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**Senate Bill 274 - Fair Housing and Housing
Discrimination - Regulations, Intent, and Discriminatory Effect
Position: Support with Amendment**

Dear Chairperson Valderrama, Vice Chairperson Charkoudian, and Members of the House Economic Matters Committee:

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

Senate Bill 274 codifies disparate impact theory, an incredibly valuable tool established by *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) that has been instrumental in the enforcement of federal, State, and local housing anti-discrimination laws for decades. Disparate impact theory holds that a housing practice is unlawful if it adversely affects one group of protected people more than another despite the practice being applied neutrally and without intent to discriminate. SB274 carves out an exception for housing practices justified by a legitimate business necessity that do not have other less discriminatory means of accomplishing that necessity.

Because SB274 codifies existing case law, it will not have an impact on the way MCCR currently enforces Maryland’s housing anti-discrimination protections found in Title 20 of the State Government Article. Rather, SB274 insulates Maryland from potential legal challenges seeking to overturn *Griggs* and, more specifically, the use of disparate impact theory that the U.S. Supreme Court says is a violation of both the Civil Rights Act of 1964 and the Fair Housing Act of 1968.

Historically, approximately 30% of MCCR’s annual complaint intakes are housing discrimination matters¹. As we at the Commission have seen over the years, it is becoming increasingly more common for housing providers to engage in covert acts of discrimination as opposed to overt, blatantly discriminatory acts. These housing

¹ In FY2025, MCCR authorized 825 total charges, 266 of which were complaints alleging unlawful housing discrimination. This is a continued increase from FY2024 when MCCR authorized 670 charges, 240 of which alleged unlawful housing discrimination.

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

practices, when taken at face value, appear neutral and harmless. However, when implemented, these practices have a disproportionately adverse impact against protected classes covered by Maryland law, such as individuals with disabilities and racial minorities². Another increasing trend that's held true for many years, according to MCCR's Annual Reports³, is a housing provider retaliating against a tenant for filing a grievance, such as with a governmental enforcement agency like MCCR, attempting to rectify the alleged discriminatory practice⁴. If disparate impact theory were to be overturned, many victims of unlawful housing discrimination seeking relief would be left without protection by the spirit of Maryland law. SB274 makes disparate impact theory both the spirit and the letter of the law.

By way of amendment, MCCR respectfully recommends adding in a "lock in" date to references to the Federal Register found on page 8, line 7 of the amended SB274. MCCR recommends this clarifying amendment because these regulations are presently at risk of being altered in order to eliminate the application of disparate impact theory within fair housing enforcement – a theory that this bill seeks to codify within State law. If 78 FR 11460 and 24 CFR 100.500 of the Federal Register are altered and/or repealed, then an inconsistency would be created. Such an inconsistency would make it difficult for MCCR to apply disparate impact theory when enforcing Maryland's fair housing law. Alternatively, removal of the language in Section 2, page 8, lines 1 through 9 would insulate the provisions of this bill from changes at the federal level.

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on SB274. Thank you for your time and consideration of the information contained in this letter. MCCR looks forward to the continued opportunity to work with you to promote and improve fair housing and civil rights in Maryland.

² In FY2025 and consistent with previous years, disability, source of income, and race complaints were the top 3 identified protected classes with 120, 47, and 46 allegations, respectively.

³ <https://mccr.maryland.gov/Pages/Publications.aspx>

⁴ In FY2025, retaliation in housing complaints was alleged 34 times. Harassment, including sexual harassment, was alleged 40 times. Allegations of unlawful harassment and retaliation remain pervasive issues within the housing charges MCCR authorizes annually.