

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 12, 2020

Senate Bill 364 – Maryland Commission on Civil Rights – Civil Penalties **Position: Support**

Dear Chairperson Smith, Vice Chairperson Waldstreicher, and Members of the Senate Judicial Proceedings 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.

Senate Bill 364 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, SB364 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.

SB364 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 SB364. *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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STATE	PA LAW	ENFORCEMENT AGENCY	AVAILABLE RELIEF/REMEDY	CIVIL PENALTY/OTHER	PRIVATE RIGHT OF ACTION
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

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STATE	PA LAW	ENFORCEMENT AGENCY	AVAILABLE RELIEF/REMEDY	CIVIL PENALTY/OTHER	PRIVATE RIGHT OF ACTION
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>

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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
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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)