

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 812

(Senator Smith, *et al.*)

Judicial Proceedings

Fair Housing Opportunities Act of 2019

This bill prohibits discriminatory practices in residential real estate transactions and the sale or rental of a dwelling because of a person's source of income.

Fiscal Summary

State Effect: Any additional workload can be handled with existing budgeted resources, as discussed below. Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in expenditures due to the bill's criminal penalty provisions. Revenues are not affected. The bill does not materially impact the workload of the circuit courts.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill prohibits taking the following actions because of a person's source of income: (1) refusing to sell or rent a dwelling after the making of a bona fide offer; (2) refusing to negotiate for the sale or rental of a dwelling; (3) making a dwelling otherwise unavailable; (4) discriminating in the terms, conditions, or privileges of sale or rental of a dwelling; (5) discriminating in the provision of services or facilities in connection with the sale or rental of a dwelling; (6) making, printing, or publishing or causing to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on source of income; (7) representing to a person that a dwelling is

not available for inspection, sale, or rental when it is available; and (8) for profit, inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons with a particular source of income.

Under the bill, a “source of income” is any lawful source of money paid directly or indirectly to or on behalf of a renter or buyer of housing, including income from (1) any lawful profession, occupation, or job; (2) any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers; (3) any gift, inheritance, pension, annuity, alimony, child support, or other consideration or benefit; and (4) any sale or pledge of property or an interest in property.

The bill also prohibits a person whose business includes engaging in residential real estate related transactions from discriminating against a person in making available a transaction, or in the terms or conditions of a transaction, because of the person’s source of income. However, a real estate appraiser may take into consideration factors other than source of income. The bill prohibits a person from, because of a person’s source of income, denying that person access to, or membership or participation in, a multiple-listing service; real estate brokers’ organization; or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminating against a person in the terms or conditions of membership or participation.

The bill also prohibits any person, whether or not acting under color of law, by force or threat of force, from willfully injuring, intimidating, or interfering with a person’s activities related to the sale, purchase, rental, or occupation of a dwelling, or from attempting to do so. Existing criminal penalties relating to these activities are expanded to include the prohibition against discrimination based on source of income.

The bill does not apply to the rental of rooms or apartments in an owner’s principal residence if the source of income is rental assistance. The exemption for apartments is limited to an owner-occupied dwelling with up to five rental units.

The bill neither prevents a person from refusing to consider income derived from any criminal activity nor prohibits a person from determining the ability of a potential buyer or renter to pay by verifying, in a commercially reasonable and nondiscriminatory manner, the source and amount of income of the potential buyer or renter. The bill does not limit the rights or remedies that are otherwise available to a landlord or tenant under any other law.

Current Law: Housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, or disability is

prohibited. There is no provision prohibiting housing discrimination based on source of income.

A person claiming to have been injured by a discriminatory housing practice may file a complaint with the Maryland Commission on Civil Rights (MCCR) or file a civil action in circuit court. If an administrative law judge (ALJ) finds that the respondent has engaged in a discriminatory housing practice, the ALJ may order appropriate relief, including actual damages and injunctive or other relief, and may assess a civil penalty against the respondent. A court may award actual or punitive damages, grant injunctive relief, and allow reasonable attorney's fees and costs.

Willfully injuring, intimidating, or interfering, by force or threat of force, with a person's activities related to the sale, purchase, rental, or occupation of a dwelling, or to attempt to do so, is a misdemeanor. A violator is subject to maximum penalties of 1 year imprisonment and/or a \$1,000 fine. If the violation results in bodily injury, the maximum penalty is 10 years imprisonment and/or a \$10,000 fine. If the violation results in death, the maximum penalty is life imprisonment.

Background: For additional information regarding source-of-income discrimination, please see the **Appendix – The Housing Choice Voucher Program and Source-of-income Discrimination.**

State Revenues: Potential minimal reduction in federal fund revenue attainment to the extent that meeting the bill's requirements reduces the capacity of MCCR to meet workload standards for other eligible discrimination cases. However, for purposes of this analysis, the Department of Legislative Services (DLS) assumes that federal fund revenue attainment is likely not affected.

MCCR has a work-sharing agreement with the U.S. Department of Housing and Urban Development for investigating housing discrimination complaints where the State and federal law overlap. However, federal law does not recognize "source of income" as a basis for discrimination. Accordingly, MCCR advises that investigative staff may be diverted to meet the bill's requirements, which could result in a reduction in federal fund revenues. However, DLS advises that given the relatively low volume of new cases anticipated under the bill, any increase in case volume is likely to be handled with existing resources or delegated to OAH so that MCCR can continue to comply with caseload processing standards for those cases with federal involvement.

General fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court or from additional civil penalties assessed.

State Expenditures: MCCR advises that it may need to hire new civil rights officers due to an anticipated increase in the number of housing complaints that may be filed as a result of the bill's provisions, however, DLS disagrees. Civil rights officers handle an average of 85 cases annually. Housing discrimination cases in fiscal 2018 account for about 130 cases or 10% of the total MCCR caseload, a small proportion. Furthermore, under current law, MCCR is able to delegate fair housing complaints, among others, to OAH. Therefore, DLS advises that the bill's provisions can be handled within existing budgeted resources. To the extent that housing discrimination cases do increase substantially in the future, MCCR may have a need for additional staff at that time.

The Judiciary and OAH both advise that the bill's provisions can be handled within existing budget resources.

General fund expenditures increase minimally as a result of the bill's incarceration penalty due to the possibility of more people being committed to State correctional facilities for convictions in Baltimore City. The number of people convicted under the bill's provisions is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Increased penalties of life imprisonment and a \$10,000 fine and/or 10 years imprisonment are provided if specified violations result in death or bodily injury, respectively. However, it is assumed that only a minimal number of people are potentially subject to these increased penalties. Accordingly, the Department of Public Safety and Correctional Services expenditures are not materially impacted as a result of people being sentenced to State correctional facilities for longer periods of time under the increased penalty provisions.

Local Revenues: Although increased penalties of life imprisonment and a \$10,000 fine and/or 10 years imprisonment are imposed if specified violations result in death or bodily injury, respectively, it is assumed that the potential number of people subject to these increased penalties does not materially impact the revenues of the circuit courts, as most of the cases fall under the jurisdiction of the District Court.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. It is expected, however, that those subject to incarceration under the bill's provisions are not likely to materially affect local government expenditures.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Small Business Effect: By prohibiting discrimination based on the source of a tenant's income, additional landlords may be subject to participation in the Housing Voucher program, which was established as a voluntary program. Landlords participating in the Housing Voucher program may have increased administrative responsibilities, as program participation, which is governed by federal standards, is administered by State and local housing authorities. For example, federal regulations require annual inspections by the housing authorities; some housing authorities require participating landlords to have direct deposit.

Additional Information

Prior Introductions: HB 172 of 2017 passed the House as amended, was referred to the Senate Judicial Proceedings Committee, and had no further action taken on it. Its cross file, SB 728, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 759 of 2016 received a hearing in the House Environment and Transportation Committee, but no further action was taken. In addition, similar bills were introduced in the 2010 through 2014 sessions.

Cross File: HB 451 (Delegate Lafferty, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Office of Administrative Hearings; Poverty and Race Research Council; U.S. Department of Housing and Urban Development; National Bureau of Economic Research; Center on Budget and Policy Priorities; *Housing Policy Debate*; *Housing Studies*; Department of Legislative Services

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Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – The Housing Choice Voucher Program and Source-of-income Discrimination

Background

According to the Poverty and Race Research Action Council, 14 states (California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, Washington, and Wisconsin) and the District of Columbia (as of January 2019) have statutes prohibiting housing discrimination on the basis of a person’s source of income. Numerous laws are also found at the local level nationwide, including cities such as Chicago, New York City, Philadelphia, Memphis, and Seattle. In Maryland, Frederick, Howard, and Montgomery counties, as well as the cities of Frederick and Annapolis, prohibit source-of-income discrimination within their jurisdictions. Under these statutes, “source of income” may include almost any lawful source of money, such as benefits from any government assistance program, private loans, gifts, pensions, alimony, and child support; the income derived from government housing assistance (*i.e.*, housing vouchers) tends to be the most controversial. While some statutes expressly include the use of housing vouchers under source-of-income protections, others do not. Moreover, court rulings in some states (*e.g.*, California and Minnesota) have held that statutes prohibiting source-of-income discrimination do not apply to landlords who decline to accept housing vouchers.

Housing Choice Voucher Program – Generally

The Housing Choice Voucher Program is a program of the U.S. Department of Housing and Urban Development (HUD) that subsidizes the cost of housing for low-income individuals and evolved from numerous federal initiatives to provide affordable housing. Initial efforts, such as the federal Housing Act of 1937, were focused on addressing the issue of affordable housing by providing federal funding to state or local housing authorities to construct public housing. Later legislation, including the Housing and Community Development Act of 1974, which allowed families to select their own housing and lease directly from a building owner through a rental certificate program, illustrated the shift in federal affordable housing strategies from locally owned public housing to privately owned rental housing. The rental certificate program was popular due to its ability to provide assistance quickly, allow families a choice of housing, and disperse families throughout the community without automatically creating “projects” or locations with high concentrations of poverty. Many aspects of the rental certificate program were included in the Quality Housing and Work Responsibility Act of 1998, which created the current Housing Choice Voucher Program.

Households with annual incomes of 50% or less of the area median income are eligible for the program. Under federal rules, 75% of annual admissions must be families with annual incomes at or below 30% of the area median income. In Maryland, local housing authorities (or the Department of Housing and Community Development (DHCD) in jurisdictions without a housing authority) administer the program and determine a payment standard for each area based on fair market rent guidelines issued by HUD. Once a voucher has been awarded, eligible individuals are responsible for finding a suitable housing unit where the owner agrees to rent under the program. A voucher recipient may choose a housing unit that rents for more or less than the payment standard. Voucher recipients must pay 30% of their monthly adjusted gross income for rent and utilities; housing assistance payments under the voucher program are the difference between the payment standard and 30% of the family's adjusted income. If the rent is greater than the payment standard, the family must pay the additional amount; however, if a family moves to a new unit where the rent exceeds the payment standard, the family may not pay more than 40% of its adjusted monthly income for rent. The local housing agency pays the housing assistance payment directly to the owner of the property. The federal law does not require that a landlord participate in the program.

The State currently has 53,124 housing choice vouchers, and household utilization of those vouchers is estimated at 90% to 95% of the total. However, demand for the program far exceeds the supply of resources. At the end of fiscal 2018, DHCD had 9,605 individuals on its waitlist (which represents only the jurisdictions in which it operates the voucher program), with an average waiting time of three to five years.

Source-of-income Discrimination Issues

The federal Fair Housing Act prohibits landlords from refusing to rent based on a tenant's race, color, religion, sex, national origin, familial status, or disability. Pursuant to State law, housing discrimination based on race, sex, color, religion, national origin, marital status, familial status, sexual orientation, disability, or gender orientation is prohibited. Although source-of-income discrimination is not prohibited by federal law or the law of the majority of states, including Maryland, advocates have expressed concerns that the refusal of landlords to accept vouchers has a disproportionate impact on minorities. According to 2017 data from HUD, approximately 81% of voucher holders in the State were minorities.

HUD has stated that efforts to increase housing choice and access to opportunity are at the core of its fair housing efforts. It has also noted that the federal Fair Housing Act and subsequent laws reaffirming its principles require recipients of federal funds not only to refrain from discrimination but also to take actions to address segregation and related barriers for protected classes. HUD recently recognized how the connection between source-of-income discrimination and the housing voucher program may have a vital role

in promoting affordable housing opportunities in better neighborhoods. As part of a settlement agreement in early 2016 between HUD and Baltimore County regarding, in part, allegations of violations of the Fair Housing Act, a provision required the county executive to submit to the county council and actively promote legislation that would prohibit source-of-income discrimination. Although the legislation ultimately failed in August 2016, it was required to be resubmitted after the next term of office of the county executive. The new term of office started January 2019. The settlement agreement also requires Baltimore County, when preparing specified plans and analyses for submission to HUD, to state that discrimination based on source of income is an impediment to fair housing choice and a significant contributing factor when assessing fair housing in the county.

Neighborhoods and Opportunity: A large body of research has been devoted to examining the potential impact that access to quality neighborhoods has on individuals and families. Many studies have focused on analyzing the Moving to Opportunity (MTO) demonstration program, which operated in Baltimore City and four other major U.S. cities, and offered families with children who lived in high-poverty public housing projects the ability (via random lottery) to use their housing vouchers to move into lower poverty neighborhoods. According to a 2012 study from the National Bureau of Economic Research (NBER), *Long-Term Neighborhood Effects on Low-Income Families: Evidence from Moving to Opportunity*, movers reported lower rates of obesity and diabetes and 33% fewer instances of major depression. A more recent study from NBER, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment* (2015), focused on the impacts of MTO for children who moved when they were younger than age 18 and concluded that the move significantly improved college attendance rates. Compared to individuals in the MTO control group (who did not move), these individuals also have higher incomes, live in better neighborhoods as adults, and are less likely to become single parents.

As noted, one of the intents of housing vouchers was to allow program recipients to choose where they live, in an effort to avoid duplicating the pockets of poverty that were created with public housing developments. Studies evaluating whether the voucher program has successfully promoted neighborhood integration have been mixed. The Center on Budget and Policy Priorities analyzed HUD data regarding voucher use in 2014. According to its findings, approximately 13% of families with children participating in the voucher program used vouchers to live in low-poverty areas (where fewer than 10% of residents are poor). It found that vouchers were particularly useful in enabling minority children to live in lower poverty neighborhoods. However, 343,000 children in families using vouchers still lived in extremely poor neighborhoods (where more than 40% of residents were poor).

Another study evaluating the use of housing vouchers between 2000 and 2008, *The Reconcentration of Poverty: Patterns of Housing Voucher Use, 2000 to 2008*, Housing

Policy Debate (2014), found that vouchers actually perpetuated concentrated poverty and racial segregation in the 50 most populous U.S. metropolitan areas. The study noted that the trends reflect a combination of preferences of voucher households and the unavailability or inaccessibility of affordable rental housing in certain communities. However, low-income households using vouchers were more segregated by race and income than a comparison group of nonvoucher households earning less than \$15,000 annually. This suggests that additional constraints may face voucher households, including a reluctance by landlords to accept vouchers and the allowable rental costs covered by the program.

While acknowledging that there are valid reasons for landlords to decline participating in the program, such as not being able to charge rent while voucher units are undergoing inspections by local housing authorities, the study noted that households in metropolitan areas with source-of-income protection laws were less racially segregated and less clustered within specific census tracts. Another study, *Do Source of Income (SOI) Anti-Discrimination Laws Facilitate Access to Better Neighborhoods?*, Housing Studies (2014), concluded that living in a jurisdiction with a source-of-income law was associated with voucher recipients living in neighborhoods with lower poverty rates. However, it also concluded that source-of-income laws did not appear to facilitate the movement of voucher recipients away from concentrations of other voucher recipients. Finally, another study found that source-of-income laws increase the percentage of people who are able to successfully find housing with a voucher (the utilization rate) by between 4% and 11% (*The Impact of Source of Income Laws on Voucher Utilization*, Housing Policy Debate 2012).

Administrative Burden Challenge Rejected: The Court of Appeals examined the issue of source-of-income discrimination in a 2007 case, *Montgomery County v. Glenmont Hills*, 402 Md. 250 (2007). The case involved Montgomery County's fair housing law, to which a prohibition of refusing to lease or rent housing to any person based on source of income was added in 1991. In the case, Glenmont Hills Associates (GHA), the owner of a multi-unit residential apartment complex, had a business policy not to participate in the voucher program. After an applicant intending to use a voucher was refused, the Montgomery County Commission on Human Rights and the rejected tenant filed separate complaints alleging a violation of the county's law. The initial hearing examiner and the subsequent case review board appointed by the commission found that GHA was in violation of the law. The administrative decision was overturned by the Circuit Court for Montgomery County, which ruled that the county cannot force a landlord to enter into a contract with the federal government. As an alternative basis, it also found that the refusal to rent to voucher recipients was not based on the tenant's status as a voucher holder, but instead on a legitimate desire to avoid the administrative hassle of the program.

The Court of Appeals granted *certiorari* and rejected GHA's argument that because federal law does not require landlords to accept vouchers, it preempts the county's source-of-income discrimination law. As a result, the ruling has the practical effect of mandating landlord participation in Montgomery County. The court held that for GHA's preemption argument to prevail, it would have to find that voluntary participation by landlords was a central component of the voucher legislation; the court found nothing to indicate that this was an important congressional objective. The court also considered whether participation in the voucher program created an undue burden on landlords and noted case law holding that unless a landlord can establish a burden that is severe enough to constitute a taking of property, or a violation of due process, an administrative burden is not a viable defense. Accordingly, the court reversed the judgment of the circuit court and remanded the case with instructions to affirm the final order of the Montgomery County Commission on Human Rights.