

HOUSE BILL 368

D5
HB 285/11 – HGO

4r1920
CF SB 666

By: ~~Delegate Cullison~~ Delegates Cullison, Alston, Bagnall, Bhandari, Guzzone, Hill, S. Johnson, Kaiser, Kerr, R. Lewis, Lopez, Martinez, Pena-Melnyk, Rosenberg, Taveras, White Holland, and Woods

Introduced and read first time: January 17, 2024
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: February 21, 2024

CHAPTER _____

1 AN ACT concerning

2 ~~Human Relations – Discrimination by a Place of Public Accommodation~~
3 Maryland Commission on Civil Rights – Monetary Relief

4 FOR the purpose of ~~authorizing certain persons or the Commission on Civil Rights to elect~~
5 ~~to have the claims asserted in a certain complaint alleging discrimination by a place~~
6 ~~of public accommodation determined in a civil action brought by the Commission~~
7 ~~under certain circumstances; requiring a civil action brought by the Commission to~~
8 ~~be filed within a certain time period after an election; expanding the remedies~~
9 ~~available for discrimination by a place of public accommodation; clarifying the~~
10 ~~remedies available for an unlawful employment practice; repealing a prohibition~~
11 ~~against issuing certain orders affecting the cost, level, or type of any transportation~~
12 ~~services; authorizing a complainant alleging discrimination by a place of public~~
13 ~~accommodation to bring a civil action under certain circumstances; providing for the~~
14 ~~venue of and remedies in a certain civil action; repealing the authority of the~~
15 ~~Commission to seek an order assessing a civil penalty for discrimination by a place~~
16 ~~of public accommodation; and generally relating to enforcement and remedies for~~
17 ~~discrimination by a place of public accommodation~~ altering certain maximum
18 amounts of monetary relief the Maryland Commission on Civil Rights is authorized
19 to award if the Commission finds that a respondent has engaged in a discriminatory
20 act under certain provisions of law regarding public accommodations and persons
21 licensed or regulated by a certain unit in the Maryland Department of Labor;
22 providing that certain maximum amounts of monetary relief the Commission is
23 authorized to award do not apply under certain circumstances; prohibiting the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Commission from awarding monetary relief to a respondent under certain circumstances; requiring an administrative law judge to consider certain information when determining the amount of monetary relief; and generally relating to the Maryland Commission on Civil Rights and monetary relief.

BY repealing and reenacting, without amendments,

Article – State Government

Section 20–304 and 20–402

Annotated Code of Maryland

(2021 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,

Article – State Government

Section ~~20–1001, 20–1006(b), 20–1007(a) and (b), 20–1009, 20–1012(a) and (b), 20–1013, and 20–1016(a)~~ 20–1016

Annotated Code of Maryland

(2021 Replacement Volume and 2023 Supplement)

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

Article – State Government

~~20–1001.~~

~~(A) In this part[, “unlawful”] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(B) “DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION” MEANS AN ACT THAT IS PROHIBITED UNDER § 20–304 OF THIS TITLE.~~

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

~~20–1006.~~

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

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

~~(2) if the complaint alleges an unlawful employment practice OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION, in a civil action elected under § 20–1007 of this subtitle.~~

1 ~~20-1007.~~

2 (a) (1) ~~When a complaint alleging an unlawful employment practice OR~~
3 ~~DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION is issued and served under~~
4 ~~§ 20-1006 of this subtitle, a complainant or respondent may elect to have the claims~~
5 ~~asserted in the complaint determined in a civil action brought by the Commission on the~~
6 ~~complainant's behalf, if:~~

7 (i) ~~the Commission has found probable cause to believe the~~
8 ~~respondent has engaged in or is engaging in an unlawful employment practice OR~~
9 ~~DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION; and~~

10 (ii) ~~there is a failure to reach an agreement to remedy and eliminate~~
11 ~~the unlawful employment practice OR DISCRIMINATION BY A PLACE OF PUBLIC~~
12 ~~ACCOMMODATION.~~

13 (2) ~~An election under paragraph (1) of this subsection shall be made within~~
14 ~~30 days after the complainant or respondent receives service under § 20-1006(b) of this~~
15 ~~subtitle.~~

16 (3) ~~If an election is not made under paragraph (1) of this subsection, the~~
17 ~~Commission shall provide an opportunity for a hearing as provided under § 20-1008(a) of~~
18 ~~this subtitle.~~

19 (b) ~~When a complaint alleging an unlawful employment practice OR~~
20 ~~DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION is issued and served under~~
21 ~~§ 20-1006 of this subtitle, the Commission may elect to have the claims asserted in the~~
22 ~~complaint determined in a civil action brought on the Commission's own behalf, if:~~

23 (1) ~~the Commission has found probable cause to believe the respondent has~~
24 ~~engaged in or is engaging in an unlawful employment practice OR DISCRIMINATION BY A~~
25 ~~PLACE OF PUBLIC ACCOMMODATION; and~~

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

29 ~~20-1009.~~

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

32 (1) ~~issue a decision and order stating the judge's findings of fact and~~
33 ~~conclusions of law; and~~

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

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

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

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

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

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

~~(iii) awarding compensatory damages; [or] AND~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) ENJOINING THE RESPONDENT FROM ENGAGING IN THE DISCRIMINATORY ACT;~~

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

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

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

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

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

~~(2) (i) In cases involving transportation services that are supported fully or partially with funds from the Maryland Department of Transportation, an order may not be issued that would require costs, level, or type of transportation services different from or exceeding those required to meet U.S. Department of Transportation regulations adopted under 20 U.S.C. § 704.~~

1 (ii) ~~An order issued in violation of subparagraph (i) of this paragraph~~
 2 ~~is not enforceable under § 20-1011 of this subtitle.~~

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

6 (1) ~~state findings of fact and conclusions of law; and~~

7 (2) ~~issue an order dismissing the complaint.~~

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

11 ~~20-1012.~~

12 (a) ~~Within 60 days after an election is made under § 20-1007 of this subtitle, the~~
 13 ~~Commission shall file a civil action in the circuit court for the county where the alleged~~
 14 ~~unlawful employment practice OR DISCRIMINATION BY A PLACE OF PUBLIC~~
 15 ~~ACCOMMODATION occurred.~~

16 (b) ~~If the court finds that an unlawful employment practice OR DISCRIMINATION~~
 17 ~~BY A PLACE OF PUBLIC ACCOMMODATION occurred, the court may provide the remedies~~
 18 ~~specified in § 20-1009(b) OR (C) of this subtitle, AS APPROPRIATE.~~

19 ~~20-1013.~~

20 (a) (1) ~~In addition to the right to make an election under § 20-1007 of this~~
 21 ~~subtitle, a complainant may bring a civil action against the respondent alleging an unlawful~~
 22 ~~employment practice OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION,~~
 23 ~~if:~~

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

27 (ii) ~~at least 180 days have elapsed since the filing of the~~
 28 ~~administrative charge or complaint; and~~

29 (iii) ~~1. subject to item 2 of this item, the civil action is filed within~~
 30 ~~2 years after the alleged unlawful employment practice OR DISCRIMINATION BY A PLACE~~
 31 ~~OF PUBLIC ACCOMMODATION occurred; or~~

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

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

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

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

12 ~~(d) If the court finds that an unlawful employment practice OR DISCRIMINATION~~
13 ~~BY A PLACE OF PUBLIC ACCOMMODATION occurred, the court may provide the remedies~~
14 ~~specified in § 20-1009(b) OR (C) of this subtitle.~~

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

17 ~~(i) the respondent is not a governmental unit or political~~
18 ~~subdivision; and~~

19 ~~(ii) the court finds that the respondent has engaged in or is engaging~~
20 ~~in an unlawful employment practice OR DISCRIMINATION BY A PLACE OF PUBLIC~~
21 ~~ACCOMMODATION with actual malice.~~

22 ~~(2) If the court awards punitive damages FOR AN UNLAWFUL~~
23 ~~EMPLOYMENT PRACTICE, the sum of the amount of compensatory damages awarded to~~
24 ~~each complainant under subsection (d) of this section and the amount of punitive damages~~
25 ~~awarded under this subsection may not exceed the applicable limitation established under~~
26 ~~§ 20-1009(b)(3) of this subtitle.~~

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

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

29 ~~(2) the court may not inform the jury of the limitations on compensatory~~
30 ~~and punitive damages imposed under § 20-1009(b)(3) of this subtitle.~~

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

1 ~~20-1016.~~

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

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

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

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

14 20-304.

15 An owner or operator of a place of public accommodation or an agent or employee of
16 the owner or operator may not refuse, withhold from, or deny to any person any of the
17 accommodations, advantages, facilities, or privileges of the place of public accommodation
18 because of the person's race, sex, age, color, creed, national origin, marital status, sexual
19 orientation, gender identity, or disability.

20 20-402.

21 A person that is licensed or regulated by a unit in the Maryland Department of Labor
22 listed in § 2-108 of the Business Regulation Article may not refuse, withhold from, or deny
23 any person any of the accommodations, advantages, facilities, privileges, sales, or services
24 of the licensed or regulated person or discriminate against any person because of the
25 person's race, sex, creed, color, national origin, marital status, sexual orientation, age,
26 gender identity, or disability.

27 20-1016.

28 (a) Except as provided in [subsection] SUBSECTIONS (b) AND (C) of this section,
29 in addition to any other relief authorized, if the Commission finds that a respondent has
30 engaged in a discriminatory act under Subtitle 3 or Subtitle 4 of this title, the Commission
31 may seek an order [assessing a civil penalty against the respondent] **AWARDING**
32 **MONETARY RELIEF TO THE COMPLAINANT:**

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

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

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

7 (b) (1) If the discriminatory act is committed by an individual who has been
8 previously adjudicated to have committed one or more discriminatory acts, the time periods
9 set forth in subsection (a)(2) and (3) of this section do not apply.

10 (2) **IF THE DISCRIMINATORY ACT IS COMMITTED BY THE AGENT OR**
11 **EMPLOYEE OF A RESPONDENT, THE MAXIMUM AMOUNTS SET FORTH IN SUBSECTION**
12 **(A)(2) AND (3) OF THIS SECTION DO NOT APPLY AND THE COMMISSION MAY SEEK AN**
13 **ORDER AWARDING MONETARY RELIEF IN AN AMOUNT NOT EXCEEDING \$25,000,**
14 **PROVIDED THAT:**

15 (I) **THE ACT COMMITTED BY THE AGENT OR EMPLOYEE IS**
16 **DETERMINED TO BE DISCRIMINATORY; AND**

17 (II) **THE RESPONDENT HAS NOT REASONABLY MITIGATED THE**
18 **HARM CAUSED BY THE DISCRIMINATORY ACT.**

19 (3) **THE MAXIMUM AMOUNTS SET FORTH IN SUBSECTION (A)(2) AND**
20 **(3) OF THIS SECTION DO NOT APPLY IF THE ACT IS FOUND TO BE MALICIOUS.**

21 (c) **THE COMMISSION MAY NOT SEEK AN ORDER AWARDING MONETARY**
22 **RELIEF TO A COMPLAINANT IF:**

23 (1) **THE DISCRIMINATORY ACT WAS LIMITED TO A VIOLATION**
24 **RELATING TO ACCESSIBILITY;**

25 (2) **THE RESPONDENT, AFTER BEING SERVED, TAKES PROMPT**
26 **CORRECTIVE ACTION; AND**

27 (3) **THE RESPONDENT HAS NOT PREVIOUSLY BEEN THE SUBJECT OF A**
28 **COMPLAINT UNDER § 20-1004 OF THIS SUBTITLE.**

29 (d) **IF THE COMMISSION SEEKS AN ORDER AWARDING MONETARY RELIEF**
30 **BEFORE AN ADMINISTRATIVE LAW JUDGE UNDER § 20-1008 OF THIS SUBTITLE, IN**
31 **DETERMINING THE AMOUNT OF THE MONETARY RELIEF TO BE AWARDED, THE**
32 **ADMINISTRATIVE LAW JUDGE SHALL CONSIDER:**

33 (1) **THE SERIOUSNESS OF THE DISCRIMINATORY ACT;**

1 **(2) THE GOOD FAITH OF THE RESPONDENT;**

2 **(3) THE HARMFUL EFFECT TO THE PUBLIC OF THE DISCRIMINATORY**
3 **ACT;**

4 **(4) THE HARMFUL EFFECT OF THE RESPONDENT’S ACTIONS ON THE**
5 **INVESTIGATORY PROCESS OF THE COMMISSION; AND**

6 **(5) THE RESPONDENT’S ASSETS.**

7 **[(c)] (E) Any [civil penalties] MONETARY RELIEF collected under this section**
8 **shall be paid to the [General Fund of the State] COMPLAINANT.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before July 1, 2025, and
10 on or before July 1 of each of the immediately following 4 years, the Maryland Commission
11 on Civil Rights shall submit a report to the Governor and, in accordance with § 2–1257 of
12 the State Government Article, the General Assembly regarding the effect Section 1 of this
13 Act has had on persons against whom complaints have been filed under Title 20 of the State
14 Government Article.

15 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.