

SENATE BILL 223

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SB 642/11 – JPR

6lr1677
CF 6lr1678

By: **Senators Lee, Benson, Feldman, Kagan, Kelley, King, Madaleno, Manno,
Nathan–Pulliam, Pugh, Ramirez, and Raskin**

Introduced and read first time: January 21, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Human Relations – 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 elect
5 to have the claims asserted in a certain complaint alleging discrimination by a place
6 of public accommodation determined in a civil action brought by the Commission
7 under certain circumstances; requiring a civil action brought by the Commission to
8 be filed within a certain time period after an election; expanding the remedies
9 available for discrimination by a place of public accommodation; clarifying the
10 remedies available for an unlawful employment practice; repealing a prohibition
11 against issuing certain orders affecting the cost, level, or type of any transportation
12 services; authorizing a complainant alleging discrimination by a place of public
13 accommodation to bring a civil action under certain circumstances; providing for the
14 venue of and remedies in a certain civil action; repealing the authority of the
15 Commission to seek an order assessing a civil penalty for discrimination by a place
16 of public accommodation; defining a certain term; making certain conforming
17 changes; and generally relating to enforcement and remedies for certain
18 discriminatory acts.

19 BY repealing and reenacting, with amendments,
20 Article – State Government
21 Section 20–1001, 20–1006(b), 20–1007(a) and (b), 20–1009, 20–1012(a) and (b),
22 20–1013, and 20–1016(a)
23 Annotated Code of Maryland
24 (2014 Replacement Volume and 2015 Supplement)

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

27 **Article – State Government**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 20-1001.

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

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

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

8 20-1006.

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

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

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

17 20-1007.

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

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

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

29 (2) An election under paragraph (1) of this subsection shall be made within
30 30 days after the complainant or respondent receives service under §
31 20-1006(b) of this subtitle.

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

4 (b) When a complaint alleging an unlawful employment practice **OR**
5 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** is issued and served under
6 § 20–1006 of this subtitle, the Commission may elect to have the claims asserted in the
7 complaint determined in a civil action brought on the Commission’s own behalf, if:

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

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

14 20–1009.

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

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

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

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

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

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

26 (i) enjoining the respondent from engaging in the discriminatory
27 act;

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

30 (iii) awarding compensatory damages; **[or] AND**

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

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

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

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

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

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

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

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

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

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

25 (5) In addition to any other relief authorized by this subsection, a
26 complainant may recover back pay for up to 2 years preceding the filing of the complaint,
27 where the unlawful employment practice that has occurred during the complaint filing
28 period is similar or related to an unlawful employment practice with regard to
29 discrimination in compensation that occurred outside the time for filing a complaint.

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

33 **(1) ENJOINING THE RESPONDENT FROM ENGAGING IN THE**
34 **DISCRIMINATORY ACT;**

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

3 **(3) AWARDING COMPENSATORY DAMAGES FOR PECUNIARY LOSSES,**
4 **EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF**
5 **ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES; AND**

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

8 ~~[(c)]~~ **(D)** (1) [(i) Except as provided in subparagraph (ii) of this paragraph,
9 if] **IF** the respondent is found to have engaged in or to be engaging in a discriminatory act
10 other than an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF**
11 **PUBLIC ACCOMMODATION**, in addition to an award of civil penalties as provided in §
12 20–1016 of this subtitle, nonmonetary relief may be granted to the complainant.

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

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

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

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

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

26 (2) issue an order dismissing the complaint.

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

30 20–1012.

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

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

4 20–1013.

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

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

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

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

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

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

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

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

28 (i) the respondent is not a governmental unit or political
29 subdivision; and

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

1 (2) If the court awards punitive damages **FOR AN UNLAWFUL**
2 **EMPLOYMENT PRACTICE**, the sum of the amount of compensatory damages awarded to
3 each complainant under subsection (d) of this section and the amount of punitive damages
4 awarded under this subsection may not exceed the applicable limitation established under
5 § 20–1009(b)(3) of this subtitle.

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

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

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

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

14 20–1016.

15 (a) Except as provided in subsection (b) of this section, in addition to any other
16 relief authorized, if the Commission finds that a respondent has engaged in a
17 discriminatory act under [Subtitle 3 or] Subtitle 4 of this title, the Commission may seek
18 an order assessing a civil penalty against the respondent:

19 (1) if the respondent has not been adjudicated to have committed any prior
20 discriminatory act, in an amount not exceeding \$500;

21 (2) if the respondent has been adjudicated to have committed one other
22 discriminatory act during the 5–year period ending on the date of the filing of the current
23 charge, in an amount not exceeding \$1,000; and

24 (3) if the respondent has been adjudicated to have committed two or more
25 discriminatory acts during the 7–year period ending on the date of the filing of the current
26 charge, in an amount not exceeding \$2,500.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2016.