

# SENATE BILL 491

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CF HB 287

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By: **Senators Gladden, Conway, Montgomery, and Stone**

Introduced and read first time: February 2, 2012

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Civil Rights – Discrimination by a Place of Public Accommodation –**  
3 **Enforcement and Remedies**

4 FOR the purpose of authorizing certain persons or the Commission on Civil Rights to  
5 elect to have the claims asserted in a certain complaint alleging discrimination  
6 by a place of public accommodation determined in a civil action brought by the  
7 Commission under certain circumstances; requiring a civil action brought by the  
8 Commission to be filed within a certain time period after an election; requiring  
9 the remedy for discrimination by a place of public accommodation to include the  
10 greater of certain damages; authorizing the remedy for discrimination by a  
11 place of public accommodation to include certain remedies; clarifying the  
12 remedies available for an unlawful employment practice; repealing a prohibition  
13 against issuing certain orders affecting the cost, level, or type of transportation  
14 services; repealing a prohibition against issuing an order in certain cases that  
15 would require costs, level, or type of transportation services different from or  
16 exceeding those required by certain federal regulations; authorizing a  
17 complainant alleging discrimination by a place of public accommodation to bring  
18 a civil action under certain circumstances; providing for the venue of and  
19 remedies in a certain civil action; defining a certain term; making certain  
20 conforming changes; and generally relating to enforcement and remedies for  
21 certain discriminatory acts.

22 BY repealing and reenacting, with amendments,  
23 Article – State Government  
24 Section 20–1001, 20–1006(b), 20–1007(a) and (b), 20–1009, 20–1012(a) and (b),  
25 and 20–1013  
26 Annotated Code of Maryland  
27 (2009 Replacement Volume and 2011 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
29 MARYLAND, That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – State Government**

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; or16 (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**; and28 (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:**

6 **(1) SHALL INCLUDE THE GREATER OF:**

7 **(I) LIQUIDATED DAMAGES OF \$100 PER DISCRIMINATORY**  
8 **ACT, OR \$1,000 PER COMPLAINANT, WHICHEVER IS GREATER; OR**

9 **(II) COMPENSATORY DAMAGES FOR PECUNIARY LOSSES,**  
10 **EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF**  
11 **ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES; AND**

12 **(2) MAY INCLUDE:**

13 **(I) ENJOINING THE RESPONDENT FROM ENGAGING IN THE**  
14 **DISCRIMINATORY ACT;**

15 **(II) ORDERING APPROPRIATE AFFIRMATIVE RELIEF,**  
16 **INCLUDING THE PROVISION OF A REASONABLE ACCOMMODATION; AND**

17 **(III) ORDERING ANY OTHER EQUITABLE RELIEF THAT THE**  
18 **ADMINISTRATIVE LAW JUDGE CONSIDERS APPROPRIATE.**

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

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

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

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

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

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

5            (2)     issue an order dismissing the complaint.

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

9     20-1012.

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

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

18     20-1013.

19           (a)     In addition to the right to make an election under § 20-1007 of this  
20 subtitle, a complainant may bring a civil action against the respondent alleging an  
21 unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**  
22 **ACCOMMODATION**, if:

23           (1)     the complainant initially filed a timely administrative charge or a  
24 complaint under federal, State, or local law alleging an unlawful employment practice  
25 **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** by the respondent;

26           (2)     at least 180 days have elapsed since the filing of the administrative  
27 charge or complaint; and

28           (3)     the civil action is filed within 2 years after the alleged unlawful  
29 employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**  
30 **ACCOMMODATION** occurred.

31           (b)     A civil action under this section shall be filed in the circuit court for the  
32 county where the alleged unlawful employment practice **OR DISCRIMINATION BY A**  
33 **PLACE OF PUBLIC ACCOMMODATION** occurred.

1 (c) The filing of a civil action under this section automatically terminates  
2 any proceeding before the Commission based on the underlying administrative  
3 complaint and any amendment to the complaint.

4 (d) If the court finds that an unlawful employment practice **OR**  
5 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred, the court  
6 may provide the remedies specified in § 20–1009(b) **OR (C)** of this subtitle.

7 (e) (1) In addition to the relief authorized under subsection (d) of this  
8 section, the court may award punitive damages, if:

9 (i) the respondent is not a governmental unit or political  
10 subdivision; and

11 (ii) the court finds that the respondent has engaged in or is  
12 engaging in an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF**  
13 **PUBLIC ACCOMMODATION** with actual malice.

14 (2) If the court awards punitive damages **FOR AN UNLAWFUL**  
15 **EMPLOYMENT PRACTICE**, the sum of the amount of compensatory damages awarded  
16 to each complainant under subsection (d) of this section and the amount of punitive  
17 damages awarded under this subsection may not exceed the applicable limitation  
18 established under § 20–1009(b)(3) of this subtitle.

19 (f) If a complainant seeks compensatory or punitive damages under this  
20 section:

21 (1) any party may demand a trial by jury; and

22 (2) the court may not inform the jury of the limitations on  
23 compensatory and punitive damages imposed under § 20–1009(b)(3) of this subtitle.

24 (g) When appropriate and to the extent authorized under law, in a dispute  
25 arising under this part, in which the complainant seeks compensatory or punitive  
26 damages, the parties are encouraged to use alternative means of dispute resolution,  
27 including settlement negotiations or mediation.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2012.