

State of Maryland

Commission on Civil Rights

“Our vision is to have a State that is free from any trace of unlawful discrimination.”



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February 25, 2020

House Bill 579 – Maryland Commission on Civil Rights – Civil Penalties **Position: Support**

Dear Chairperson Pendergrass, Vice Chairperson Peña-Melnyk, and Members of the House Health & Government Operations Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and state contracts based upon race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, and physical and mental disability.

House Bill 579 amends Maryland’s public accommodations anti-discrimination law to state that if a Respondent is found in violation of Maryland law, an Administrative Law Judge (ALJ) may order the Respondent to pay a civil penalty that is to be remitted to the Complainant instead of the State’s General Fund. The civil penalty schedule the ALJ can order is currently prescribed in law as \$500 for the first offense, \$1,000 for the second offense, and \$2,500 for the third offense, within defined time periods. However, if the Respondent has been found in violation of State law previously, and if the violations are found to be malicious by the ALJ, then the civil penalty caps in current law do not apply. Instead, HB579 sets the following civil penalty caps for malicious violations of State law:

- Up to \$25,000 if the offender is an agent or employee of the Respondent, and the Respondent has not reasonably mitigated harm caused by the discriminatory act; or
- Waived entirely if the Respondent was the offending party.

Finally, the bill codifies existing regulation that requires the ALJ to consider, when assessing the civil penalty to be imposed:

- The seriousness of the discriminatory act,
- The good faith of the Respondent,
- The harmful effect to the public of the discriminatory act,
- The harmful effect of the Respondent’s actions on the investigatory process of MCCR, and
- The Respondent’s assets.

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When compared with the employment and housing provisions in State Government Article, Title 20, the relief to Complainants has historically been a small fine remitted to the State of Maryland. Nothing in law provides relief directly to the victim of unlawful discrimination. Whether it is the denial of service due to a person's race, or an individual being assaulted by an owner/operator of a place of public accommodation due to their disability, the law does not permit MCCR or the Complainant to seek any meaningful and personal relief through administrative or judicial means. Thirty-six (36) states as well as the District of Columbia provide the award of compensatory and actual damages for victims of unlawful discriminatory practices by a place of public accommodation. Maryland should join this list of states that enable direct relief for its citizens who have suffered unlawful discrimination.

HB579 is the byproduct of many years of compromise with stakeholders to craft language that strikes the balance of affording aggrieved individuals access to meaningful relief, while protecting businesses operating in good faith from frivolous complaints filed with MCCR. This bill does not grant a Complainant a private right of action to file in Maryland's judiciary once their administrative remedies have been exhausted.

For these reasons, MCCR urges the committee to vote favorably on HB579. *Included in this testimony for the Committee's convenience is a chart illustrating every state's public accommodations law, as well as an analysis of these laws.*

State-by-State Comparison of Public Accommodations Laws

Prepared by the Maryland Commission on Civil Rights

| STATE | PA LAW | ENFORCEMENT AGENCY | AVAILABLE RELIEF/REMEDY | CIVIL PENALTY/OTHER | PRIVATE RIGHT OF ACTION |
|-----------------------------|------------------------------|------------------------------------------------|----------------------------------------------------------------------------------------|-----------------------------------------------|----------------------------------------------------------------------------------------------------------|
| ALABAMA | No PA Law | N/A | N/A | N/A | N/A |
| ALASKA | Alaska Human Rts Law | Comm. for Human Rights | Injunctive, affirm, expenses, atty. fees; Willful (misdemeanor, fine/jail) | Fine up to \$100 and/or up to 30 days in jail | Yes, no need to first file with admin. agency |
| ARIZONA | Arizona Civ. Rts. Act | Civil Rights Division | Injunctive (60 days to correct) | \$300 | Yes, may file in court or use division |
| ARKANSAS | Arkansas Civ. Rts Act | None, but Atty. Gen. may bring action | Injunctive, affirm, damages (comp/punitive), costs, atty. fees | No | Yes, for intentional discrimination cases |
| CALIFORNIA | Unruh Civ. Rts. Act | Dept. of Fair Emp. And Housing | Injunctive, damages (comp, punitive, actual (3x), fines, expenses, atty. fees | No | Yes, need to first request right to sue. May also be removed to Court by Resp. |
| COLORADO | Anti-Discrimination Act | Civ. Rts. Div. Of Colo. Dept. of Reg. Agencies | Injunctive, comp. damages Willful- misdemeanor, \$10 -\$300 fine and 1 year in jail | Fine, \$50 - \$500 | Yes, upon exhaustion of administrative remedies. Must wait 180 days for rt. to sue or ask for exception. |
| CONNECTICUT | Discriminatory Practices Act | Comm. on Human Rts. and Opp. | Injunctive, make whole relief, comp. damages, atty. fees, costs | No | Yes, after 210 days may request agency to release jurisdiction to file in court. |
| DELAWARE | Equal Accom. Act | Human Relations Comm. | Injunctive, affirm, comp. damages | \$5,000 - \$25,000 | Yes, no need to file with agency first |
| DISTRICT OF COLUMBIA | Human Rights Act | Office of Human Rights | Comp. damages, atty. fees | No, license revocation possible | Yes, after exhausted admin. remedies, or must withdraw complaint |

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| STATE | PA LAW | ENFORCEMENT AGENCY | AVAILABLE RELIEF/REMEDY | CIVIL PENALTY/OTHER | PRIVATE RIGHT OF ACTION |
|------------------|-----------------------------|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--------------------------------------------------------------------------------------------------------|
| FLORIDA | Civ. Rts. Law 509.092 | Comm. on Human Relations | Admin.–injunctive, affirm, costs, atty. fees; Court -injunctive, damages (comp., punitive (not to exceed \$100,000), atty. fees | No | Yes, after reasonable cause determined |
| ILLINOIS | Human Right Act | Dept. of Human Rts./Human Rts Comm. | Cease and desist, actual damages, make whole, atty. fees, costs, affirm | No | No, but may elect an alternative hearing format (binding/no right of appeal) |
| INDIANA | Civil Rights Law | Civil Rights Comm. | Cease and desist, actual (comp.) damages | No | Yes, no need to file with agency first |
| IOWA | Iowa Civil Rights Act | Civil Rights Comm. | Make whole relief, cease and desist, damages, atty. fees, expenses, costs | No | Yes, after 60 days may request right to sue and before NPC finding |
| KANSAS | Kansas Act Against Discrim. | Human Rights Comm. | Affirm, cease and desist, comp. damages (not more than \$2000) | No | Yes, as tort action, either after exhausted or after 300 days |
| KENTUCKY | Kentucky Civ. Rts. Act | Comm. on Human Rts. | Cease and desist, affirm, actual damages, costs, atty. fees | No, but may publish names of violators | Yes, no requirement to first file with agency |
| LOUISIANA | LSA-R.S. 51-2231 | Comm. on Human Rts. | Cease and desist, affirm., comp. damages, atty. fees, costs | No, but may publish names of violators | Yes, request notice of right to file in District Court *May also participate in binding arbitration |
| MAINE | Human Rights Act | Human Rights Comm. | Comp. and punitive damages, atty. fees and costs (w/exception) | \$10,000 - \$50,000 | Yes, after 90 days or if case dismissed |
| MARYLAND | Title 20 | Comm. on Human Relations | Cease and desist, affirm, injunctive | \$500 - \$2500 | No |

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|----------------------|---------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|--------------------------------------------------------------------------------|
| MASSACHUSETTS | Chapter 151B | Commission Against Discrim. | Actual, punitive damages, atty. fees/costs, other as appropriate | No | Yes, after 90 days |
| MICHIGAN | Elliott-Larsen Civ. Rights Act | Dept. of Civil Rights | Cease and desist, comp. damages, atty. fees/witness fees | No, but reported to licensing bds. | Yes, no requirement to first file with the Comm. |
| MINNESOTA | Minn. Human Rts. Act | Dept. of Human Rights | Cease and desist, injunctive, damages-comp. (limited to 3x actual), punitive (\$8,500 limit) , atty. fees/ costs | No, but may revoke or suspend of any licenses held | Yes, no need to first file with agency |
| MISSISSIPPI | No PA Law | N/A | N/A | N/A | N/A |
| MISSOURI | Mo. Rev. Stat. 213.065 | Comm. on Human Relations | Admin.-injunctive, actual Court – add'l punitive, atty. fees and costs w/exception | \$2000 - \$10,000 | Yes, after 180 days |
| MONTANA | Montana Human Rights Act | Dept. of Labor & Industry – Human Rts. Bureau | Affirm, comp. damages | No | Yes, if NPC given or after 12 months w/ no contested matter filed w/ exception |
| NEBRASKA | Public Accommodations Act | Equal Opportunity Comm. | Cease and desist, affirm Willful – misdemeanor-jail(30 days)/fines (\$100) | No | No |
| NEVADA | Chap. 651 | Equal Rights Comm. | Affirm., injunctive, may settle for nuisance award | No | Yes, but required exhaust w/ agency |
| NEW HAMPSHIRE | Law Against Discrim. Chap. 354 | Comm. for Human Rights | Cease and desist, injunctive, comp. damages | \$10,000 - \$50,000 | Yes, after 180 days and before 3 years No, if NPC Finding issued |
| NEW JERSEY | New Jersey Law Against Discrim. | Div. of Civ. Rts. | Affirm., comp. damages Court –punitive, atty. fees | \$2,000 - \$5,000 | Yes, not required to file with division prior to filing |

State-by-State Comparison of Public Accommodations Laws

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|----------------------|--------------------------------------------|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| NEW MEXICO | Human Rights Act | Dept. of Labor – Civ. Rts. Div. Comm. on Human Rts. (hearing) | Affirm, damages (actual and comp.), atty. fees | No | No |
| NEW YORK | Human Rts. Law | Div. of Human Rts. | Cease and desist, affirm, comp. and punitive damages | No, but forfeit profits/report to license bd. | Yes, no need to first file with agency If filed with agency, no P.R.O.A. unless dismissed by agency |
| NOTH CAROLINA | No PA Law | N/A | N/A | N/A | N/A |
| NORTH DAKOTA | Human Rights Act | Dept. of Labor | Comp. and punitive damages, injunctive | No | Yes, no need to first file with agency |
| OHIO | Ohio Rev. Stat. 4112 | Civil Rights Comm. | Cease and desist | No, but reported to licensing bd. | No |
| OKLAHOMA | Title 25, Art. 4 | Human Rights Comm. | Cease and desist, affirm., costs, atty. Fees, comp. damages | No | No |
| OREGON | Oregon Stat. 30.670, 30.685, Chap. 651/659 | Bureau of Labor and Industries, Civ. Rts. Div. | Provision of service, expenses, comp. damages (emotional distress) Court – punitive damages, atty. fees | Yes, not to exceed \$1,000 | Yes, no need to 1 st file w/ agency (admin. relief) Yes, after case closed with agency |
| PENNSYLVANIA | P.L. 744, 43 P.S. §§951-963 | Human Relations Comm. | Actual, humiliation and embarrassment, out of pocket, atty. fees and costs | \$10,000, 1 st violation \$25,000, 2 nd violation \$50,000, 3 rd violation | Yes, after 1 year, court may order affirmative, equitable and legal relief |
| RHODE ISLAND | Title 11, Chap. 24 | Comm. for Human Rts. | Affirm, atty. fees, comp damages (intentional discrim.), punitive damages (malice, ill-will) | No | Yes, after 120 days may request rt. to sue |

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| STATE | PA LAW | ENFORCEMENT AGENCY | AVAILABLE RELIEF/REMEDY | CIVIL PENALTY/OTHER | PRIVATE RIGHT OF ACTION |
|-----------------------|--------------------------------|------------------------------------|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|---------------------------------------------------------------|
| SOUTH CAROLINA | Equal Opp. and Priv. to PA Act | Human Affairs Comm. | Affirm, misdemeanor-jail/fine (\$2,000) Court-damages, atty. fees/costs | No, but possible revocation of license | Yes |
| SOUTH DAKOTA | Human Rights Act | Div. of Human Rts. | Cease and desist, comp. damages, equitable/make whole relief | No | Yes, if PC finding may remove to court or have admin. hearing |
| TENNESSEE | Title 4, Chap. 21 | Human Rts. Comm. | Affirm, cease and desist, comp. damages, atty. fees | No | Yes |
| TEXAS | No PA Law | N/A | N/A | N/A | N/A |
| UTAH | Public Accommm. Law | Attorney General | Injunctive; Court-damages, other legal/equitable relief | No | Yes |
| VERMONT | Title 9, Chap. 139 | Human Rts. Comm. | Injunctive, comp. damages, atty. fees | \$10,000 | Yes |
| VIRGINIA | Human Rts. Act | Council on Human Rts. | Affirm, atty. Fees, comp. damages | No | No |
| WASHINGTON | Law Against Discrim. | Human Rts. Comm. | Affirm, cease and desist, comp. damages (\$10,000 limit) | No | Yes, no need to file with agency first |
| WEST VIRGINA | Human Rts. Act | Human Rts. Comm. | Cease and desist, affirm; Willful-misdemeanor, jail/fine (\$100-\$500) | No | Yes |
| WISCONSIN | Wis. Stat. 106.52, ch. DWD 221 | Equal Rts. Div. – Civ. Rts. Bureau | Effectuate purpose of statute Court-comp. and punitive damages, costs, atty. fees | \$1,000 - \$10,000 (if 2 violations w/n 5 years) Report violation to licensing bd. | Yes |
| WYOMING | WY Stat 6-9-101 (2013) | Department of Workforce Services | Jail/fine (\$750) | \$750 | No |

Analysis of State-by-State Comparison of Public Accommodations Laws

Prepared by the Maryland Commission on Civil Rights

I. Number of States with Comprehensive Public Accommodations Law

Currently, forty-five (45) states and the District of Columbia have some comprehensive Public Accommodations law.

There are five (5) states that have no comprehensive Public Accommodations Law. These states are Alabama, Georgia, Mississippi, North Carolina, and Texas¹.

II. Available Relief

A. Injunctive/Affirmative

Several of the states with Public Accommodations Laws provide for injunctive/affirmative relief, such as cease and desist orders, policy modifications, sensitivity training, and other preventive and protective remedies.

This type of relief is available in forty-two (42) states. While the laws in the remaining states do not expressly provide for such relief, the availability of this relief is implied in the statutes. For example, under Wisconsin law, the available relief should “effectuate the purpose of the statute.” Such language implies that various forms of relief, including injunctive, are available.

B. Compensatory Damages

THIRTY-SIX (36) STATES AND THE DISTRICT OF COLUMBIA provide for the award of compensatory and actual damages to the victims of unlawful discriminatory practices by places of public accommodation. These damage awards are available at various stages of the processes, either administrative or in a civil proceeding.

These states: Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin.

C. Punitive Damages

Fifteen (15) states provide for an award of punitive damages under current Public Accommodations Laws. As with compensatory damages, the award of punitive damages can occur at various stages of the process. Some states provide for them at the administrative level, while others in a civil action.

The fifteen (15) states that provide for punitive damages: Arkansas, California, Florida, Idaho, Maine, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Dakota, Oregon, Rhode Island, Utah, and Wisconsin.

¹ <http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx>

Analysis of State-by-State Comparison of Public Accommodations Laws

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D. Treble Damages

Three (3) states (California, Hawaii and Minnesota) provide for treble damages based on the amount of actual damages sustained as a result of discrimination by places of public accommodation.

E. Criminal Penalties

In cases involving willful or intentional discrimination, criminal misdemeanor charges may be levied against individuals who discriminate under Public Accommodations Laws.

Five (5) states (Alaska, Colorado, Nebraska, South Carolina, and West Virginia) have laws that provide for a criminal charge. The penalty can include jail and/or fine. Jail time ranged from 30 days to 1 year between the states. Criminal fines ranged from \$10 to \$2000.

F. Civil Penalty/Fines

Under various state laws, places of public accommodation may be fined or assessed a civil penalty for illegal discriminatory practices.

Thirteen (13) states (Arizona, Colorado, Delaware, Hawaii, Maine, Maryland, Missouri, New Hampshire, New Jersey, Oregon, Pennsylvania, Vermont, Wisconsin, and Wyoming) have some type of monetary penalty and/or fine. The amount the penalty/fine ranges from \$50 - \$50,000.

G. Licensing

In the six (6) states, Michigan, Minnesota, New York, Ohio, South Carolina, Wisconsin and the District of Columbia, a place of public accommodation required to maintain a license for operation may forfeit such license if found guilty of discrimination.

H. Private Right of Action

A VICTIMS OF DISCRIMINATION HAVE A PRIVATE RIGHT OF ACTION IN THIRTY-SEVERN (37) STATES AND THE DISTRICT OF COLUMBIA:

Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia and Wisconsin.

This right is available to the victim at various stages of the administrative process. In sixteen (16) states, a party need not file with the administrative agency before filing a

Analysis of State-by-State Comparison of Public Accommodations Laws
Prepared by the Maryland Commission on Civil Rights

civil action. Others require an exhaustion of administrative remedies and/or a waiting period prior to filing a civil action.

I. Other

The names of violators may be reported or published to the public in Kentucky and Louisiana.

In New York, a place of public accommodation may forfeit profits if found in violation of the State's anti-discrimination law.

Title 14 INDEPENDENT AGENCIES

Subtitle 03 COMMISSION ON HUMAN RELATIONS

Chapter 03 Penalties

Authority: State Government Article, §§10-204, 20-710(d), 20-1016, 20-1028, 20-1032, 20-1034, and 20-1036, Annotated Code of Maryland

14.03.03.01

.01 Scope.

These regulations apply whenever an administrative law judge intends to impose a financial penalty.

14.03.03.02

.02 Requirements.

In determining the amount of financial penalty to be imposed, an administrative law judge shall consider the following:

- A. The seriousness of the violation;
- B. The good faith of the violator;
- C. The harmful effect of the violation on the public or the harmful effect of the violator's actions on the investigatory process of the Commission on Human Relations; and
- D. The assets of the violator.

14.03.03.9999

Administrative History

Effective date:

Regulations .01 and .02 adopted as an emergency provision effective July 30, 1991 (18:17 Md. R. 1913); emergency status expired July 1, 1992 (Emergency provisions are temporary and not printed in COMAR)

Regulations. 01 and .02 adopted effective August 30, 1993 (20:17 Md. R. 1350)