

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 317

(Delegate Cullison)

Health and Government Operations

Judicial Proceedings

Maryland Commission on Civil Rights - Civil Penalties

This bill increases the maximum civil penalties that the Maryland Commission on Civil Rights (MCCR) is authorized to seek to \$25,000 if it finds that (1) an agent or employee of a respondent has engaged in a discriminatory act regarding public accommodations or specified actions of persons licensed or regulated by the Department of Labor, Licensing, and Regulation (DLLR); (2) the discriminatory act is determined to be malicious; and (3) the respondent has not reasonably mitigated the harm caused by the discriminatory act.

The bill establishes specified circumstances under which MCCR may not seek a civil penalty and specified criteria that an administrative law judge (ALJ) must consider in determining the amount of the civil penalty to be imposed. Under the bill, any civil penalties collected must be paid to the complainant, rather than the State general fund.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources. The bill does not materially impact general fund revenues.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: MCCR may not seek an order assessing a civil penalty against a respondent if (1) the discriminatory act was limited to a violation relating to accessibility;

(2) the respondent, after being served, takes prompt corrective action; and (3) the respondent has not previously been subject to a complaint of an alleged discriminatory act.

When assessing a penalty at an administrative hearing regarding a complaint of an alleged discriminatory act, the ALJ must consider the following when determining the amount of the civil penalty to impose (1) the seriousness of the discriminatory act; (2) the good faith of the respondent; (3) the harmful effect to the public of the discriminatory act; (4) the harmful effect of the respondent's actions on the investigatory process of MCCR; and (5) the respondent's assets.

The bill also requires that MCCR submit a report to the Governor and General Assembly by July 1, 2020, and each July 1 thereafter for the next four years, regarding the effect the bill's provisions have had on respondents against whom complaints have been filed.

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, gender identity, 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.

A person that is licensed or regulated by DLLR may not refuse, withhold from, or deny any person any of the accommodations, advantages, facilities, privileges, sales, or services of the licensed or regulated person or discriminate because of a person's race, sex, creed, color, national origin, marital status, sexual orientation, age, gender identity, or disability.

On a finding that a respondent has engaged in a discriminatory act in relation to the prohibitions against discrimination specified above, MCCR may issue an order for nonmonetary relief and/or assess a civil penalty against a respondent. Civil penalties collected are paid to the general fund.

The statute specifies that if a respondent has not been adjudicated to have committed any prior discriminatory act, the civil penalty may not exceed \$500. If the respondent has been adjudicated to have committed one other discriminatory act during a specified five-year period, the civil penalty may not exceed \$1,000. In addition, if the respondent has been adjudicated to have committed two or more discriminatory acts during a specified seven-year period, the penalty amount may not exceed \$2,500. Furthermore, if the discriminatory act is committed by an individual who has been previously adjudicated to have committed one or more discriminatory acts, the above-mentioned time periods do not apply.

Background: MCCR received 81 complaints of discrimination in public accommodations in fiscal 2018. In its annual report, MCCR noted that public accommodations complaints represent only 9% of the total complaints MCCR received in 2018. It has previously indicated that one of the major factors contributing to the consistently low number of complaints is that the statute does not mandate any type of financial relief for the complainant, as any civil penalties collected are deposited into the State's general fund. It also notes that many places of public accommodation have refused to comply with existing law, which is one of the primary reasons MCCR has consistently supported efforts to improve its enforcement authority and remedies.

State Revenues: MCCR advises that most public accommodations cases are settled administratively or with a finding of no probable cause; it is also unaware of any recent cases where a civil penalty was assessed against a respondent. Accordingly, any potential minimal decrease in general fund revenues due to the bill's provisions does not materially impact State finances.

State Expenditures: Although the enhanced remedies authorized by the bill under specified circumstances, and the requirement that any civil penalty awarded be paid to the complainant rather than the general fund may result in more individuals pursuing claims of discrimination, any caseload increase is expected to be minimal. Thus, any additional workload for MCCR, the Judiciary, or the Office of Administrative Hearings can be handled with existing budgeted resources. MCCR further advises that it can issue the required annual report within existing resources.

Small Business Impact: Small businesses held liable for discrimination in public accommodations that was both malicious and not reasonably mitigated are subject to higher penalties.

Additional Information

Prior Introductions: SB 823 of 2018 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 935 of 2018 was withdrawn.

Cross File: SB 271 (Senator Lee) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of Administrative Hearings; Department of Legislative Services

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