

HOUSE BILL 285

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11r0900
CF SB 642

By: Delegates Pena–Melnyk, Rosenberg, Anderson, Barnes, Barve, Beidle, Braveboy, Cane, Carr, Carter, Cullison, Elliott, Feldman, Frick, Frush, Glenn, Griffith, Gutierrez, Haynes, Hubbard, Huckler, Ivey, Kach, A. Kelly, Lee, Luedtke, Murphy, Nathan–Pulliam, Oaks, Proctor, Ross, Tarrant, V. Turner, Valderrama, Vallario, and Wilson

Introduced and read first time: February 1, 2011
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 24, 2011

CHAPTER _____

1 AN ACT concerning

2 **Human Relations – Discrimination by a Place of Public Accommodation –**
3 **Enforcement and Remedies**

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

20 BY repealing and reenacting, with amendments,

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.



1 Article – State Government

2 Section ~~20-1009 and 20-1013~~ 20-1001, 20-1006(b), 20-1007(a) and (b),
 3 20-1009, 20-1012(a) and (b), 20-1013, and 20-1016(a)

4 Annotated Code of Maryland

5 (2009 Replacement Volume and 2010 Supplement)

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

8 **Article – State Government**

9 20-1001.

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

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

14 **(C) “UNLAWFUL employment practice” means an act that is prohibited**
 15 **under § 20-606 of this title.**

16 20-1006.

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

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

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

26 20-1007.

27 **(a) (1) When a complaint alleging an unlawful employment practice OR**
 28 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION is issued and served**
 29 **under § 20-1006 of this subtitle, a complainant or respondent may elect to have the**
 30 **claims asserted in the complaint determined in a civil action brought by the**
 31 **Commission on the complainant’s behalf, if:**

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

4 (ii) there is a failure to reach an agreement to remedy and
5 eliminate the unlawful employment practice OR DISCRIMINATION BY A PLACE OF
6 PUBLIC ACCOMMODATION.

7 (2) An election under paragraph (1) of this subsection shall be made
8 within 30 days after the complainant or respondent receives service under §
9 20–1006(b) of this subtitle.

10 (3) If an election is not made under paragraph (1) of this subsection,
11 the Commission shall provide an opportunity for a hearing as provided under §
12 20–1008(a) of this subtitle.

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

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

21 (2) there is a failure to reach an agreement to remedy and eliminate
22 the unlawful employment practice OR DISCRIMINATION BY A PLACE OF PUBLIC
23 ACCOMMODATION.

24 20–1009.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **(1) ENJOINING THE RESPONDENT FROM ENGAGING IN THE**
14 **DISCRIMINATORY ACT;**

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

17 **(3) AWARDING COMPENSATORY DAMAGES FOR PECUNIARY**
18 **LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH,**
19 **LOSS OF ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES, ~~IN AN~~**
20 **~~AMOUNT NOT LESS THAN \$1,000 FOR EACH DISCRIMINATORY ACT PERSONALLY~~**
21 **~~SUFFERED BY EACH COMPLAINANT; AND~~**

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

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

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

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

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

3 ~~[(d)]~~ (E) If, after reviewing all of the evidence, the administrative law judge
4 finds that the respondent has not engaged in an alleged discriminatory act, the
5 administrative 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
9 with the Commission’s regulations, a decision and order issued by the administrative
10 law judge 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,
13 the Commission shall file a civil action in the circuit court for the county where the
14 alleged 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**
17 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred, the court
18 may provide the remedies specified in § 20–1009(b) **OR (C)** of this subtitle, **AS**
19 **APPROPRIATE.**

20 20–1013.

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

25 ~~[(1)]~~ ~~(1)~~ the complainant initially filed a timely administrative
26 charge or a complaint under federal, State, or local law alleging an unlawful
27 employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**
28 **ACCOMMODATION** by the respondent;

29 ~~[(2)]~~ ~~(2)~~ at least 180 days have elapsed since the filing of the
30 administrative charge or complaint; and

1 ~~[(3)]~~ ~~(H)~~ the civil action is filed within 2 years after the alleged
2 unlawful employment practice OR DISCRIMINATION BY A PLACE OF PUBLIC
3 ACCOMMODATION occurred.

4 ~~(2) A COMPLAINANT MAY BRING A CIVIL ACTION AGAINST THE~~
5 ~~RESPONDENT ALLEGING DISCRIMINATION BY A PLACE OF PUBLIC~~
6 ~~ACCOMMODATION IF THE CIVIL ACTION IS FILED WITHIN 2 YEARS AFTER THE~~
7 ~~ALLEGED DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION~~
8 ~~OCCURRED.~~

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

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

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

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

20 (i) the respondent is not a governmental unit or political
21 subdivision; and

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

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

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

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

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

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

5 20-1016.

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

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

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

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

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.