

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 540

(The President)(By Request - Office of the Attorney
 General)

Judicial Proceedings

Judiciary

Human Relations - Civil Rights Enforcement - Powers of the Attorney General

This bill generally (1) grants the Attorney General the power to investigate, prosecute, and remediate any conduct that constitutes a civil rights violation; (2) establishes related procedures and specified remedies for violations; (3) requires coordination with the Maryland Commission on Civil Rights (MCCR); and (4) establishes the Civil Rights Enforcement Fund.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.0 million in FY 2024; future years reflect annualization, inflation, and ongoing operating costs. The FY 2024 budget as passed by the General Assembly includes \$1.0 million in available funding for the bill or its cross file, as discussed below. Special fund revenues increase from civil penalties (and to the extent additional general fund support is provided); special fund expenditures increase correspondingly. General fund revenues increase minimally from interest.

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF Revenue	-	-	-	-	-
SF Revenue	-	-	-	-	-
GF Expenditure	\$1.0	\$1.2	\$1.3	\$1.3	\$1.4
SF Expenditure	-	-	-	-	-
Net Effect	(\$1.0)	(\$1.2)	(\$1.3)	(\$1.3)	(\$1.4)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not expected to materially affect local finances and operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The Attorney General may investigate, prosecute, and remediate, on behalf of the residents of the State, any conduct that constitutes a civil rights violation. The Attorney General may not bring a civil rights action (1) on behalf of an individual; (2) against a political subdivision; (3) against any unit of State or local government; or (4) against any employee or agent of a political subdivision or unit of State or local government who is acting under the color of law. If the Attorney General has reasonable cause to believe that a person is engaged in discrimination prohibited by the U.S. Constitution, the Maryland Constitution, or State or federal law, the Attorney General may commence a civil action. The civil action must be instituted in the circuit court for the county where (1) the alleged violator resides or has a principal place of business or (2) the alleged violation has occurred.

Prior to initiating a civil action, the Office of the Attorney General (OAG) must conduct a preliminary investigation to determine whether there is reasonable cause to believe that any person committed a civil rights violation. During any examination, investigation, or hearing, OAG may (1) subpoena witnesses; (2) administer oaths; (3) examine individuals under oath; and (4) compel production of records, books, papers, contracts, and other documents. Unless obtained by a method independent of a subpoena, information obtained through subpoena is not admissible in a later criminal proceeding against the person who provided the evidence. The Attorney General may intervene in a civil action concerning an alleged civil rights violation if (1) the Attorney General certifies that the case is of general importance and (2) timely application is made.

To obtain relief with respect to an alleged civil rights violation, an action must be commenced no later than three years after the discovery, occurrence, or termination – whichever occurs last – of the alleged civil rights violation.

Conciliation or Settlement Agreements

If the Attorney General obtains a conciliation or settlement agreement, no action may be filed with respect to the alleged conduct that forms the basis for the complaint covered by the agreement, except for the purpose of enforcing the terms of the agreement. To obtain relief with respect to an alleged breach of a conciliation or settlement agreement, an action must be commenced no later than three years after the discovery, occurrence, or termination of the alleged breach.

Remedies

The Attorney General may seek an injunction to prohibit a person that has engaged or is engaging in a civil rights violation from continuing or engaging in the violation. In a request

for injunctive relief, the Attorney General is *not* required to (1) post bond; (2) allege or prove that an adequate remedy at law does not exist; or (3) allege or prove that substantial or irreparable damage would result from any conduct alleged. OAG must serve notice of the general relief sought at least seven days before the action for an injunction is filed. The court may enter any order of judgement necessary to (1) prevent the use by a person of any prohibited practice; (2) restore to a person any money, real property, or personal property acquired by means of any prohibited practice; or (3) appoint a receiver to prevent willful violations.

The Attorney General may obtain equitable relief, including a permanent or preliminary injunction, a temporary restraining order, or any other order, including an order enjoining the defendant from engaging in civil rights violations or an order requiring any appropriate action.

The Attorney General may also obtain a civil penalty to vindicate the public interest. Civil penalties must not exceed (1) \$10,000 for the first violation or (2) \$25,000 for a second or subsequent violation. These civil penalties are recoverable by the State in a civil action and must be deposited in the Civil Rights Enforcement Fund (as established by the bill).

The Attorney General may obtain restitution, including a requirement that the violator or alleged violator (1) reimburse the costs of the investigation and litigation to the Attorney General and MCCR; (2) make restitution to any aggrieved person of money, property, or any other thing received from the aggrieved person in connection with a violation or an alleged violation; (3) pay economic damages to an aggrieved person; or (4) post a performance bond or other security.

Jurisdiction with the Maryland Commission on Civil Rights

The bill's provisions may not be interpreted to impair the rights and powers of MCCR. In areas of overlapping jurisdiction, the Attorney General and MCCR must coordinate and make referrals to minimize and eliminate duplication of effort and promote collaboration. The Attorney General, in coordination with MCCR, must adopt regulations to implement the requirements of the bill.

The Attorney General must publish proposed regulations for notice and comment by July 1, 2024.

The Civil Rights Enforcement Fund

The purpose of the fund is to provide funding for civil rights enforcement activities of the Attorney General and MCCR, as well as education and outreach in the community relating to civil rights violations. The fund consists of (1) civil penalties deposited into the fund;

(2) money appropriated in the State budget to the fund; and (3) any other money from any other source accepted for the benefit of the fund. The fund may be used only (1) to reimburse the Attorney General and MCCR for costs associated with investigating and prosecuting civil rights violations and (2) education and outreach in the community relating to civil rights violations.

Interest earnings from the fund must be credited to the general fund.

Money expended from the fund for the enforcement activities of the Attorney General and MCCR is supplemental to and is not intended to take the place of funding that would otherwise be appropriated for the Attorney General or MCCR.

Current Law/Background: The Attorney General is an elected official who serves a four-year term of office. Pursuant to the State Constitution, the Attorney General has enumerated responsibilities, including investigating, commencing, and prosecuting or defending any civil or criminal suit or action, as specified, which the General Assembly, by law or joint resolution, or the Governor, directs to be investigated, commenced, and prosecuted or defended. The Attorney General does not, however, have general authority to prosecute matters in the absence of specific statutory authority or an executive order. The Attorney General also has and must perform any other duties and possess any other powers as the General Assembly prescribes by law. OAG advises that more than 20 other states' Attorneys General have some form of authority to enforce civil rights laws.

MCCR is the independent State agency charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting. According to its annual report, MCCR received 632 reports of discrimination in fiscal 2022.

State Fiscal Effect:

Office of the Attorney General – Staffing Costs

OAG estimates that the bill necessitates 12 staff, including attorneys, investigators, and other administrative positions. The fiscal 2024 budget as passed by the General Assembly includes \$1,048,706 in funding (for 12 new positions) that, contingent on the enactment of House Bill 772 or Senate Bill 540, is to be transferred from the Criminal Investigations Division to the Civil Litigation Division to be used to implement the bill's provisions.

For purposes of this fiscal and policy note, it is therefore assumed that OAG annually engages in civil rights enforcement activities that support the need for 12 dedicated staff, consistent with what is available in the fiscal 2024 budget for this purpose, and incurs associated expenditures in fiscal 2024 reflective of the amount included in the budget.

Accordingly, general fund expenditures increase by \$1,048,706 in fiscal 2024. Assuming a start date of October 1, 2023, consistent with the bill’s effective date, the funding is sufficient to support salaries, fringe benefits, one-time start-up costs, costs for consultants/experts, and ongoing operating expenses, as shown below.

Positions	12.0
Salaries and Fringe Benefits	\$901,529
Standard Operating Expenses	\$88,908
Consultant costs/Expert fees	37,500
Additional Budgeted Funding	<u>20,769</u>
Total FY 2024 State Expenditures	\$1,048,706

Future year expenditures assume continuation of these positions for the purposes of the bill, and reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Civil Rights Enforcement Fund

Special fund revenues increase to the extent that civil penalties are collected and deposited into the Civil Rights Enforcement Fund created by the bill (and to the extent that any general funds are appropriated to the fund). Special fund expenditures increase as the fund is used for authorized purposes, including relevant education and outreach. Although the fund may also be used to reimburse OAG and MCCR for costs associated with investigating/prosecuting civil rights violations, because the amount of any funding that may be provided to the new special fund is speculative, this analysis assumes that general funds are used to support the expenditures associated with OAG as shown above. Any potential impact on OAG and MCCR due to potential reimbursements from the special fund has not specifically been accounted for in this analysis. General fund revenues increase minimally from investment earnings of the fund.

Small Business Effect: Small businesses engaged in discriminatory practices are subject to enhanced enforcement under the bill.

Additional Comments: The Department of Legislative Services (DLS) notes that although the *transfer* of the positions (with the associated funding) is contingent on enactment of the bill or its cross file, the budgeted expenditures for OAG occur even without the enactment of House Bill 772 or Senate Bill 540, only for a different purpose. DLS further advises that the bill’s enactment (or that of its cross file) effectuates the transfer of significant resources originally included for criminal investigations within OAG to the Civil Litigation Division to be used instead for the bill’s purposes. This fiscal and policy note does not account for any potential associated impact on the Criminal Investigations Division within OAG.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 772 (The Speaker)(By Request - Office of the Attorney General) - Judiciary.

Information Source(s): Maryland Commission on Civil Rights; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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