being regarded as having a physical or mental impairment
 13 as otherwise defined under this subsection.

14 (2) “Disability” includes:

15 (i) 1. any degree of paralysis, amputation, or lack of
 16 physical coordination;

17 2. blindness or visual impairment;

18 3. deafness or hearing impairment;

19 4. muteness or speech impediment; and

20 5. physical reliance on a service animal, wheelchair, or
 21 other remedial appliance or device; and

22 (ii) **[retardation] INTELLECTUAL DISABILITY, AS DEFINED IN**
 23 **§ 7–101 OF THE HEALTH – GENERAL ARTICLE**, and any other mental impairment
 24 or deficiency that may have necessitated remedial or special education and related
 25 services.

26 20–701.

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

28 (b) (1) “Disability” means:

1 [(i) a physical or mental impairment that substantially limits
2 one or more of an individual's major life activities;

3 (ii) a record of having a physical or mental impairment that
4 substantially limits one or more of an individual's major life activities; or

5 (iii) being regarded as having a physical or mental impairment
6 that substantially limits one or more of an individual's major life activities.]

7 **(I) 1. A PHYSICAL DISABILITY, INFIRMITY,
8 MALFORMATION, OR DISFIGUREMENT THAT IS CAUSED BY BODILY INJURY,
9 BIRTH DEFECT, OR ILLNESS, INCLUDING EPILEPSY; OR**

10 **2. A MENTAL IMPAIRMENT OR DEFICIENCY;**

11 **(II) A RECORD OF HAVING A PHYSICAL OR MENTAL
12 IMPAIRMENT AS OTHERWISE DEFINED UNDER THIS SUBSECTION; OR**

13 **(III) BEING REGARDED AS HAVING A PHYSICAL OR MENTAL
14 IMPAIRMENT AS OTHERWISE DEFINED UNDER THIS SUBSECTION.**

15 **(2) "DISABILITY" INCLUDES:**

16 **(I) 1. ANY DEGREE OF PARALYSIS, AMPUTATION, OR
17 LACK OF PHYSICAL COORDINATION;**

18 **2. BLINDNESS OR VISUAL IMPAIRMENT;**

19 **3. DEAFNESS OR HEARING IMPAIRMENT;**

20 **4. MUTENESS OR SPEECH IMPEDIMENT; AND**

21 **5. PHYSICAL RELIANCE ON A SERVICE ANIMAL,
22 WHEELCHAIR, OR OTHER REMEDIAL APPLIANCE OR DEVICE; AND**

23 **(II) INTELLECTUAL DISABILITY, AS DEFINED IN § 7-101 OF
24 THE HEALTH – GENERAL ARTICLE, AND ANY OTHER MENTAL IMPAIRMENT OR
25 DEFICIENCY THAT MAY HAVE NECESSITATED REMEDIAL OR SPECIAL
26 EDUCATION AND RELATED SERVICES.**

27 **[(2)] (3) "Disability" does not include the current illegal use of or
28 addiction to:**

29 (i) a controlled dangerous substance, as defined in § 5-101 of
30 the Criminal Law Article; or

1 (ii) a controlled substance, as defined in 21 U.S.C. § 802.

2 20–1001.

3 (A) In this part[, “unlawful] **THE FOLLOWING WORDS HAVE THE**
4 **MEANINGS INDICATED.**

5 (B) **“DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION”**
6 **MEANS AN ACT THAT IS PROHIBITED UNDER § 20–304 OF THIS TITLE.**

7 (C) **“UNLAWFUL employment practice”** means an act that is prohibited
8 under § 20–606 of this title.

9 20–1006.

10 (b) The Executive Director of the Commission shall cause a written notice to
11 be issued and served in the name of the Commission, together with a copy of the
12 complaint, requiring the respondent to answer the charges of the complaint at a public
13 hearing:

14 (1) before an administrative law judge at a time and place certified in
15 the notice; or

16 (2) if the complaint alleges an unlawful employment practice **OR**
17 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**, in a civil action
18 elected under § 20–1007 of this subtitle.

19 20–1007.

20 (a) (1) When a complaint alleging an unlawful employment practice **OR**
21 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** is issued and served
22 under § 20–1006 of this subtitle, a complainant or respondent may elect to have the
23 claims asserted in the complaint determined in a civil action brought by the
24 Commission on the complainant’s behalf, if:

25 (i) the Commission has found probable cause to believe the
26 respondent has engaged in or is engaging in an unlawful employment practice **OR**
27 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**; and

28 (ii) there is a failure to reach an agreement to remedy and
29 eliminate the unlawful employment practice **OR DISCRIMINATION BY A PLACE OF**
30 **PUBLIC ACCOMMODATION.**

1 (2) An election under paragraph (1) of this subsection shall be made
2 within 30 days after the complainant or respondent receives service under §
3 20–1006(b) of this subtitle.

4 (3) If an election is not made under paragraph (1) of this subsection,
5 the Commission shall provide an opportunity for a hearing as provided under §
6 20–1008(a) of this subtitle.

7 (b) When a complaint alleging an unlawful employment practice **OR**
8 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** is issued and served
9 under § 20–1006 of this subtitle, the Commission may elect to have the claims
10 asserted in the complaint determined in a civil action brought on the Commission’s
11 own behalf, if:

12 (1) the Commission has found probable cause to believe the
13 respondent has engaged in or is engaging in an unlawful employment practice **OR**
14 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**; and

15 (2) there is a failure to reach an agreement to remedy and eliminate
16 the unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**
17 **ACCOMMODATION**.

18 20–1009.

19 (a) If, after reviewing all of the evidence, the administrative law judge finds
20 that the respondent has engaged in a discriminatory act, the administrative law judge
21 shall:

22 (1) issue a decision and order stating the judge’s findings of fact and
23 conclusions of law; and

24 (2) issue and cause to be served on the respondent an order requiring
25 the respondent to:

26 (i) cease and desist from engaging in the discriminatory acts;
27 and

28 (ii) take affirmative action to effectuate the purposes of the
29 applicable subtitle of this title.

30 (b) (1) If the respondent is found to have engaged in or to be engaging in
31 an unlawful employment practice charged in the complaint, the remedy may include:

32 (i) enjoining the respondent from engaging in the
33 discriminatory act;

1 (ii) ordering appropriate affirmative relief, including the
2 reinstatement or hiring of employees, with or without back pay;

3 (iii) awarding compensatory damages; [or] AND

4 (iv) ordering any other equitable relief that the administrative
5 law judge considers appropriate.

6 (2) Compensatory damages awarded under this subsection are in
7 addition to:

8 (i) back pay or interest on back pay that the complainant may
9 recover under any other provision of law; and

10 (ii) any other equitable relief that a complainant may recover
11 under any other provision of law.

12 (3) The sum of the amount of compensatory damages awarded to each
13 complainant under this subsection for future pecuniary losses, emotional pain,
14 suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary
15 losses, may not exceed:

16 (i) \$50,000, if the respondent employs not fewer than 15 and
17 not more than 100 employees in each of 20 or more calendar weeks in the current or
18 preceding calendar year;

19 (ii) \$100,000, if the respondent employs not fewer than 101 and
20 not more than 200 employees in each of 20 or more calendar weeks in the current or
21 preceding calendar year;

22 (iii) \$200,000, if the respondent employs not fewer than 201 and
23 not more than 500 employees in each of 20 or more calendar weeks in the current or
24 preceding calendar year; and

25 (iv) \$300,000, if the respondent employs not fewer than 501
26 employees in each of 20 or more calendar weeks in the current or preceding calendar
27 year.

28 (4) If back pay is awarded under paragraph (1) of this subsection, the
29 award shall be reduced by any interim earnings or amounts earnable with reasonable
30 diligence by the person discriminated against.

31 (5) In addition to any other relief authorized by this subsection, a
32 complainant may recover back pay for up to 2 years preceding the filing of the
33 complaint, where the unlawful employment practice that has occurred during the
34 complaint filing period is similar or related to an unlawful employment practice with

1 regard to discrimination in compensation that occurred outside the time for filing a
2 complaint.

3 **(C) IF THE RESPONDENT IS FOUND TO HAVE ENGAGED IN OR TO BE**
4 **ENGAGING IN DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION AS**
5 **CHARGED IN THE COMPLAINT, THE REMEDY MAY INCLUDE:**

6 **(1) ENJOINING THE RESPONDENT FROM ENGAGING IN THE**
7 **DISCRIMINATORY ACT;**

8 **(2) ORDERING APPROPRIATE AFFIRMATIVE RELIEF, INCLUDING**
9 **THE PROVISION OF A REASONABLE ACCOMMODATION;**

10 **(3) AWARDING COMPENSATORY DAMAGES FOR PECUNIARY**
11 **LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH,**
12 **LOSS OF ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES, IN AN**
13 **AMOUNT NOT LESS THAN \$500 FOR EACH DISCRIMINATORY ACT PERSONALLY**
14 **SUFFERED BY EACH COMPLAINANT; AND**

15 **(4) ORDERING ANY OTHER EQUITABLE RELIEF THAT THE**
16 **ADMINISTRATIVE LAW JUDGE CONSIDERS APPROPRIATE.**

17 **[(c) (D) (1) [(i) Except as provided in subparagraph (ii) of this**
18 **paragraph, if] IF the respondent is found to have engaged in or to be engaging in a**
19 **discriminatory act other than an unlawful employment practice OR DISCRIMINATION**
20 **BY A PLACE OF PUBLIC ACCOMMODATION, in addition to an award of civil penalties**
21 **as provided in § 20–1016 of this subtitle, nonmonetary relief may be granted to the**
22 **complainant.**

23 **[(ii) An order may not be issued that substantially affects the**
24 **cost, level, or type of any transportation services.]**

25 **(2) (i) In cases involving transportation services that are supported**
26 **fully or partially with funds from the Maryland Department of Transportation, an**
27 **order may not be issued that would require costs, level, or type of transportation**
28 **services different from or exceeding those required to meet U.S. Department of**
29 **Transportation regulations adopted under 29 U.S.C. § 794.**

30 **(ii) An order issued in violation of subparagraph (i) of this**
31 **paragraph is not enforceable under § 20–1011 of this subtitle.**

32 **[(d) (E) If, after reviewing all of the evidence, the administrative law judge**
33 **finds that the respondent has not engaged in an alleged discriminatory act, the**
34 **administrative law judge shall:**

1 (1) state findings of fact and conclusions of law; and

2 (2) issue an order dismissing the complaint.

3 **[(e)] (F)** Unless a timely appeal is filed with the Commission in accordance
4 with the Commission's regulations, a decision and order issued by the administrative
5 law judge under this section shall become the final order of the Commission.

6 20-1012.

7 (a) Within 60 days after an election is made under § 20-1007 of this subtitle,
8 the Commission shall file a civil action in the circuit court for **[the] ANY** county where
9 **[the] AN** alleged unlawful employment practice **OR DISCRIMINATION BY A PLACE OF**
10 **PUBLIC ACCOMMODATION** occurred.

11 (b) If the court finds that an unlawful employment practice **OR**
12 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred, the court
13 may provide the remedies specified in § 20-1009(b) **OR (C)** of this subtitle, **AS**
14 **APPROPRIATE.**

15 20-1017.

16 (a) At any time after a complaint has been filed, if the Commission believes
17 that a civil action is necessary to preserve the status of the parties or to prevent
18 irreparable harm from the time the complaint is filed until the time of the final
19 disposition of the complaint, the Commission may bring an action to obtain a
20 temporary injunction.

21 (b) The action shall be brought in the circuit court for **[the] ANY** county
22 where:

23 (1) **[the place of public accommodation that is the subject of the**
24 **alleged discriminatory act is located;**

25 **(2)] the unlawful employment practice OR DISCRIMINATION BY A**
26 **PLACE OF PUBLIC ACCOMMODATION** is alleged to have occurred or to be occurring;
27 or

28 **[(3)] (2)** the dwelling that is the subject of the alleged discriminatory
29 housing practice is located.

30 SECTION 3. AND BE IT FURTHER ENACTED, That an Internet Web site
31 described under § 20-301(6) of the State Government Article, as enacted by Section 1
32 of this Act that was created and made available to the public before October 1, 2011,
33 shall be made accessible to the blind and visually impaired on or before October 1,
34 2012. An Internet Web site described under § 20-301(6) of the State Government

1 Article, as enacted by Section 1 of this Act that is created or substantially revised on or
2 after October 1, 2011, shall be made accessible to the blind and visually impaired on or
3 before January 1, 2012.

4 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2011.