

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 183 (Delegate Rosenberg, *et al.*)
 Health and Government Operations

State Government - Human Relations - Discrimination in Housing, Employment,
 and Places of Public Accommodation

This bill expands the remedies available for discrimination by a place of public accommodation. The bill also extends provisions of law related to discrimination by a place of public accommodation to the website of a business entity that (1) is a place of public accommodation or provides goods, services, entertainment, recreation, or transportation to any person in the State through the Internet; and (2) had gross revenue of at least \$1.0 million in the entity’s most recently completed fiscal year. Any such website that was created and made available to the public before October 1, 2012, must be made accessible to the blind and visually impaired by October 1, 2013; and any such website that is created or substantially revised on or after October 1, 2012, must be made accessible to the blind and visually impaired by January 1, 2013.

Fiscal Summary

State Effect: General fund expenditures increase by \$114,200 in FY 2013 for the Maryland Commission on Civil Rights (MCCR) to hire one full-time investigator and one full-time attorney to handle an expected increase in complaints under the bill. Future year expenditures reflect annualization and inflation. Additional responsibilities for the Judiciary can be handled with existing budgeted resources. Revenues are not affected.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	114,200	142,000	151,600	158,800	166,300
Net Effect	(\$114,200)	(\$142,000)	(\$151,600)	(\$158,800)	(\$166,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in litigation costs for local governments.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill specifies that an owner or operator of a place of public accommodation, or an agent or employee of the owner or operator, may not refuse, withhold from, or deny to any person any of the services of the place of public accommodation because of the person's race, sex, age, color, creed, national origin, marital status, sexual orientation, or disability. Each time a person is affected by a discriminatory act by a place of public accommodation constitutes a separate violation.

This bill also expands the remedies available for discrimination by a place of public accommodation to 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 and nonpecuniary losses; and (4) ordering any other equitable relief that the administrative law judge (ALJ) considers appropriate.

The bill also adds discrimination by a place of public accommodation to the alleged discriminatory acts for which a complainant or respondent may elect to have MCCR bring a civil action in circuit court in lieu of an administrative hearing before an ALJ. The bill also authorizes a complainant to bring a civil action against the respondent alleging discrimination by a place of public accommodation if (1) the complainant initially filed a timely administrative charge or complaint; (2) at least 180 days have elapsed since the filing of the charge or complaint; and (3) the action is filed within two years after the alleged discrimination occurred. If the court finds that discrimination by a place of public accommodation occurred, the court may provide the above remedies. The court may also award punitive damages if the respondent is not a governmental unit or political subdivision and the court finds that the respondent acted with actual malice.

The bill repeals the definition of "disability" applicable to provisions relating to discrimination in housing, which is consistent with the federal fair housing law, and replaces it with new language that parallels the definition of "disability" under the State employment discrimination law. Under the bill, "disability" is defined to mean (1) a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness (including epilepsy), or a mental impairment of deficiency; (2) a record of having a physical or mental impairment; or (3) being regarded as having a physical or mental impairment. The bill specifies that disability includes any degree of paralysis, amputation, or lack of physical coordination; blindness or physical impairment; deafness or hearing impediment; muteness or speech impediment; physical reliance on a service animal, wheelchair, or other remedial appliance or device; intellectual disability;

and any other mental impairment or deficiency that may have necessitated remedial or special education and related services. The bill also amends the definition of “disability” applicable to provisions relating to employment discrimination by replacing a reference to “retardation” with a reference to “intellectual disability.”

The bill expands the definition of “place of public accommodation” to include any establishment that is operated by a public or private entity and offers goods, services, entertainment, recreation, or transportation.

The bill also specifies that a proper venue for a civil action brought by MCCR alleging discrimination by a place of public accommodation is any county where the alleged discrimination occurred.

In addition, the bill repeals a provision that prohibits an ALJ from issuing – with regard to a respondent found to have engaged in a discriminatory act other than an unlawful employment practice – an order that substantially affects the cost, level, or type of transportation services.

Current Law: A “place of public accommodation” includes (1) an inn, hotel, motel, or other lodging establishment; (2) a facility serving food or alcoholic beverages, including facilities on the premises of a retail establishment or gasoline station; (3) entertainment, sports, or exhibition venues; and (4) a public or privately operated retail establishment offering goods, services, entertainment, recreation, or transportation. A separate establishment that holds itself out as serving patrons of one of the above establishments is also included if (1) it is physically located within the premises of one of the above establishments; or (2) it is within the premises of which one of the above establishments is physically located.

Under State law, an owner or operator of a place of public accommodation, or an agent or employee of the owner, may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person’s race, sex, age, color, creed, national origin, marital status, sexual orientation, or disability. Governmental units, officers, and employees are prohibited from discrimination in public accommodations. Any structural changes, modifications, or special equipment that are necessary to accommodate an individual with a disability must be reasonable. A reasonable accommodation is defined as making a place of public accommodation suitable for access, use, and patronage by an individual with a disability without danger to the individual’s health or safety and undue hardship or expense to the person making the accommodation.

“Disability” is defined for purposes of the State housing discrimination law as a physical or mental impairment (or a record of having or being regarded as having such an impairment) that substantially limits one or more of an individual’s major life activities. A disability does not include the current illegal use of or addiction to a controlled substance.

On a finding that a respondent has engaged in a discriminatory act in relation to the prohibition against discrimination in public accommodations, MCCR may issue an order for nonmonetary relief and/or assess a civil penalty against a respondent. Maximum civil penalties range from \$500 to \$2,500 depending on whether or not the respondent committed prior discriminatory acts. However, an order may not be issued that substantially affects the cost, level, or type of any transportation services.

Background: A website can be designed, developed, and edited in ways that improve access for blind or visually impaired users. For example, if a website is coded with semantically meaningful HTML, with textual equivalents provided for images and with links named meaningfully, blind users can more easily use text-to-speech software and/or text-to-Braille hardware to navigate the website.

In 2009, the National Federation of the Blind reached a settlement with Target Corporation for \$9.7 million stemming from a lawsuit alleging that the corporation’s website was inaccessible to vision-impaired individuals and therefore in violation of the Americans with Disabilities Act (ADA). A number of similar lawsuits and settlements under ADA have followed.

MCCR received 49 complaints of discrimination in public accommodations in fiscal 2011.

State Expenditures: MCCR advises that it anticipates a significant increase in complaints stemming from this legislation. Due to the large number of websites that fall within the bill’s purview, Legislative Services concurs with this assumption. Accordingly, general fund expenditures increase by \$114,160 in fiscal 2013, which accounts for the bill’s October 1, 2012 effective date. This estimate reflects the cost of hiring one full-time investigator and one full-time attorney to handle the increased complaints.

New Positions	2
Salary and Fringe Benefits	\$104,365
Operating Expenses	<u>9,795</u>
Total FY 2013 General Fund Expenditures	\$114,160

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional responsibilities for the Judiciary can be handled with existing budgeted resources.

Local Expenditures: The expansion of the definition of “disability” and the ability for individuals to file civil actions in public accommodations cases, as well as the expanded remedies established by this bill, may lead to additional cases being filed and increased litigation costs for some local governments. For example, Baltimore City indicated that it anticipated an increase in litigation costs as a result of more individuals potentially filing claims against the Housing Authority.

Small Business Effect: Potential meaningful impact for small businesses to conform their websites in accordance with the bill’s requirements. It is unclear how many small businesses are affected.

Additional Information

Prior Introductions: HB 580 of 2011, a similar bill, was withdrawn after a hearing in the House Health and Government Operations Committee. Its cross file, SB 596, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 278 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Housing and Community Development; Department of Disabilities; Department of Health and Mental Hygiene; Maryland Commission on Civil Rights; Comptroller’s Office; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of Administrative Hearings; Maryland Department of Transportation; Baltimore City; Howard County; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2012
mc/kdm

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510