

SENATE BILL 834

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SB 223/16 – JPR

7lr1644
CF 7lr3493

By: **Senators Lee, Guzzone, Kagan, Kelley, King, Madaleno, Manno,
Nathan-Pulliam, Robinson, Smith, and Zucker**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

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 authorizing certain persons to elect to have the claims asserted in a
5 certain complaint alleging discrimination by a place of public accommodation
6 determined in a civil action brought by the Commission on Civil Rights under certain
7 circumstances; requiring a civil action brought by the Commission to be filed within
8 a certain time period after an election; expanding the remedies available for
9 discrimination by a place of public accommodation; establishing certain limitations
10 on the compensatory damages that may be awarded for discrimination by a place of
11 public accommodation; 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 a
14 civil action under certain circumstances; providing for the venue of and remedies in
15 a certain civil action; authorizing a court to award punitive damages for
16 discrimination by a place of public accommodation under certain circumstances;
17 establishing certain limitations on the punitive damages that may be awarded for
18 discrimination by a place of public accommodation; repealing the authority of the
19 Commission to seek an order assessing a civil penalty for discrimination by a place
20 of public accommodation; defining a certain term; making certain conforming
21 changes; and generally relating to enforcement and remedies for certain
22 discriminatory acts.

23 BY repealing and reenacting, without amendments,
24 Article – State Government
25 Section 20–304
26 Annotated Code of Maryland
27 (2014 Replacement Volume and 2016 Supplement)

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – State Government

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

Annotated Code of Maryland

(2014 Replacement Volume and 2016 Supplement)

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

Article – State Government

20–304.

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 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, gender identity, or disability.

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,] in a civil action elected under § 20–1007 of this subtitle **IF THE COMPLAINT ALLEGES:**

(I) AN UNLAWFUL EMPLOYMENT PRACTICE; OR

(II) DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION.

1 20-1007.

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

6 [(i)] 1. the Commission has found probable cause to believe the
7 respondent has engaged in or is engaging in an unlawful employment practice; and

8 [(ii)] 2. there is a failure to reach an agreement to remedy and
9 eliminate the unlawful employment practice.

10 (II) WHEN A COMPLAINT ALLEGING DISCRIMINATION BY A
11 PLACE OF PUBLIC ACCOMMODATION IS ISSUED AND SERVED UNDER § 20-1006 OF
12 THIS SUBTITLE, A COMPLAINANT OR RESPONDENT MAY ELECT TO HAVE THE CLAIMS
13 ASSERTED IN THE COMPLAINT DETERMINED IN A CIVIL ACTION BROUGHT BY THE
14 COMMISSION ON THE COMPLAINANT'S BEHALF IF:

15 1. THE COMMISSION HAS FOUND PROBABLE CAUSE TO
16 BELIEVE THE RESPONDENT HAS ENGAGED IN OR IS ENGAGING IN DISCRIMINATION
17 BY A PLACE OF PUBLIC ACCOMMODATION; AND

18 2. THERE IS A FAILURE TO REACH AN AGREEMENT TO
19 REMEDY AND ELIMINATE THE DISCRIMINATION.

20 (2) An election under paragraph (1) of this subsection shall be made within
21 30 days after the complainant or respondent receives service under § 20-1006(b) of this
22 subtitle.

23 (3) If an election is not made under paragraph (1) of this subsection, the
24 Commission shall provide an opportunity for a hearing as provided under §
25 20-1008(a) of this subtitle.

26 20-1009.

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

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

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

33 (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) (1) 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:

(I) ENJOINING THE RESPONDENT FROM ENGAGING IN THE DISCRIMINATORY ACT;

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

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

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

(2) THE SUM OF THE AMOUNT OF COMPENSATORY DAMAGES AWARDED TO EACH COMPLAINANT UNDER THIS SUBSECTION FOR PECUNIARY LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, OR NONPECUNIARY LOSSES MAY NOT EXCEED \$50,000.

[(c)] (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 29 U.S.C. § 794.

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

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

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

(2) issue an order dismissing the complaint.

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

20–1012.

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

(b) **(1)** If the court finds that an unlawful employment practice occurred, the court may provide the remedies specified in § 20–1009(b) of this subtitle.

(2) IF THE COURT FINDS THAT DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION OCCURRED, THE COURT MAY PROVIDE THE REMEDIES SPECIFIED IN § 20–1009(C) OF THIS SUBTITLE.

20–1013.

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

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

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

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

3 **(2) IN ADDITION TO THE RIGHT TO MAKE AN ELECTION UNDER §**
4 **20-1007 OF THIS SUBTITLE, A COMPLAINANT MAY BRING A CIVIL ACTION AGAINST**
5 **THE RESPONDENT ALLEGING DISCRIMINATION BY A PLACE OF PUBLIC**
6 **ACCOMMODATION IF:**

7 **(I) THE COMPLAINANT FILED A TIMELY COMPLAINT WITH THE**
8 **COMMISSION UNDER § 20-1004 OF THIS SUBTITLE;**

9 **(II) AT LEAST 180 DAYS HAVE ELAPSED SINCE THE FILING OF**
10 **THE ADMINISTRATIVE CHARGE OR COMPLAINT; AND**

11 **(III) THE CIVIL ACTION IS FILED WITHIN 2 YEARS AND 180 DAYS**
12 **AFTER THE ADMINISTRATIVE CHARGE OR COMPLAINT IS FILED.**

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

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

19 (d) **(1)** If the court finds that an unlawful employment practice occurred, the
20 court may provide the remedies specified in § 20-1009(b) of this subtitle.

21 **(2) IF THE COURT FINDS THAT DISCRIMINATION BY A PLACE OF**
22 **PUBLIC ACCOMMODATION OCCURRED, THE COURT MAY PROVIDE THE REMEDIES**
23 **SPECIFIED IN § 20-1009(C) OF THIS SUBTITLE.**

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

26 (i) the respondent is not a governmental unit or political
27 subdivision; and

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

31 **(2)** If the court awards punitive damages **FOR AN UNLAWFUL**
32 **EMPLOYMENT PRACTICE**, the sum of the amount of compensatory damages awarded to
33 each complainant under subsection (d) of this section and the amount of punitive damages

awarded under this subsection may not exceed the applicable limitation established under § 20–1009(b)(3) of this subtitle.

(3) IF THE COURT AWARDS PUNITIVE DAMAGES FOR DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION, THE AMOUNT OF PUNITIVE DAMAGES:

(I) IS NOT SUBJECT TO THE LIMITATION ESTABLISHED UNDER § 20–1009(C)(2) OF THIS SUBTITLE; AND

(II) MAY NOT EXCEED THREE TIMES THE SUM OF THE AMOUNT OF COMPENSATORY DAMAGES AWARDED TO EACH COMPLAINANT.

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

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

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

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

20–1016.

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.