

# SENATE BILL 642

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CF HB 285

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By: **Senator Gladden**

Introduced and read first time: February 4, 2011

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of expanding the remedies available for discrimination by a place of  
5 public accommodation; clarifying the remedies available for an unlawful  
6 employment practice; repealing a prohibition against issuing certain orders  
7 affecting the cost, level, or type of any transportation services; authorizing a  
8 complainant alleging discrimination by a place of public accommodation to bring  
9 a civil action; providing for the venue of and remedies in a certain civil action;  
10 and generally relating to enforcement and remedies for certain discriminatory  
11 acts.

12 BY repealing and reenacting, with amendments,  
13 Article – State Government  
14 Section 20–1009 and 20–1013  
15 Annotated Code of Maryland  
16 (2009 Replacement Volume and 2010 Supplement)

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

19 **Article – State Government**

20 20–1009.

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **(1) ENJOINING THE RESPONDENT FROM ENGAGING IN THE**  
20 **DISCRIMINATORY ACT;**

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

23 **(3) AWARDING COMPENSATORY DAMAGES FOR PECUNIARY**  
24 **LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH,**  
25 **LOSS OF ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES, IN AN**  
26 **AMOUNT NOT LESS THAN \$1,000 FOR EACH DISCRIMINATORY ACT PERSONALLY**  
27 **SUFFERED BY EACH COMPLAINANT; AND**

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

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

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

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

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

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

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

14                    (2) issue an order dismissing the complaint.

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

18 20–1013.

19                   (a) (1) In addition to the right to make an election under § 20–1007 of this  
20 subtitle, a complainant may bring a civil action against the respondent alleging an  
21 unlawful employment practice, if:

22                    [(1)] (I) the complainant initially filed a timely administrative  
23 charge or a complaint under federal, State, or local law alleging an unlawful  
24 employment practice by the respondent;

25                    [(2)] (II) at least 180 days have elapsed since the filing of the  
26 administrative charge or complaint; and

27                    [(3)] (III) the civil action is filed within 2 years after the alleged  
28 unlawful employment practice occurred.

29                    (2) **A COMPLAINANT MAY BRING A CIVIL ACTION AGAINST THE**  
30 **RESPONDENT ALLEGING DISCRIMINATION BY A PLACE OF PUBLIC**  
31 **ACCOMMODATION IF THE CIVIL ACTION IS FILED WITHIN 2 YEARS AFTER THE**  
32 **ALLEGED DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION**  
33 **OCCURRED.**

1 (b) A civil action under this section shall be filed in the circuit court for [the]  
2 ANY county where [the] AN alleged unlawful employment practice OR  
3 DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION occurred.

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

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

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

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

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

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

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

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

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

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

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