

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 285

(Delegate Pena-Melnyk, *et al.*)

Health and Government Operations

Judicial Proceedings

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**Human Relations - Discrimination by a Place of Public Accommodation -  
Enforcement and Remedies**

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This bill expands the remedies available for discrimination by a place of public accommodation. The bill also authorizes a complainant to bring a civil action alleging discrimination by a place of public accommodation under certain circumstances. In addition, the bill authorizes specified parties to elect to have the claims asserted in a complaint alleging discrimination by a place of public accommodation determined in a civil action brought by the Maryland Commission on Human Relations (MCHR) if certain requirements are met.

The bill also repeals a provision that prohibits an administrative law judge (ALJ) from issuing – with regard to a respondent found to have engaged in a discriminatory act other than an unlawful employment practice – an order that substantially affects the cost, level, or type of transportation services. Finally, the bill repeals MCHR’s authority to seek an order assessing a civil penalty for discrimination by a place of public accommodation.

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**Fiscal Summary**

**State Effect:** Any additional workload for MCHR, the Judiciary, or the Office of the Attorney General can be handled with existing budgeted resources. Any decrease in revenues due to the elimination of MCHR’s authority to seek an order assessing a civil penalty for discrimination by a place of public accommodation is not expected to materially affect State finances.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** This bill expands the remedies available for discrimination by a place of public accommodation to include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief, including the provision of a reasonable accommodation; (3) awarding compensatory damages for pecuniary and nonpecuniary losses; and (4) ordering any other equitable relief that the ALJ considers appropriate.

The bill also authorizes a complainant to bring a civil action against the respondent alleging discrimination by a place of public accommodation if (1) the complainant initially filed a timely administrative charge or complaint; (2) at least 180 days have elapsed since the filing of the charge or complaint; and (3) the action is filed within two years after the alleged discrimination occurred. If the court finds that discrimination by a place of public accommodation occurred, the court may provide the above remedies. The court may also award punitive damages if the respondent is not a governmental unit or political subdivision and the court finds that the respondent acted with actual malice.

In addition, the bill authorizes a complainant, a respondent, or MCHR to elect to have the claims asserted in a complaint alleging discrimination by a place of public accommodation determined in a civil action brought by MCHR on behalf of either the commission or the complainant if (1) MCHR has found probable cause to believe the respondent has engaged or is engaging in discrimination by a place of accommodation; and (2) there is a failure to reach an agreement to remedy and eliminate the discrimination. If the election for MCHR to assert the claims in civil court is made by either the complainant or respondent, such an election must be made within 30 days after the complainant or respondent receives service. A civil action brought by MCHR must be filed within 60 days after such an election is made.

**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, 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.

On a finding that a respondent has engaged in a discriminatory act in relation to the prohibition against discrimination in public accommodations, MCHR may issue an order for nonmonetary relief and/or assess a civil penalty against a respondent. Maximum civil penalties range from \$500 to \$2,500 depending on whether or not the respondent committed prior discriminatory acts. However, an order may not be issued that substantially affects the cost, level, or type of any transportation services.

**Background:** MCHR received 44 complaints of discrimination in public accommodations in fiscal 2010.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 642 (Senator Raskin) - Judicial Proceedings.

**Information Source(s):** Department of Natural Resources; Maryland State Department of Education; Department of General Services; Department of Health and Mental Hygiene; Human Relations Commission; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Municipal League; Office of Administrative Hearings; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2011  
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