

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 287 (Delegate Hubbard, *et al.*)
Health and Government Operations

**Civil Rights - Discrimination by a Place of Public Accommodation - Enforcement
and Remedies**

This bill expands the remedies available for discrimination by a place of public accommodation and provides for a civil cause of action in such cases.

Fiscal Summary

State Effect: Potential significant increase in Transportation Trust Fund (TTF) expenditures for the Maryland Department of Transportation (MDOT) if an order were to be issued requiring costs, level, or transportation services different from or exceeding federal requirements or affecting the cost, level, or type of transportation services. Potential minimal increase in general fund expenditures for the Maryland Commission on Civil Rights (MCCR) to investigate and litigate additional cases. Any additional workload for the Judiciary or the Office of Administrative Hearings can be handled with existing budgeted resources.

Local Effect: Potential minimal increase in litigation costs for local governments.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: If a respondent is found to have engaged in or to be engaging in discrimination by a place of public accommodation, this bill establishes that the remedy must include the greater of (1) liquidated damages of \$100 per discriminatory act or \$1,000 per complaint, whichever is greater; or (2) compensatory damages for pecuniary and nonpecuniary losses. The remedies may also include (1) enjoining the respondent

from engaging in the discriminatory act; (2) ordering appropriate affirmative relief, including the provision of a reasonable accommodation; and (3) ordering any other equitable relief that the administrative law judge (ALJ) considers appropriate.

The bill adds discrimination by a place of public accommodation to the alleged discriminatory acts for which a complainant or respondent may elect to have MCCR bring a civil action in circuit court in lieu of an administrative hearing before an ALJ. 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 respondent will be subject to 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.

The bill specifies that a proper venue for a civil action brought by MCCR alleging discrimination by a place of public accommodation is any county where the alleged discrimination occurred.

The bill repeals a provision that prohibits an 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. It also repeals a provision that prohibits, in cases involving transportation services that are supported fully or partially with funds from MDOT, an order to be issued that would require costs, level, or type of transportation services different from or exceeding those required to meet federal regulations adopted under the Rehabilitation Act.

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, MCCR 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. If the transportation services are partially or fully funded by MDOT, an order may not be issued that would require costs, level, or type of services different from or exceeding those required to meet federal standards, as specified.

Background: MCCR received 49 complaints of discrimination in public accommodations in fiscal 2011.

State Fiscal Effect: MDOT advises that repealing the provision that makes unenforceable any order issued that would require costs, level, or type of transportation services different from or exceeding those required to meet federal requirements could cause a significant increase in TTF expenditures. MDOT could have significant additional TTF expenditures if an order is issued that substantially affects the cost, type, or level of transportation services.

MCCR estimates that the expanded remedies and enforcement options may result in more cases being filed. Accordingly, expenditures for MCCR increase minimally to investigate and litigate additional public accommodations cases.

Local Fiscal Effect: The ability for individuals to file civil actions in public accommodations cases, as well as the mandatory penalties established by this bill may lead to additional cases being filed and increased litigation costs for some local governments. For example, Baltimore City indicated that the bill could increase expenditures related to legal fees. Kent and Worcester counties did not anticipate any fiscal impact.

Small Business Effect: Small businesses found to be in violation of the provisions relating to public accommodations will be subject to mandatory penalty of either liquidated damages or compensatory damages, whichever is greater.

Additional Information

Prior Introductions: HB 285 of 2011, a similar bill as amended, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 642, passed the Senate on second reading, as amended, but was then recommitted to the Senate Judicial Proceedings Committee.

Cross File: SB 491 (Senator Gladden, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Housing and Community Development, Maryland Commission on Civil Rights, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Maryland Department of Transportation, Kent and Worcester counties, Baltimore City, Department of Legislative Services

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