

SENATE BILL 278

D5

2lr1544
CF HB 183

By: **Senators Raskin, Benson, Conway, Kelley, Madaleno, Montgomery,
Pinsky, Ramirez, and Stone**

Introduced and read first time: January 26, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Human Relations – Discrimination in Housing,**
3 **Employment, and Places of Public Accommodation**

4 FOR the purpose of making certain provisions of law related to discrimination by a
5 place of public accommodation applicable to a certain Internet Web site of a
6 certain business entity; prohibiting an owner or operator of a place of public
7 accommodation from refusing, withholding from, or denying to any person the
8 services of the place of public accommodation because of certain characteristics
9 of the person; providing that each time a person is affected by a certain
10 discriminatory act is a separate violation; making certain provisions of law
11 related to enforcement applicable to alleged discrimination by a place of public
12 accommodation; authorizing certain remedies for discrimination by a place of
13 public accommodation; clarifying the remedies available for an unlawful
14 employment practice; repealing a prohibition against issuing certain orders
15 affecting the cost, level, or type of transportation services; authorizing a
16 complainant alleging discrimination by a place of public accommodation to bring
17 a civil action under certain circumstances; providing for the venue of and
18 remedies in a certain civil action; repealing the authority of the Commission on
19 Civil Rights to seek an order assessing a civil penalty for discrimination by a
20 place of public accommodation; altering the definition of “disability” for
21 purposes of provisions of law relating to discrimination in employment and
22 housing; defining certain terms; requiring an Internet Web site created and
23 made available to the public before a certain date to be made accessible to the
24 blind and visually impaired on or before a certain date; requiring an Internet
25 Web site created or substantially revised on or after a certain date to be
26 accessible to the blind and visually impaired on or before a certain date; making
27 conforming changes; and generally relating to discrimination in housing,
28 employment, and places of public accommodation.

29 BY renumbering

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – State Government
 2 Section 20–101(e) and (f), respectively
 3 to be Section 20–101(f) and (g), respectively
 4 Annotated Code of Maryland
 5 (2009 Replacement Volume and 2011 Supplement)

6 BY repealing and reenacting, without amendments,
 7 Article – State Government
 8 Section 20–101(a), 20–601(a), and 20–701(a)
 9 Annotated Code of Maryland
 10 (2009 Replacement Volume and 2011 Supplement)

11 BY adding to
 12 Article – State Government
 13 Section 20–101(e)
 14 Annotated Code of Maryland
 15 (2009 Replacement Volume and 2011 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article – State Government
 18 Section 20–301, 20–304, 20–601(b), 20–701(b), 20–1001, 20–1006(b), 20–1007(a)
 19 and (b), 20–1009, 20–1012(a) and (b), 20–1013, 20–1016(a), and 20–1017
 20 Annotated Code of Maryland
 21 (2009 Replacement Volume and 2011 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 23 MARYLAND, That Section(s) 20–101(e) and (f), respectively, of Article – State
 24 Government of the Annotated Code of Maryland be renumbered to be Section(s)
 25 20–101(f) and (g), respectively.

26 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 27 read as follows:

28 **Article – State Government**

29 20–101.

30 (a) In Subtitles 1 through 11 of this title the following words have the
 31 meanings indicated.

32 **(E) “INTERNET WEB SITE” MEANS A COLLECTION OF ALL RELATED**
 33 **WEB PAGES CONSISTING OF HYPERTEXT MARKUP LANGUAGE (HTML)**
 34 **DOCUMENTS AND RELATED FILES, SCRIPTS, AND DATABASES RETRIEVABLE BY**
 35 **A WEB BROWSER OR ANY OTHER ELECTRONIC DEVICE.**

36 20–301.

1 In this subtitle, “place of public accommodation” means:

2 (1) an inn, hotel, motel, or other establishment that provides lodging
3 to transient guests;

4 (2) a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or
5 other facility principally engaged in selling food or alcoholic beverages for consumption
6 on or off the premises, including a facility located on the premises of a retail
7 establishment or gasoline station;

8 (3) a motion picture house, theater, concert hall, sports arena,
9 stadium, or other place of exhibition or entertainment;

10 (4) [a retail] AN establishment that:

11 (i) is operated by a public or private entity; and

12 (ii) offers goods, services, entertainment, recreation, or
13 transportation; [and]

14 (5) an establishment:

15 (i) 1. that is physically located within the premises of any
16 other establishment covered by this subtitle; or

17 2. within the premises of which any other establishment
18 covered by this subtitle is physically located; and

19 (ii) that holds itself out as serving patrons of the covered
20 establishment; AND

21 **(6) THE INTERNET WEB SITE OF ANY BUSINESS ENTITY:**

22 **(I) 1. DESCRIBED IN ITEMS (1) THROUGH (5) OF THIS**
23 **SECTION; OR**

24 **2. THAT PROVIDES GOODS, SERVICES,**
25 **ENTERTAINMENT, RECREATION, OR TRANSPORTATION TO ANY PERSON IN THE**
26 **STATE THROUGH THE INTERNET; AND**

27 **(II) THAT HAD GROSS REVENUE OF AT LEAST \$1,000,000 IN**
28 **THE BUSINESS ENTITY’S MOST RECENTLY COMPLETED FISCAL YEAR.**

29 20–304.

1 **(A)** An owner or operator of a place of public accommodation or an agent or
2 employee of the owner or operator may not refuse, withhold from, or deny to any
3 person any of the accommodations, advantages, facilities, **SERVICES**, or privileges of
4 the place of public accommodation because of the person's race, sex, age, color, creed,
5 national origin, marital status, sexual orientation, or disability.

6 **(B) EACH TIME A PERSON IS AFFECTED BY A DISCRIMINATORY ACT**
7 **PROHIBITED UNDER THIS SECTION CONSTITUTES A SEPARATE VIOLATION.**

8 20-601.

9 (a) In this subtitle the following words have the meanings indicated.

10 (b) (1) "Disability" means:

11 (i) 1. a physical disability, infirmity, malformation, or
12 disfigurement that is caused by bodily injury, birth defect, or illness, including
13 epilepsy; or

14 2. a mental impairment or deficiency;

15 (ii) a record of having a physical or mental impairment as
16 otherwise defined under this subsection; or

17 (iii) being regarded as having a physical or mental impairment
18 as otherwise defined under this subsection.

19 (2) "Disability" includes:

20 (i) 1. any degree of paralysis, amputation, or lack of
21 physical coordination;

22 2. blindness or visual impairment;

23 3. deafness or hearing impairment;

24 4. muteness or speech impediment; and

25 5. physical reliance on a service animal, wheelchair, or
26 other remedial appliance or device; and

27 (ii) **[retardation] INTELLECTUAL DISABILITY, AS DEFINED IN**
28 **§ 7-101 OF THE HEALTH - GENERAL ARTICLE**, and any other mental impairment
29 or deficiency that may have necessitated remedial or special education and related
30 services.

1 20-701.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) (1) "Disability" means:

4 [(i) a physical or mental impairment that substantially limits
5 one or more of an individual's major life activities;

6 (ii) a record of having a physical or mental impairment that
7 substantially limits one or more of an individual's major life activities; or

8 (iii) being regarded as having a physical or mental impairment
9 that substantially limits one or more of an individual's major life activities.]

10 (I) 1. A PHYSICAL DISABILITY, INFIRMITY,
11 MALFORMATION, OR DISFIGUREMENT THAT IS CAUSED BY BODILY INJURY,
12 BIRTH DEFECT, OR ILLNESS, INCLUDING EPILEPSY; OR

13 2. A MENTAL IMPAIRMENT OR DEFICIENCY;

14 (II) A RECORD OF HAVING A PHYSICAL OR MENTAL
15 IMPAIRMENT AS OTHERWISE DEFINED UNDER THIS SUBSECTION; OR

16 (III) BEING REGARDED AS HAVING A PHYSICAL OR MENTAL
17 IMPAIRMENT AS OTHERWISE DEFINED UNDER THIS SUBSECTION.

18 (2) "DISABILITY" INCLUDES:

19 (I) 1. ANY DEGREE OF PARALYSIS, AMPUTATION, OR
20 LACK OF PHYSICAL COORDINATION;

21 2. BLINDNESS OR VISUAL IMPAIRMENT;

22 3. DEAFNESS OR HEARING IMPAIRMENT;

23 4. MUTENESS OR SPEECH IMPEDIMENT; AND

24 5. PHYSICAL RELIANCE ON A SERVICE ANIMAL,
25 WHEELCHAIR, OR OTHER REMEDIAL APPLIANCE OR DEVICE; AND

26 (II) INTELLECTUAL DISABILITY, AS DEFINED IN § 7-101 OF
27 THE HEALTH - GENERAL ARTICLE, AND ANY OTHER MENTAL IMPAIRMENT OR

1 **DEFICIENCY THAT MAY HAVE NECESSITATED REMEDIAL OR SPECIAL**
2 **EDUCATION AND RELATED SERVICES.**

3 **[(2)] (3)** “Disability” does not include the current illegal use of or
4 addiction to:

5 (i) a controlled dangerous substance, as defined in § 5–101 of
6 the Criminal Law Article; or

7 (ii) a controlled substance, as defined in 21 U.S.C. § 802.

8 20–1001.

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

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

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

15 20–1006.

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

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

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

25 20–1007.

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

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

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

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

30 (2) (i) In cases involving transportation services that are supported
31 fully or partially with funds from the Maryland Department of Transportation, an
32 order may not be issued that would require costs, level, or type of transportation
33 services different from or exceeding those required to meet U.S. Department of
34 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] ANY** county where
14 **[the] AN** alleged unlawful employment practice **OR DISCRIMINATION BY A PLACE OF**
15 **PUBLIC 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) 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) the complainant initially filed a timely administrative charge or a
26 complaint under federal, State, or local law alleging an unlawful employment practice
27 **OR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** by the respondent;

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

30 (3) the civil action is filed within 2 years after the alleged unlawful
31 employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**
32 **ACCOMMODATION** occurred.

1 (b) A civil action under this section shall be filed in [the] ANY circuit court
2 for the 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 20–1016.

32 (a) Except as provided in subsection (b) of this section, in addition to any
33 other relief authorized, if the Commission finds that a respondent has engaged in a

1 discriminatory act under [Subtitle 3 or] Subtitle 4 of this title, the Commission may
2 seek an order assessing a civil penalty against the respondent:

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

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

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

11 20-1017.

12 (a) At any time after a complaint has been filed, if the Commission believes
13 that a civil action is necessary to preserve the status of the parties or to prevent
14 irreparable harm from the time the complaint is filed until the time of the final
15 disposition of the complaint, the Commission may bring an action to obtain a
16 temporary injunction.

17 (b) The action shall be brought in the circuit court for [the] ANY county
18 where:

19 (1) [the place of public accommodation that is the subject of the
20 alleged discriminatory act is located;

21 (2)] the unlawful employment practice **OR DISCRIMINATION BY A**
22 **PLACE OF PUBLIC ACCOMMODATION** is alleged to have occurred or to be occurring;
23 or

24 [(3)] (2) the dwelling that is the subject of the alleged discriminatory
25 housing practice is located.

26 SECTION 3. AND BE IT FURTHER ENACTED, That an Internet Web site
27 described under § 20-301(6) of the State Government Article, as enacted by Section 2
28 of this Act, that was created and made available to the public before October 1, 2012,
29 shall be made accessible to the blind and visually impaired on or before October 1,
30 2013. An Internet Web site described under § 20-301(6) of the State Government
31 Article, as enacted by Section 2 of this Act, that is created or substantially revised on
32 or after October 1, 2012, shall be made accessible to the blind and visually impaired on
33 or before January 1, 2013.

34 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2012.

