

HOUSE BILL 1216

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By: **Delegate Rosenberg**

Introduced and read first time: February 8, 2021

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Human Relations – Public Accommodation Discrimination – Enforcement and**
3 **Remedies**

4 FOR the purpose of authorizing complainants, respondents, and the Commission on Civil
5 Rights to elect to have claims of public accommodation discrimination determined in
6 a civil action brought by the Commission under certain circumstances and subject to
7 certain requirements; requiring the remedy for public accommodation
8 discrimination to include the greater of certain damages; authorizing the remedy for
9 public accommodation discrimination to include certain remedies; repealing a
10 provision of law prohibiting an administrative law judge from issuing a certain order
11 that substantially affects the cost, level, or type of any transportation services;
12 authorizing a complainant alleging public accommodation discrimination to bring a
13 civil action under certain circumstances; providing for the venue of and remedies in
14 a certain civil action; defining a certain term; making conforming changes; and
15 generally relating to the enforcement of and remedies for public accommodation
16 discrimination.

17 BY repealing and reenacting, with amendments,
18 Article – State Government
19 Section 20–1001, 20–1006(b), 20–1007(a) and (b), 20–1009, 20–1012, and 20–1013
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2020 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
23 That the Laws of Maryland read as follows:

24 **Article – State Government**

25 20–1001.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (A) In this part[, “unlawful] **THE FOLLOWING WORDS HAVE THE MEANINGS**
2 **INDICATED.**

3 (B) **“PUBLIC ACCOMMODATION DISCRIMINATION” MEANS AN ACT THAT IS**
4 **PROHIBITED UNDER § 20–304 OF THIS TITLE.**

5 (C) **“UNLAWFUL employment practice” means an act that is prohibited under §**
6 **20–606 of this title.**

7 20–1006.

8 (b) The Executive Director of the Commission shall cause a written notice to be
9 issued and served in the name of the Commission, together with a copy of the complaint,
10 requiring the respondent to answer the charges of the complaint at a public hearing:

11 (1) before an administrative law judge at a time and place certified in the
12 notice; or

13 (2) if the complaint alleges an unlawful employment practice **OR PUBLIC**
14 **ACCOMMODATION DISCRIMINATION**, in a civil action elected under § 20–1007 of this
15 subtitle.

16 20–1007.

17 (a) (1) When a complaint alleging an unlawful employment practice **OR**
18 **PUBLIC ACCOMMODATION DISCRIMINATION** is issued and served under § 20–1006 of
19 this subtitle, a complainant or respondent may elect to have the claims asserted in the
20 complaint determined in a civil action brought by the Commission on the complainant’s
21 behalf, if:

22 (i) the Commission has found probable cause to believe the
23 respondent has engaged in or is engaging in an unlawful employment practice **OR PUBLIC**
24 **ACCOMMODATION DISCRIMINATION**; and

25 (ii) there is a failure to reach an agreement to remedy and eliminate
26 the unlawful employment practice **OR PUBLIC ACCOMMODATION DISCRIMINATION.**

27 (2) An election under paragraph (1) of this subsection shall be made within
28 30 days after the complainant or respondent receives service under § 20–1006(b) of this
29 subtitle.

30 (3) If an election is not made under paragraph (1) of this subsection, the
31 Commission shall provide an opportunity for a hearing as provided under § 20–1008(a) of
32 this subtitle.

33 (b) When a complaint alleging an unlawful employment practice **OR PUBLIC**

1 **ACCOMMODATION DISCRIMINATION** is issued and served under § 20–1006 of this
2 subtitle, the Commission may elect to have the claims asserted in the complaint determined
3 in a civil action brought on the Commission’s own behalf, if:

4 (1) the Commission has found probable cause to believe the respondent has
5 engaged in or is engaging in an unlawful employment practice **OR PUBLIC**
6 **ACCOMMODATION DISCRIMINATION**; and

7 (2) there is a failure to reach an agreement to remedy and eliminate the
8 unlawful employment practice **OR PUBLIC ACCOMMODATION DISCRIMINATION**.

9 20–1009.

10 (a) If, after reviewing all of the evidence, the administrative law judge finds that
11 the respondent has engaged in a discriminatory act, the administrative law judge shall:

12 (1) issue a decision and order stating the judge’s findings of fact and
13 conclusions of law; and

14 (2) issue and cause to be served on the respondent an order requiring the
15 respondent to:

16 (i) cease and desist from engaging in the discriminatory acts; and

17 (ii) take affirmative action to effectuate the purposes of the
18 applicable subtitle of this title.

19 (b) (1) If the respondent is found to have engaged in or to be engaging in an
20 unlawful employment practice charged in the complaint, the remedy may include:

21 (i) enjoining the respondent from engaging in the discriminatory
22 act;

23 (ii) ordering appropriate affirmative relief, including the
24 reinstatement or hiring of employees, with or without back pay;

25 (iii) awarding compensatory damages; or

26 (iv) ordering any other equitable relief that the administrative law
27 judge considers appropriate.

28 (2) Compensatory damages awarded under this subsection are in addition
29 to:

30 (i) back pay or interest on back pay that the complainant may
31 recover under any other provision of law; and

1 (ii) any other equitable relief that a complainant may recover under
2 any other provision of law.

3 (3) The sum of the amount of compensatory damages awarded to each
4 complainant under this subsection for future pecuniary losses, emotional pain, suffering,
5 inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses, may not
6 exceed:

7 (i) \$50,000, if the respondent employs not fewer than 15 and not
8 more than 100 employees in each of 20 or more calendar weeks in the current or preceding
9 calendar year;

10 (ii) \$100,000, if the respondent employs not fewer than 101 and not
11 more than 200 employees in each of 20 or more calendar weeks in the current or preceding
12 calendar year;

13 (iii) \$200,000, if the respondent employs not fewer than 201 and not
14 more than 500 employees in each of 20 or more calendar weeks in the current or preceding
15 calendar year; and

16 (iv) \$300,000, if the respondent employs not fewer than 501
17 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

18 (4) If back pay is awarded under paragraph (1) of this subsection, the
19 award shall be reduced by any interim earnings or amounts earnable with reasonable
20 diligence by the person discriminated against.

21 (5) In addition to any other relief authorized by this subsection, a
22 complainant may recover back pay for up to 2 years preceding the filing of the complaint,
23 where the unlawful employment practice that has occurred during the complaint filing
24 period is similar or related to an unlawful employment practice with regard to
25 discrimination in compensation that occurred outside the time for filing a complaint.

26 **(C) IF THE RESPONDENT IS FOUND TO HAVE ENGAGED IN OR TO BE**
27 **ENGAGING IN PUBLIC ACCOMMODATION DISCRIMINATION AS CHARGED IN THE**
28 **COMPLAINT, THE REMEDY:**

29 **(1) SHALL INCLUDE THE GREATER OF:**

30 **(I) LIQUIDATED DAMAGES OF \$100 PER DISCRIMINATORY ACT,**
31 **OR \$1,000 PER COMPLAINT, WHICHEVER IS GREATER; OR**

32 **(II) COMPENSATORY DAMAGES FOR PECUNIARY LOSSES,**
33 **EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF**
34 **ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES; AND**

1 **(2) MAY INCLUDE:**

2 **(I) ENJOINING THE RESPONDENT FROM ENGAGING IN THE**
3 **DISCRIMINATORY ACT;**

4 **(II) ORDERING APPROPRIATE AFFIRMATIVE RELIEF,**
5 **INCLUDING THE PROVISION OF A REASONABLE ACCOMMODATION; OR**

6 **(III) ORDERING ANY OTHER EQUITABLE RELIEF THAT THE**
7 **ADMINISTRATIVE LAW JUDGE CONSIDERS APPROPRIATE.**

8 ~~[(c)]~~ **(D)** (1) ~~[(i)]~~ Except as provided in subparagraph (ii) of this paragraph,
9 if] **IF** the respondent is found to have engaged in or to be engaging in a discriminatory act
10 other than an unlawful employment practice **OR PUBLIC ACCOMMODATION**
11 **DISCRIMINATION**, in addition to an award of civil penalties as provided in § 20–1016 of
12 this subtitle, nonmonetary relief may be granted to the complainant.

13 ~~[(ii)]~~ An order may not be issued that substantially affects the cost,
14 level, or type of any transportation services.]

15 (2) (i) In cases involving transportation services that are supported
16 fully or partially with funds from the Maryland Department of Transportation, an order
17 may not be issued that would require costs, level, or type of transportation services different
18 from or exceeding those required to meet U.S. Department of Transportation regulations
19 adopted under 29 U.S.C. § 794.

20 (ii) An order issued in violation of subparagraph (i) of this paragraph
21 is not enforceable under § 20–1011 of this subtitle.

22 ~~[(d)]~~ **(E)** If, after reviewing all of the evidence, the administrative law judge finds
23 that the respondent has not engaged in an alleged discriminatory act, the administrative
24 law judge shall:

25 (1) state findings of fact and conclusions of law; and

26 (2) issue an order dismissing the complaint.

27 ~~[(e)]~~ **(F)** Unless a timely appeal is filed with the Commission in accordance with
28 the Commission's regulations, a decision and order issued by the administrative law judge
29 under this section shall become the final order of the Commission.

30 20–1012.

31 (a) Within 60 days after an election is made under § 20–1007 of this subtitle, the
32 Commission shall file a civil action in the circuit court for the county where the alleged

1 unlawful employment practice **OR PUBLIC ACCOMMODATION DISCRIMINATION**
 2 occurred.

3 (b) **(1)** If the court finds that an unlawful employment practice occurred, the
 4 court may provide the remedies specified in § 20–1009(b) of this subtitle.

5 **(2) IF THE COURT FINDS THAT PUBLIC ACCOMMODATION**
 6 **DISCRIMINATION HAS OCCURRED, THE COURT MAY PROVIDE THE REMEDIES**
 7 **SPECIFIED IN § 20–1009(C) OF THIS SUBTITLE.**

8 (c) If the Commission seeks compensatory damages under this section:

9 (1) any party may demand a trial by jury; and

10 (2) the court may not inform the jury of the limitations on compensatory
 11 damages imposed under § 20–1009(b)(3) of this subtitle.

12 20–1013.

13 (a) In addition to the right to make an election under § 20–1007 of this subtitle, a
 14 complainant may bring a civil action against the respondent alleging an unlawful
 15 employment practice **OR PUBLIC ACCOMMODATION DISCRIMINATION**, if:

16 (1) the complainant initially filed a timely administrative charge or a
 17 complaint under federal, State, or local law alleging an unlawful employment practice **OR**
 18 **PUBLIC ACCOMMODATION DISCRIMINATION** by the respondent;

19 (2) at least 180 days have elapsed since the filing of the administrative
 20 charge or complaint; and

21 (3) **(I) IN THE CASE OF ALLEGED PUBLIC ACCOMMODATION**
 22 **DISCRIMINATION, THE CIVIL ACTION IS FILED WITHIN 2 YEARS AFTER THE ALLEGED**
 23 **PUBLIC ACCOMMODATION DISCRIMINATION OCCURRED; AND**

24 **(II) IN THE CASE OF AN ALLEGED UNLAWFUL EMPLOYMENT**
 25 **PRACTICE:**

26 **[(i)] 1.** except as provided in item **[(ii)] 2** of this **[paragraph]**
 27 **ITEM**, the civil action is filed within 2 years after the alleged unlawful employment practice
 28 occurred; or

29 **[(ii)] 2.** if the complaint is alleging harassment, the civil action is
 30 filed within 3 years after the alleged harassment occurred.

31 (b) A civil action under this section shall be filed in the circuit court for the county
 32 where the alleged unlawful employment practice occurred.

1 (c) The filing of a civil action under this section automatically terminates any
2 proceeding before the Commission based on the underlying administrative complaint and
3 any amendment to the complaint.

4 (d) (1) If the court finds that an unlawful employment practice occurred, the
5 court may provide the remedies specified in § 20–1009(b) of this subtitle.

6 (2) **IF THE COURT FINDS THAT PUBLIC ACCOMMODATION**
7 **DISCRIMINATION HAS OCCURRED, THE COURT MAY PROVIDE THE REMEDIES**
8 **SPECIFIED IN § 20–1009(C) OF THIS SUBTITLE.**

9 (e) (1) In addition to the relief authorized under subsection (d) of this section,
10 the court may award punitive damages, if:

11 (i) the respondent is not a governmental unit or political
12 subdivision; and

13 (ii) the court finds that the respondent has engaged in or is engaging
14 in an unlawful employment practice **OR PUBLIC ACCOMMODATION DISCRIMINATION**
15 with actual malice.

16 (2) If the court awards punitive damages **FOR AN UNLAWFUL**
17 **EMPLOYMENT PRACTICE**, the sum of the amount of compensatory damages awarded to
18 each complainant under subsection (d) of this section and the amount of punitive damages
19 awarded under this subsection may not exceed the applicable limitation established under
20 § 20–1009(b)(3) of this subtitle.

21 (f) If a complainant seeks compensatory or punitive damages under this section:

22 (1) any party may demand a trial by jury; and

23 (2) the court may not inform the jury of the limitations on compensatory
24 and punitive damages imposed under § 20–1009(b)(3) of this subtitle.

25 (g) When appropriate and to the extent authorized under law, in a dispute arising
26 under this part, in which the complainant seeks compensatory or punitive damages, the
27 parties are encouraged to use alternative means of dispute resolution, including settlement
28 negotiations or mediation.

29 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect
30 October 1, 2021.