

# SENATE BILL 596

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CF 11r0761

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By: **Senators Raskin, Benson, and Stone**  
Introduced and read first time: February 4, 2011  
Assigned to: Judicial Proceedings

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## 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; establishing the  
16 venue for certain actions; altering the definition of “disability” for purposes of  
17 provisions of law relating to discrimination in employment and housing;  
18 defining certain terms; requiring an Internet Web site created and made  
19 available to the public before a certain date to be made accessible to the blind  
20 and visually impaired on or before a certain date; requiring an Internet Web  
21 site created or substantially revised on or after a certain date to be accessible to  
22 the blind and visually impaired on or before a certain date; making conforming  
23 changes; and generally relating to prohibiting discrimination in housing,  
24 employment, and places of public accommodation.

25 BY renumbering

26 Article – State Government  
27 Section 20–101(e) and (f), respectively  
28 to be Section (f) and (g), respectively  
29 Annotated Code of Maryland  
30 (2009 Replacement Volume and 2010 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,  
 2 Article – State Government  
 3 Section 20–101(a), 20–601(a), and 20–701(a)  
 4 Annotated Code of Maryland  
 5 (2009 Replacement Volume and 2010 Supplement)

6 BY adding to  
 7 Article – State Government  
 8 Section 20–101(e)  
 9 Annotated Code of Maryland  
 10 (2009 Replacement Volume and 2010 Supplement)

11 BY repealing and reenacting, with amendments,  
 12 Article – State Government  
 13 Section 20–301, 20–304, 20–601(b), 20–701(b), 20–1001, 20–1006(b), 20–1007(a)  
 14 and (b), 20–1009, 20–1012(a) and (b), and 20–1017  
 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 Section(s) 20–101(e) and (f), respectively, of Article – State  
 19 Government of the Annotated Code of Maryland be renumbered to be Section(s)  
 20 20–101(f) and (g), respectively.

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

23 **Article – State Government**

24 20–101.

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

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

31 20–301.

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

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

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

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

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

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

9 (ii) offers goods, services, entertainment, recreation, or  
10 transportation; [and]

11 (5) an establishment:

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

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

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

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

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

21 **2. THAT PROVIDES GOODS, SERVICES,**  
22 **ENTERTAINMENT, RECREATION, OR TRANSPORTATION TO ANY PERSON IN THE**  
23 **STATE THROUGH THE INTERNET; AND**

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

26 20-304.

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

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

3 20–601.

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

5           (b) (1) “Disability” means:

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

9   2. a mental impairment or deficiency;

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

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

14           (2) “Disability” includes:

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

17   2. blindness or visual impairment;

18   3. deafness or hearing impairment;

19   4. muteness or speech impediment; and

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

22                                       (ii) **[retardation] INTELLECTUAL DISABILITY, AS DEFINED IN**  
 23 **§ 7–101 OF THE HEALTH – GENERAL ARTICLE**, and any other mental impairment  
 24 or deficiency that may have necessitated remedial or special education and related  
 25 services.

26 20–701.

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

28           (b) (1) “Disability” means:

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

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

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

7                    **(I) 1. A PHYSICAL DISABILITY, INFIRMITY,  
8 MALFORMATION, OR DISFIGUREMENT THAT IS CAUSED BY BODILY INJURY,  
9 BIRTH DEFECT, OR ILLNESS, INCLUDING EPILEPSY; OR**

10                    **2. A MENTAL IMPAIRMENT OR DEFICIENCY;**

11                    **(II) A RECORD OF HAVING A PHYSICAL OR MENTAL  
12 IMPAIRMENT AS OTHERWISE DEFINED UNDER THIS SUBSECTION; OR**

13                    **(III) BEING REGARDED AS HAVING A PHYSICAL OR MENTAL  
14 IMPAIRMENT AS OTHERWISE DEFINED UNDER THIS SUBSECTION.**

15                    **(2) "DISABILITY" INCLUDES:**

16                    **(I) 1. ANY DEGREE OF PARALYSIS, AMPUTATION, OR  
17 LACK OF PHYSICAL COORDINATION;**

18                    **2. BLINDNESS OR VISUAL IMPAIRMENT;**

19                    **3. DEAFNESS OR HEARING IMPAIRMENT;**

20                    **4. MUTENESS OR SPEECH IMPEDIMENT; AND**

21                    **5. PHYSICAL RELIANCE ON A SERVICE ANIMAL,  
22 WHEELCHAIR, OR OTHER REMEDIAL APPLIANCE OR DEVICE; AND**

23                    **(II) INTELLECTUAL DISABILITY, AS DEFINED IN § 7-101 OF  
24 THE HEALTH – GENERAL ARTICLE, AND ANY OTHER MENTAL IMPAIRMENT OR  
25 DEFICIENCY THAT MAY HAVE NECESSITATED REMEDIAL OR SPECIAL  
26 EDUCATION AND RELATED SERVICES.**

27                    **[(2)] (3) "Disability" does not include the current illegal use of or  
28 addiction to:**

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

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

2 20–1001.

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

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

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

9 20–1006.

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

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

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

19 20–1007.

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

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

28 (ii) there is a failure to reach an agreement to remedy and  
29 eliminate the unlawful employment practice **OR DISCRIMINATION BY A PLACE OF**  
30 **PUBLIC ACCOMMODATION.**

1           (2) An election under paragraph (1) of this subsection shall be made  
2 within 30 days after the complainant or respondent receives service under §  
3 20–1006(b) of this subtitle.

4           (3) If an election is not made under paragraph (1) of this subsection,  
5 the Commission shall provide an opportunity for a hearing as provided under §  
6 20–1008(a) of this subtitle.

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

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

15           (2) there is a failure to reach an agreement to remedy and eliminate  
16 the unlawful employment practice **OR DISCRIMINATION BY A PLACE OF PUBLIC**  
17 **ACCOMMODATION**.

18 20–1009.

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

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

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

26           (i) cease and desist from engaging in the discriminatory acts;  
27 and

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

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

32           (i) enjoining the respondent from engaging in the  
33 discriminatory act;

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

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

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

6 (2) Compensatory damages awarded under this subsection are in  
7 addition to:

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

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

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

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

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

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

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

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

31 (5) In addition to any other relief authorized by this subsection, a  
32 complainant may recover back pay for up to 2 years preceding the filing of the  
33 complaint, where the unlawful employment practice that has occurred during the  
34 complaint filing period is similar or related to an unlawful employment practice with



1 regard to discrimination in compensation that occurred outside the time for filing a  
2 complaint.

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

6 **(1) ENJOINING THE RESPONDENT FROM ENGAGING IN THE**  
7 **DISCRIMINATORY ACT;**

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

10 **(3) AWARDING COMPENSATORY DAMAGES FOR PECUNIARY**  
11 **LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH,**  
12 **LOSS OF ENJOYMENT OF LIFE, AND OTHER NONPECUNIARY LOSSES, IN AN**  
13 **AMOUNT NOT LESS THAN \$500 FOR EACH DISCRIMINATORY ACT; AND**

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

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

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

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

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

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

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

1 (2) issue an order dismissing the complaint.

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

5 20-1012.

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

10 (b) If the court finds that an unlawful employment practice **OR**  
11 **DISCRIMINATION BY A PLACE OF PUBLIC ACCOMMODATION** occurred, the court  
12 may provide the remedies specified in § 20-1009(b) **OR (C)** of this subtitle, **AS**  
13 **APPROPRIATE.**

14 20-1017.

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

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

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

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

27 [(3)] (2) the dwelling that is the subject of the alleged discriminatory  
28 housing practice is located.

29 SECTION 3. AND BE IT FURTHER ENACTED, That an Internet Web site  
30 described under § 20-301(6) of the State Government Article, as enacted by Section 1  
31 of this Act that was created and made available to the public before October 1, 2011,  
32 shall be made accessible to the blind and visually impaired on or before October 1,  
33 2012. An Internet Web site described under § 20-301(6) of the State Government  
34 Article, as enacted by Section 1 of this Act that is created or substantially revised on or

1 after October 1, 2011, shall be made accessible to the blind and visually impaired on or  
2 before January 1, 2012.

3 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 2011.