

Department of Legislative Services
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2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1239 (Delegate Taveras, *et al.*)
Environment and Transportation

Fair Housing and Housing Discrimination - Regulations, Intent, and
Discriminatory Effect

This bill alters State statute related to housing discrimination to prohibit a person from acting in a manner that has a discriminatory effect against a person in the terms, conditions, or privileges of the sale or rental of a dwelling (or in the provision of services or facilities in connection with the sale or rental of a dwelling), because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, source of income, or military status. The bill also specifies that the prohibited acts in § 20-705 of the State Government Article are *regardless of intent*. However, a person has not violated a prohibition in § 20-705 if (1) the act was without discriminatory intent; (2) the action was justified by a legitimate business necessity; and (3) the person could not have accomplished the legitimate business necessity by less discriminatory means. The bill also authorizes the Department of Housing and Community Development (DHCD) to adopt regulations to carry out its statutory responsibilities related to affirmatively furthering fair housing.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: In general, State law prohibits housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, source of income, disability, or military status.

Housing discrimination prohibited under § 20-705 of the State Government Article includes, among other things, taking the following actions based on a protected class: (1) refusing to sell or rent a dwelling after the making of a *bona fide* offer; (2) refusing to negotiate for the sale or rental of a dwelling; (3) making a dwelling otherwise unavailable; (4) discriminating in the terms, conditions, or privileges of the sale or rental of a dwelling; (5) discriminating in the provision of services or facilities in connection with the sale or rental of a dwelling; (6) making, printing, or publishing or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on a protected status; (7) representing to a person that a dwelling is not available for inspection, sale, or rental when it is available; and (8) for profit, inducing, or attempting to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular protected status.

Provisions prohibiting housing discrimination do not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of another individual or result in substantial physical damage to the property of others, nor do they prohibit conduct against a person because the person has been convicted of the illegal manufacture or distribution of “controlled dangerous substances” or “controlled substances” as defined in State and federal law.

Enforcement and Remedies – In General

The Maryland Commission on Civil Rights (MCCR) is the independent State agency generally charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting.

A person claiming to have been injured by a discriminatory housing practice may file a complaint with MCCR. Statutory provisions specify the process and requirements for complaints of housing discrimination, including the responsibilities of MCCR in investigating a claim and attempting conciliation and the circumstances under which a complainant, respondent, or aggrieved person must have an opportunity for an administrative hearing conducted by the Office of Administrative Hearings or may elect to file a civil action in circuit court. If an administrative law judge (ALJ) finds that the respondent has engaged in a discriminatory housing practice, the ALJ may order appropriate relief, including actual damages and injunctive or other relief, and may assess

a civil penalty against the respondent. A court may award actual or punitive damages, grant injunctive relief, and allow reasonable attorney's fees and costs.

Fair Housing Act – Disparate Impacts

The federal Fair Housing Act (FHA) prohibits housing discrimination on the basis of race, color, sex, disability, national origin, familial status, or religion. FHA violations may involve actions and policies that are intentionally discriminatory, as well as those that, despite being applied neutrally and without intent to discriminate, have a discriminatory effect (disparate impact). The disparate impact theory was first recognized in the context of employment discrimination in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), a case that examined an employer's policy that required employees to have a high school diploma or pass an "intelligence test" to qualify for certain positions. Although these requirements appeared neutral, they disproportionately excluded African American employees and were not shown to be necessary for job performance. As a result, the U.S. Supreme Court held that employment practices that have a discriminatory effect, even if unintentional, may violate Title VII of the Civil Rights Act, unless the employer can prove that the practice is related to job performance.

The U.S. Supreme Court later affirmed and extended similar protections in housing discrimination cases in *Texas Dept. of Housing and Community Affairs v. The Inclusive Communities Project*, 576 U.S. 519 (2015), finding that recognition of disparate impact claims is consistent with FHA's central purpose. Specifically, the U.S. Supreme Court noted that antidiscrimination laws are to be construed as encompassing disparate impact claims if their text refers not only to the mindset of actors, but also to the consequences of actions (and when such interpretation is consistent with statutory purpose). According to the court, such unlawful practices may include zoning laws and other housing restrictions that function to unfairly exclude minorities from certain neighborhoods without any sufficient justification.

Housing and Community Development Article § 2-402 – Affirmatively Furthering Fair Housing by Political Subdivisions

DCHD must administer its programs and activities related to housing and community development to affirmatively further fair housing and must explore ways to ensure it is collaborating with and supporting nonprofit and governmental entities devoted to furthering fair housing. DHCD may not take any action that is materially inconsistent with the obligation to affirmatively further fair housing.

DHCD must require political subdivisions and housing authorities to affirmatively further fair housing. To ensure that political subdivisions and housing authorities affirmatively further fair housing, DHCD must require a political subdivision or housing authority to

submit an assessment of fair housing to DCHD as part of the housing element of a comprehensive plan, in accordance with specified provisions of the Land Use Article.

Small Business Effect: Landlords and other small businesses generally involved in the sale or rental of dwellings may be meaningfully impacted to the extent housing discrimination cases are pursued based on the prohibitions within the bill.

Additional Comments: According to MCCR's annual report, it received 247 total housing discrimination cases for investigation in fiscal 2024.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Howard and Prince George's counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Legislative Services

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