

HOUSE BILL 368

D5
HB 285/11 – HGO

4lr1920

By: **Delegate Cullison**

Introduced and read first time: January 17, 2024

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Human Relations – Discrimination by a Place of Public Accommodation**

3 FOR the purpose of authorizing certain persons or the Commission on Civil Rights to elect
4 to have the claims asserted in a certain complaint alleging discrimination by a place
5 of public accommodation determined in a civil action brought by the Commission
6 under certain circumstances; requiring a civil action brought by the Commission to
7 be filed within a certain time period after an election; expanding the remedies
8 available for discrimination by a place of public accommodation; clarifying the
9 remedies available for an unlawful employment practice; repealing a prohibition
10 against issuing certain orders affecting the cost, level, or type of any transportation
11 services; authorizing a complainant alleging discrimination by a place of public
12 accommodation to bring a civil action under certain circumstances; providing for the
13 venue of and remedies in a certain civil action; repealing the authority of the
14 Commission to seek an order assessing a civil penalty for discrimination by a place
15 of public accommodation; and generally relating to enforcement and remedies for
16 discrimination by a place of public accommodation.

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(a) and (b),
20 20–1013, and 20–1016(a)

21 Annotated Code of Maryland

22 (2021 Replacement Volume and 2023 Supplement)

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

25 **Article – State Government**

26 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) **“DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION” MEANS**
4 **AN ACT THAT IS 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**
14 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**, in a civil action elected
15 under § 20–1007 of this subtitle.

16 20–1007.

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

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

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

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

1 (b) When a complaint alleging an unlawful employment practice **OR**
2 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** is issued and served under
3 § 20–1006 of this subtitle, the Commission may elect to have the claims asserted in the
4 complaint determined in a civil action brought on the Commission’s own behalf, if:

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

8 (2) there is a failure to reach an agreement to remedy and eliminate the
9 unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**
10 **ACCOMMODATION**.

11 20–1009.

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

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

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

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

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

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

23 (i) enjoining the respondent from engaging in the discriminatory
24 act;

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

27 (iii) awarding compensatory damages; [or] **AND**

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

30 (2) Compensatory damages awarded under this subsection are in addition
31 to:

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

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

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

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

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

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

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

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

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

28 **(C) IF THE RESPONDENT IS FOUND TO HAVE ENGAGED IN OR TO BE**
29 **ENGAGING IN DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION AS**
30 **CHARGED IN THE COMPLAINT, THE REMEDY MAY INCLUDE:**

31 **(1) ENJOINING THE RESPONDENT FROM ENGAGING IN THE**
32 **DISCRIMINATORY ACT;**

33 **(2) ORDERING APPROPRIATE AFFIRMATIVE RELIEF, INCLUDING THE**
34 **PROVISION OF A REASONABLE ACCOMMODATION;**

1 **(3) AWARDING COMPENSATORY DAMAGES FOR PECUNIARY LOSSES,**
2 **EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF**
3 **ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES; AND**

4 **(4) ORDERING ANY OTHER EQUITABLE RELIEF THAT THE**
5 **ADMINISTRATIVE LAW JUDGE CONSIDERS APPROPRIATE.**

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

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

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

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

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

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

24 (2) issue an order dismissing the complaint.

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

28 20–1012.

29 (a) Within 60 days after an election is made under § 20–1007 of this subtitle, the
30 Commission shall file a civil action in the circuit court for the county where the alleged
31 unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**
32 **ACCOMMODATION** occurred.

1 (b) If the court finds that an unlawful employment practice **OR DISCRIMINATION**
2 **BY A PLACE OF PUBLIC ACCOMMODATION** occurred, the court may provide the remedies
3 specified in § 20–1009(b) **OR (C)** of this subtitle, **AS APPROPRIATE**.

4 20–1013.

5 (a) (1) In addition to the right to make an election under § 20–1007 of this
6 subtitle, a complainant may bring a civil action against the respondent alleging an unlawful
7 employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**,
8 if:

9 (i) the complainant initially filed a timely administrative charge or
10 a complaint under federal, State, or local law alleging an unlawful employment practice **OR**
11 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** by the respondent;

12 (ii) at least 180 days have elapsed since the filing of the
13 administrative charge or complaint; and

14 (iii) 1. subject to item 2 of this item, the civil action is filed within
15 2 years after the alleged unlawful employment practice **OR DISCRIMINATION BY A PLACE**
16 **OF PUBLIC ACCOMMODATION** occurred; or

17 2. if the complaint is alleging harassment, the civil action is
18 filed within 3 years after the alleged harassment occurred.

19 (2) The time limitations under paragraph (1)(iii) of this subsection shall be
20 tolled while an administrative charge or complaint filed by the complainant under
21 paragraph (1)(ii) is pending.

22 (b) A civil action under this section shall be filed in the circuit court for the county
23 where the alleged unlawful employment practice **OR DISCRIMINATION BY A PLACE OF**
24 **PUBLIC ACCOMMODATION** occurred.

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

28 (d) If the court finds that an unlawful employment practice **OR DISCRIMINATION**
29 **BY A PLACE OF PUBLIC ACCOMMODATION** occurred, the court may provide the remedies
30 specified in § 20–1009(b) **OR (C)** of this subtitle.

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

33 (i) the respondent is not a governmental unit or political
34 subdivision; and

1 (ii) the court finds that the respondent has engaged in or is engaging
2 in an unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**
3 **ACCOMMODATION** with actual malice.

4 (2) If the court awards punitive damages **FOR AN UNLAWFUL**
5 **EMPLOYMENT PRACTICE**, the sum of the amount of compensatory damages awarded to
6 each complainant under subsection (d) of this section and the amount of punitive damages
7 awarded under this subsection may not exceed the applicable limitation established under
8 § 20–1009(b)(3) of this subtitle.

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

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

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

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

17 20–1016.

18 (a) Except as provided in subsection (b) of this section, in addition to any other
19 relief authorized, if the Commission finds that a respondent has engaged in a
20 discriminatory act under [Subtitle 3 or] Subtitle 4 of this title, the Commission may seek
21 an order assessing a civil penalty against the respondent:

22 (1) if the respondent has not been adjudicated to have committed any prior
23 discriminatory act, in an amount not exceeding \$500;

24 (2) if the respondent has been adjudicated to have committed one other
25 discriminatory act during the 5–year period ending on the date of the filing of the current
26 charge, in an amount not exceeding \$1,000; and

27 (3) if the respondent has been adjudicated to have committed two or more
28 discriminatory acts during the 7–year period ending on the date of the filing of the current
29 charge, in an amount not exceeding \$2,500.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2024.