

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 231

(Delegate Lierman, *et al.*)

Environment and Transportation

Judicial Proceedings

Housing Opportunities Made Equal Act

This bill prohibits discriminatory practices in residential real estate transactions and the sale or rental of a dwelling because of a person's source of income.

Fiscal Summary

State Effect: General fund expenditures may increase for the Maryland Commission on Civil Rights (MCCR) to investigate additional complaints, as discussed below. Potential minimal increase in general fund revenues due to the bill's penalty provisions.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill prohibits taking the following actions because of a person's source of income: (1) refusing to sell or rent a dwelling after the making of a bona fide offer; (2) refusing to negotiate for the sale or rental of a dwelling; (3) making a dwelling otherwise unavailable; (4) discriminating in the terms, conditions, or privileges of sale or rental of a dwelling; (5) discriminating in the provision of services or facilities in connection with the sale or rental of a dwelling; (6) making, printing, or publishing or causing to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on source of income; (7) representing to a person that a dwelling is not available for inspection, sale, or rental when it is available; and (8) for profit, inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the

entry or prospective entry into the neighborhood of a person or persons with a particular source of income.

Under the bill, a “source of income” is any lawful source of money paid directly or indirectly to or on behalf of a renter or buyer of housing, including income from (1) any lawful profession, occupation, or job; (2) any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers; (3) any gift, inheritance, pension, annuity, alimony, child support, or other consideration or benefit; and (4) any sale or pledge of property or an interest in property.

The bill also prohibits a person whose business includes engaging in residential real estate-related transactions from discriminating against a person in making available a transaction, or in the terms or conditions of a transaction, because of the person’s source of income. However, a real estate appraiser may take into consideration factors other than source of income. The bill prohibits a person from, because of a person’s source of income, denying that person access to, or membership or participation in, a multiple-listing service; real estate brokers’ organization; or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminating against a person in the terms or conditions of membership or participation.

The bill also prohibits any person, whether or not acting under color of law, by force or threat of force, from willfully injuring, intimidating, or interfering with a person’s activities related to the sale, purchase, rental, or occupation of a dwelling, or from attempting to do so. Existing criminal penalties relating to these activities are expanded to include the prohibition against discrimination based on source of income.

The bill does not apply to the rental of rooms or apartments in an owner’s principal residence if the source of income is low-income housing assistance certificates or vouchers, as specified. The exemption for apartments is limited to an owner-occupied dwelling with up to five rental units.

The bill neither prevents a person from refusing to consider income derived from any criminal activity nor prohibits a person from determining the ability of a potential buyer or renter to pay by verifying, in a commercially reasonable and nondiscriminatory manner, the source and amount of income or creditworthiness of the potential buyer or renter. The bill also does not prohibit a person from determining, in accordance with applicable federal and State laws, the ability of a potential buyer to repay a mortgage loan. The bill does not limit the rights or remedies that are otherwise available to a landlord or tenant under any other law.

Current Law: Housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, or disability is

prohibited. There is no provision prohibiting housing discrimination based on source of income.

A person claiming to have been injured by a discriminatory housing practice may file a complaint with the Maryland Commission on Civil Rights (MCCR) or file a civil action in circuit court. If an administrative law judge (ALJ) finds that the respondent has engaged in a discriminatory housing practice, the ALJ may order appropriate relief, including actual damages and injunctive or other relief, and may assess a civil penalty against the respondent. A court may award actual or punitive damages, grant injunctive relief, and allow reasonable attorney's fees and costs.

Willfully injuring, intimidating, or interfering, by force or threat of force, with a person's activities related to the sale, purchase, rental, or occupation of a dwelling, or to attempt to do so, is a misdemeanor. A violator is subject to maximum penalties of 1 year imprisonment and/or a \$1,000 fine. If the violation results in bodily injury, the maximum penalty is 10 years imprisonment and/or a \$10,000 fine. If the violation results in death, the maximum penalty is life imprisonment.

Background: For additional information regarding source-of-income discrimination, please see the **Appendix – The Housing Choice Voucher Program and Source-of-income Discrimination.**

State Revenues: General fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court or from additional civil penalties assessed.

State Expenditures: General fund expenditures may increase to the extent that a new civil rights officer is hired at MCCR to handle a potential increase in the number of housing complaints that may be filed as a result of the bill's provisions. MCCR advises that it receives federal reimbursement for investigating complaints related to housing discrimination from the Department of Housing and Urban Development (HUD) and for investigating employment discrimination from the Equal Employment Opportunity Commission. Any housing discrimination complaints filed on the basis of "source of income" are not eligible for reimbursement under MCCR's contractual relationship with HUD, because "source of income" is not a protected class under the federal Fair Housing Act. Accordingly, MCCR needs to ensure that investigating any additional cases regarding source of income housing discrimination does not negatively impact its case closure rate, which may impact federal funding. Although existing staff can investigate a small number of additional cases, an additional officer is necessary to the extent that MCCR receives a large number of complaints. *For illustrative purposes only*, if an additional civil rights officer is required, general fund expenditures increase by a minimum of \$61,000 annually.

The Judiciary advises that the bill's provisions are not anticipated to have a significant fiscal or operational impact. Similarly, the Office of Administrative Hearings advises that the bill's provisions can be handled within existing budget resources.

Small Business Effect: By prohibiting discrimination based on the source of a tenant's income, additional landlords may be subject to participation in the Housing Voucher program, which was established as a voluntary program. Landlords participating in the Housing Voucher program may have increased administrative responsibilities, as program participation, which is governed by federal standards, is administered by State and local housing authorities. For example, federal regulations require annual inspections by the housing authorities; some housing authorities require participating landlords to have direct deposit.

Additional Information

Prior Introductions: HB 451 of 2019 was assigned to the House Environment and Transportation Committee, but was withdrawn. Its cross file, SB 812, was assigned to the Senate Judicial Proceedings Committee but was also withdrawn. HB 172 of 2017 passed the House as amended, was referred to the Senate Judicial Proceedings Committee, and had no further action taken on it. Its cross file, SB 728, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 759 of 2016 received a hearing in the House Environment and Transportation Committee, but no further action was taken. In addition, similar bills were introduced in the 2010 through 2014 sessions.

Designated Cross File: SB 530 (Senator Smith, *et al.*) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Caroline, Howard, and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Department of Legislative Services

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Appendix – The Housing Choice Voucher Program and Source-of-income Discrimination

Background

According to the Poverty and Race Research Action Council, 15 states (California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oklahoma, Oregon, Utah, Vermont, Washington, and Wisconsin) and the District of Columbia (as of December 2019) have statutes prohibiting housing discrimination on the basis of a person’s source of income (SOI). Numerous laws are also found at the local level nationwide, including cities such as Chicago, New York City, Philadelphia, Memphis, and Seattle. In Maryland, Anne Arundel, Baltimore, Frederick, Howard, Montgomery, and Prince George’s counties, as well as the cities of Annapolis, Baltimore, and Frederick, prohibit SOI discrimination within their jurisdictions. Under these statutes, SOI may include almost any lawful source of money, such as benefits from any government assistance program, private loans, gifts, pensions, alimony, and child support; the income derived from government housing assistance (*i.e.*, housing vouchers) tends to be the most controversial. While some statutes expressly include the use of housing vouchers under SOI protections, others do not. Moreover, court rulings in some states (*e.g.*, California and Minnesota) have held that statutes prohibiting SOI discrimination do not apply to landlords who decline to accept housing vouchers.

Housing Choice Voucher Program – Generally

The Housing Choice Voucher Program is a program of the U.S. Department of Housing and Urban Development (HUD) that subsidizes the cost of housing for low-income individuals and evolved from numerous federal initiatives to provide affordable housing. While initial efforts under the federal Housing Act of 1937 were focused on addressing the issue of affordable housing by providing federal funding for the construction of public housing, later legislation, such as the Housing and Community Development Act of 1974, illustrated the shift in federal affordable housing strategies from locally owned public housing to privately owned rental housing. The Act allowed families to select their own housing and lease directly from a building owner through a rental certificate program. This program was popular due to its ability to provide assistance quickly, allow families a choice of housing, and disperse families throughout the community without automatically creating “projects” or locations with high concentrations of poverty. Many aspects of the rental certificate program were included in the Quality Housing and Work Responsibility Act of 1998, which created the current Housing Choice Voucher Program.

Households with annual incomes of 50% or less of the area median income are eligible for the program. Under federal rules, 75% of annual admissions must be families with annual incomes at or below 30% of the area median income. In Maryland, local housing authorities (or the Department of Housing and Community Development (DHCD) in jurisdictions without a housing authority) administer the program and determine a payment standard for each area based on fair market rent guidelines issued by HUD. Once a voucher has been awarded, eligible individuals are responsible for finding a suitable housing unit where the owner agrees to rent under the program. A voucher recipient may choose a housing unit that rents for more or less than the payment standard. Voucher recipients must pay 30% of their monthly adjusted gross income for rent and utilities; housing assistance payments are generally the difference between the payment standard and 30% of the family's adjusted income. If the rent is greater than the payment standard, the family must pay the additional amount; however, if a family moves to a new unit where the rent exceeds the payment standard, the family may not pay more than 40% of its adjusted monthly income for rent. The local housing agency pays the housing assistance payment directly to the owner of the property. The federal law does not require that a landlord participate in the program.

Demand for the program has traditionally far exceeded the supply of resources. DHCD advises that as of December 31, 2019, 8,575 individuals were on the waitlist for a housing voucher (which represents only the jurisdictions in which DHCD operates the voucher program).

Source-of-income Discrimination Issues

The federal Fair Housing Act prohibits landlords from refusing to rent based on a tenant's race, color, religion, sex, national origin, familial status, or disability. Pursuant to State law, housing discrimination based on race, sex, color, religion, national origin, marital status, familial status, sexual orientation, disability, or gender identity is prohibited. Although SOI discrimination is not prohibited by federal law or the law of the majority of states, including Maryland, advocates have expressed concerns that the refusal of landlords to accept vouchers has a disproportionate impact on minorities. According to 2018 data from HUD, approximately 81% of voucher holders in the State were minorities.

Neighborhoods and Opportunity: A large body of research has been devoted to examining the potential impact that access to quality neighborhoods has on individuals and families. Many studies have focused on analyzing the Moving to Opportunity (MTO) demonstration program, which operated in Baltimore City and four other major U.S. cities, and offered families with children who lived in high-poverty public housing projects the ability (via random lottery) to use their housing vouchers to move into lower poverty neighborhoods. For example, a 2015 study from the National Bureau of Economic Research, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment* (2015), focused on the impacts of MTO for

children who moved when they were younger than age 18 and concluded that the move significantly improved college attendance rates. Compared to individuals in the MTO control group (who did not move), these individuals also have higher incomes, live in better neighborhoods as adults, and are less likely to become single parents.

As noted, one of the intents of housing vouchers was to allow program recipients to choose where they live, in an effort to avoid duplicating the pockets of poverty that were created with public housing developments. Studies evaluating whether the voucher program has successfully promoted neighborhood integration have been mixed. The Center on Budget and Policy Priorities analyzed HUD data regarding voucher use in 2014. According to its findings, approximately 13% of families with children participating in the voucher program used vouchers to live in low-poverty areas (where fewer than 10% of residents are poor). It found that vouchers were particularly useful in enabling minority children to live in lower poverty neighborhoods. However, 343,000 children in families using vouchers still lived in extremely poor neighborhoods (where more than 40% of residents were poor).

A study evaluating the use of housing vouchers between 2000 and 2008, *The Reconcentration of Poverty: Patterns of Housing Voucher Use, 2000 to 2008*, Housing Policy Debate (2014), found that vouchers actually perpetuated concentrated poverty and racial segregation in the 50 most populous U.S. metropolitan areas. The study noted that the trends reflect a combination of preferences of voucher households and the unavailability or inaccessibility of affordable rental housing in certain communities. However, low-income households using vouchers were more segregated by race and income than a comparison group of nonvoucher households earning less than \$15,000 annually. This suggests that additional constraints may face voucher households, including a reluctance by landlords to accept vouchers and the allowable rental costs covered by the program. While acknowledging that there are valid reasons for landlords to decline participating in the program, such as not being able to charge rent while voucher units are undergoing inspections by local housing authorities, the study noted that households in metropolitan areas with SOI protection laws were less racially segregated and less clustered within specific census tracts. Another study, *Do Source of Income Anti-Discrimination Laws Facilitate Access to Better Neighborhoods?*, Housing Studies (2014), concluded that although living in a jurisdiction with SOI law was associated with voucher recipients living in neighborhoods with lower poverty rates, SOI laws did not appear to facilitate the movement of voucher recipients away from concentrations of other voucher recipients.

Administrative Burden Challenge Rejected: The Court of Appeals examined the issue of SOI discrimination in a 2007 case, *Montgomery County v. Glenmont Hills*, 402 Md. 250 (2007). The case involved Montgomery County's fair housing law to which a prohibition of refusing to lease or rent housing to any person based on SOI was added in 1991. In the case, Glenmont Hills Associates (GHA), the owner of a multi-unit residential apartment

complex, had a business policy not to participate in the voucher program. After an applicant intending to use a voucher was refused, the Montgomery County Commission on Human Rights and the rejected tenant filed separate complaints alleging a violation of the county's law. The initial hearing examiner and the subsequent case review board appointed by the commission found that GHA was in violation of the law. The administrative decision was overturned by the Circuit Court for Montgomery County, which ruled that the county cannot force a landlord to enter into a contract with the federal government. As an alternative basis, it also found that the refusal to rent to voucher recipients was not based on the tenant's status as a voucher holder, but instead on a legitimate desire to avoid the administrative hassle of the program.

The Court of Appeals granted *certiorari* and rejected GHA's argument that because federal law does not require landlords to accept vouchers, it preempts the county's SOI discrimination law. As a result, the ruling has the practical effect of mandating landlord participation in Montgomery County. The court held that for GHA's preemption argument to prevail, it would have to find that voluntary participation by landlords was a central component of the voucher legislation; the court found nothing to indicate that this was an important congressional objective. The court also considered whether participation in the voucher program created an undue burden on landlords and noted case law holding that unless a landlord can establish a burden that is severe enough to constitute a taking of property, or a violation of due process, an administrative burden is not a viable defense. Accordingly, the court reversed the judgment of the circuit court and remanded the case with instructions to affirm the final order of the Montgomery County Commission on Human Rights.