

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1561 (Delegate Rosenberg)
Health and Government Operations

Discriminatory Housing Practices - Intent

This bill prohibits a person from acting in a manner, regardless of intent, that has a discriminatory effect against any person in specified housing transactions because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, or national origin. A person who violates this prohibition, without discriminatory intent, has not committed a discriminatory housing practice if (1) the violation was justified by a legitimate business necessity and (2) there was no other less discriminatory means of accomplishing that business necessity. The bill also makes conforming changes.

Fiscal Summary

State Effect: Potential expenditures to litigate claims asserted under the bill, as discussed below. No material effect on revenues is anticipated.

Local Effect: Potential expenditures to litigate claims asserted under the bill, as discussed below. No material effect on revenues is anticipated.

Small Business Effect: Potential meaningful for landlords, to the extent that additional housing discrimination cases are pursued under State law.

Analysis

Current Law/Background: Housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, or disability is prohibited under State law.

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.

Housing discrimination because of race, sex, color, religion, sex, disability, familial status, or national origin is prohibited under the federal Fair Housing Act. The U.S. Department of Housing and Urban Development (HUD) has long interpreted the Act to create liability for practices with an unjustified discriminatory effect, even if the practices were not motivated by such intent (disparate impact). As noted in the bill's preamble, a proposed federal rule would alter the standards by which the burden of proof in disparate impact cases is allocated. Attorneys General in 22 states, including Maryland, have submitted comments to HUD opposing the proposed rule change.

Currently, to make a disparate impact claim under the Fair Housing Act, the party making the accusation of discrimination has to prove that a policy is causing a discriminatory effect, even if the policy is facially neutral. The burden of proof shifts to the defendant, who must prove that the policy is necessary for legitimate, nondiscriminatory results. If the defendant is able to prove those elements, the plaintiff must then prove that the defendant's interests could be achieved with a policy or practice that is less discriminatory.

Under the proposed rule, this burden-shifting framework is altered such that a *plaintiff* must prove

- that the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective;
- that there is a robust causal link between the challenged policy or practice and a disparate impact on members of a protected class that shows the specific practice is the direct cause of the discriminatory effect;
- that the alleged disparity caused by the policy or practice has an adverse effect on members of a protected class;
- that the alleged disparity caused by the policy or practice is significant; and
- that there is a direct link between the disparate impact and the complainings party's alleged injury.

According to its most recent annual report, housing discrimination complaints accounted for 10% of the total complaints received in fiscal 2019. MCCR typically receives fewer than 100 housing discrimination complaints annually.

State/Local Expenditures: The Judiciary advises that because the proposed federal rule will provide a more limited definition of what disparate impact claims can be allowed under the federal Fair Housing Act, the bill has the potential to generate an increase in housing discrimination claims filed pursuant to State law. The Department of Housing and Community Development also notes the potential for legal costs associated with the need to defend program policies that may be challenged as unintentionally discriminatory under State law, and advises of the potential for similar impacts on local governments.

MCCR advises that it can handle any additional cases with existing resources. The bill is also not anticipated to materially affect the workload of the circuit courts.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Legislative Services

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mr/jkb

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