



**WASHINGTON  
LAWYERS'  
COMMITTEE**

**FOR CIVIL RIGHTS & URBAN AFFAIRS**

# Protecting Civil Rights in the DC Region

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A Comparative Assessment of State and Local Human Rights Laws  
October 2014

A Report of the Washington Lawyers' Committee  
for Civil Rights and Urban Affairs

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# I. Introduction

Since its founding in 1968, the Washington Lawyers' Committee for Civil Rights and Urban Affairs ("WLC") has sought to address issues of discrimination and civil rights in the D.C. metropolitan area. Our work started with efforts to address issues of discrimination and poverty identified by the Report of the National Advisory Commission on Civil Disorders (known as the Kerner Commission) as the root causes of the riots that erupted in cities across the country throughout the 1960s.

Forty-five years later, the WLC has developed a wide range of litigation and advocacy programs and projects addressing a broad range of civil rights and poverty concerns. The Committee focuses its work in a number of major civil rights areas – fair housing, equal employment opportunity, public accommodations, disability rights, immigrant and refugee rights, D.C. prisoners' rights, and public education.

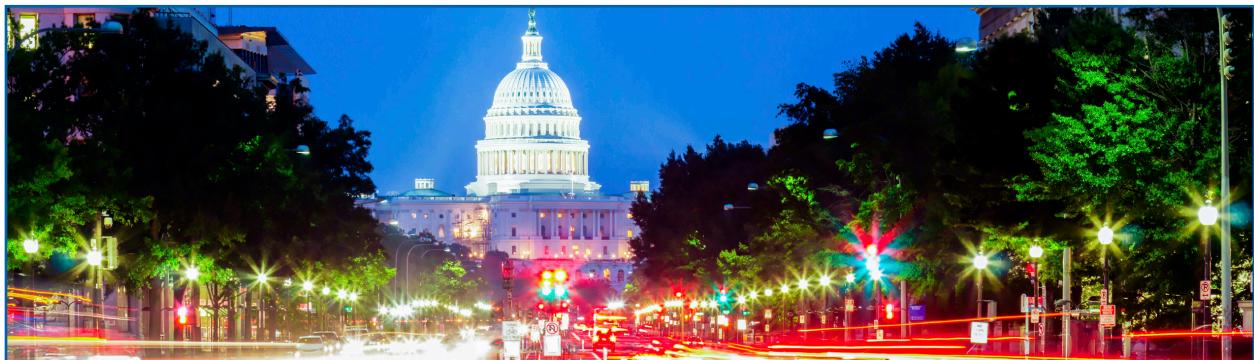
During the last decade, it has become increasingly clear to the WLC that, although people are generally aware of the more common federal civil rights protections, there is confusion and a lack of awareness about the multiplicity of state and local protections in the metropolitan Washington area. With the assistance of a number of law firms, we embarked on this project to determine what protections are available in each of the local

area jurisdictions, the robustness of each jurisdiction's enforcement scheme, and the remedies available for violations of each jurisdiction's civil rights laws. We did not conduct exhaustive searches to determine all possible rights available under state and local laws but instead studied each jurisdiction's human rights act to see what rights are available under it.

We extend our gratitude to BuckleySandler LLP, and particularly to Jay Williams, Ignacio Hiraldo, Angela Parr, and Greg Center, for spearheading this effort and preparing the reports on Arlington County, Virginia, and Prince George's County, Maryland. We also thank the rest of our teams: K&L Gates LLP, Melanie Brody, and Kate Civitello – District of Columbia; Hunton & Williams LLP, Rori Malech, and Greer Watson – Maryland; Goodwin Procter LLP, Kimberly Vargo, and Christopher Palmer – Virginia; and Finnegan Henderson LLP, Scott Burwell, and Flora Amwayi – Alexandria. We are most appreciative for the excellent work they have done and believe their findings and the WLC's resulting recommendations<sup>1</sup> will contribute significantly to enhancing the civil rights protections available throughout the metropolitan Washington area.

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<sup>1</sup> All recommendations set forth in this document are those of the WLC and not those of the law firms.



# II. Overview of State and Local Human Rights Laws in the Region

Most people have a general awareness that discrimination in housing, employment, and public accommodations is illegal. A number of federal statutes provide protections from discrimination on the basis of race, national origin, sex, disability, and other categories. Some of these statutes include the Fair Housing Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act.

Throughout the country, many states, counties, and cities have enacted their own human rights laws to replicate and expand on the protections available at the federal level. In the DC metro region, DC and all of the surrounding jurisdictions have enacted their own human rights laws – in the District; at the state level in Maryland and Virginia; at the county level in Montgomery and Prince George’s, Maryland, and Fairfax and Arlington, Virginia; and at the city level in Alexandria, Virginia.

The DC metro area is home to an extremely diverse population, as reflected by the demographics of each of the surveyed jurisdictions. Not only is there racial diversity, but also economic and age diversity. That level of diversity underscores the importance of robust civil rights laws in every locality and emphasizes the importance of the work that the state and local administrative bodies perform on a daily basis to protect the rights of their citizens.

As an organization that represents people throughout the DC metro area when their civil rights have been violated, we set out to determine what rights, protections, and

remedies are available in each of these jurisdictions, as well as what enforcement mechanisms exist for each jurisdiction’s human rights law. While focusing on housing, employment, and public accommodations, we also looked at the protections these jurisdictions offered in other areas. Our review was limited to the general human rights laws, as described in the sections, and did not endeavor to determine whether additional human rights protections might be available under other state or local laws. Similarly, our review was limited to the language of the laws themselves; we did not review caselaw or regulations interpreting these laws.

## Protected Categories

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**Housing.** All of the state and local laws prohibit discrimination in housing. These laws all protect the same characteristics as the Fair Housing Act – race, color, religion, national origin, sex, familial status, and disability – as well as marital status. All of the jurisdictions except Maryland offer protection based on age, and all of the jurisdictions except Virginia and Fairfax County offer protection based on sexual orientation. Only the District of Columbia and Montgomery County offer protection on the basis of source of income, gender identity, or family responsibilities. Montgomery County and Alexandria offer protection on the basis of ancestry. Only the District of Columbia offers protection for victims of domestic violence.

**Employment.** All of the state and local laws prohibit discrimination in employment. These laws all offer protection on the basis of race, color, religion, national origin, sex, disability, age, and marital status. All of the jurisdictions except Virginia offer protection on the basis of

sexual orientation, though in Fairfax County that protection is limited to state government employment. Although genetic information is protected under federal law, only the District of Columbia, Maryland, and Montgomery County offer that protection under their local laws. Maryland, Montgomery County, and Alexandria offer protection based on ancestry. Only the District of Columbia and Montgomery County offer protection on the basis of gender identity or family responsibilities. None of the jurisdictions offer protection for victims of domestic violence.

**Public Accommodations.** All of the state and local laws prohibit discrimination in public accommodations. These laws all offer protection on the basis of race, color, religion, national origin, sex, disability, and marital status. All of the jurisdictions except Montgomery County offer protection on the basis of age, and all of the jurisdictions except Virginia and Fairfax County offer protection based on sexual orientation. Only Montgomery County and Alexandria offer protections based on ancestry, while only the District of Columbia and Montgomery County offer protection based on gender identity.

**Credit.** Prince George's County, Fairfax County, Arlington County, and Alexandria all prohibit discrimination in credit. Those four jurisdictions all prohibit credit discrimination on the basis of race, color, religion, national origin, sex, age, disability, and marital status. All of the jurisdictions except Fairfax County offer protection on the basis of sexual orientation. In Virginia, credit discrimination is covered by a statute separate from its Human Rights Act. The state and local laws that do not have separate prohibitions against credit discrimination do offer protection in mortgage lending as part of their housing discrimination provisions.

**Education.** All of the region's jurisdictions except for Maryland and Montgomery County prohibit discrimination in education on the

basis of race, color, national origin, and sex. All of the jurisdictions that prohibit education discrimination do so on the basis of disability except for Prince George's County and Arlington, and on the basis of sexual orientation except for Virginia and Fairfax County.

**Commercial Real Estate.** All of the state and local laws appear to prohibit discrimination in commercial real estate. These laws all offer protection on the basis of race, color, religion, national origin, sex, disability, age, and marital status.

**Intimidation and Retaliation.** All of the state and local laws prohibit both intimidation and retaliation, though Virginia's protection is limited to its Fair Housing Law and not its Human Rights Act.

## Relief Available

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**Compensatory Damages.** Compensatory damages are available under all of the state and local civil rights laws.

**Punitive Damages.** Most of the state and local laws do not allow for the recovery of punitive damages. Maryland, Fairfax County, and Alexandria are exceptions that do provide for punitive damages, and Virginia allows for punitive damages under its Fair Housing Law.

**Interest.** The jurisdictions are split on pre- and post-judgment interest. Only the District of Columbia, Montgomery County, and (in limited circumstances) Virginia provide for pre-judgment interest. Those same jurisdictions, as well as Prince George's County, also provide for post-judgment interest.

**Equitable Relief.** All of the jurisdictions provide for some equitable relief.

**Attorneys' Fees.** Prince George's and Arlington Counties, as well as Alexandria, do not provide for the recovery of attorneys' fees; all of the other jurisdictions' laws do.

**Civil Penalties.** All of the jurisdictions except for Virginia and Arlington County provide for civil penalties.

## **Enforcement**

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**Judicial.** All of the state and local laws, except for Alexandria, provide a private right of action for judicial enforcement, though that right is limited in Maryland and Virginia. Any “aggrieved” person has standing to file a lawsuit in court under the civil rights law of the District of Columbia, Prince George’s County, Fairfax County, Arlington County, and the Fair Housing Law in Virginia. Maryland’s human rights law grants standing for judicial enforcement to any “aggrieved” person, but only in housing and employment cases. Montgomery County’s ordinance restricts standing in court to any person “subjected to” discrimination, while Virginia’s Human Rights Act restricts standing for judicial enforcement to limited employment lawsuits filed by “the employee.”

**Administrative.** All of the state and local laws provide for administrative enforcement, and most of them provide for broad enforcement rights. The District of Columbia, Montgomery County, Prince George’s County, and Fairfax County allow any person to file a complaint, while Virginia and Maryland limit administrative complaints to “aggrieved” persons (and under Virginia’s Human Rights Act, persons, agencies, or organizations filing on behalf of “aggrieved” persons), and Alexandria limits complaints to those “claiming to have been injured.” Arlington County’s law provides for more restrictive standing for administrative enforcement than judicial enforcement, limiting administrative enforcement to a person who has been discriminated against.

**Administrative Appellate Rights.** The appellate rights available for administrative enforcement differ greatly across the jurisdictions, but all except Arlington County provide for at least some level of review of an

administrative office’s initial decision. Many of the jurisdictions do not provide for any right to appeal to a court.

**Statutes of Limitations.** The state and local laws are split regarding the statute of limitations for filing an administrative complaint. The District of Columbia, Montgomery County, and Fairfax County all have one-year statutes of limitation (Alexandria’s is 300 days), while Virginia, Maryland, Prince George’s County, and Arlington County all have 180-day statutes of limitation. The statutes of limitation for housing claims are the same as for other claims in the District of Columbia (one year), Virginia and Maryland (one year), and Prince George’s County (360 days); Alexandria’s is one year for housing claims.

## **General Recommendations**

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Throughout the region, state and local laws prohibit additional forms of discrimination and offer additional rights and remedies beyond those available under federal law. The WLC offers the following general recommendations to all of the region’s jurisdictions to strengthen the protections offered within their borders and to ensure that all people have equal opportunity in housing, employment, public accommodations, and other areas of public life. Additional specific recommendations appear at the end of each jurisdiction’s section of the report.

**Add Additional Protected Categories.** The region’s state and local laws provide protection for some groups beyond those protected by federal law, though the jurisdictions all differ on which specific groups enjoy additional protections. The District of Columbia appears to have the most robust civil rights protections, in terms of the number of different groups protected under the statute, and we encourage all of the jurisdictions in the region to extend the protections of their civil rights laws to all of these groups to ensure equal opportunity to all.





At a minimum, jurisdictions that do not already offer protections on the basis of sexual orientation or gender identity, as well as family responsibilities in housing and employment, should do so. Similarly, victims of domestic violence are not afforded special protection in most of the region’s jurisdictions, but it is crucial that this vulnerable group be protected in housing as well as employment.

Finally, for more than a decade, the WLC has received complaints throughout the region about source of income discrimination, particularly against Housing Choice Voucher (formerly Section 8 voucher) holders, and the WLC believes that the enactment of source of income protections in housing are of utmost importance.

***Remove Obstacles to Enforcement.*** We recommend that each jurisdiction ensure that its civil rights protections can be enforced judicially, and that standing for judicial enforcement is available to “any aggrieved person.”

We also recommend that each jurisdiction review its requirements for complaints, and remove any technical requirements that make it difficult for individuals to file administrative complaints or handle their administrative matters pro se. Further, any jurisdictions that require a photo ID for the filing of a complaint should eliminate that requirement to ensure that some of the region’s most vulnerable residents

are not precluded from filing complaints when their human rights are violated.

***Strengthen Appellate Rights.*** Appellate rights differ greatly across the region’s jurisdictions, but many of the state and local laws do not offer any right to appeal a negative decision to a court. Each jurisdiction should review its administrative appellate rights and ensure that complainants have a right to appeal any finding (whether a reasonable cause determination or a final decision) through the administrative process as well as in court.

***Require – and Make Publicly Available – Robust Data.*** Although some of the region’s jurisdictions require their administrative bodies to provide regular reports on human rights issues in their locality, we found such reporting to be lacking (or at least not easily accessible to the public). Reporting of data is a key public accountability tool. Each jurisdiction should bolster the requirements of its agencies to provide data publicly that – at minimum – reports on the types and number of complaints received and resolved by each agency, the manner in which each complaint is resolved, as well as the time it takes the agency to resolve such complaints. The agencies should abide by these requirements by making such data publicly available online, as well as in print.

# III. Washington, DC

## Statute

The District of Columbia Human Rights Act is under Chapter 14 of the Code of the District of Columbia (“Human Rights”).

## Protected Categories<sup>1</sup>

	Public Accommodations	Housing <sup>2</sup>	Employment <sup>3</sup>	Credit	Education <sup>4</sup>	Commercial Real Estate
Race	Yes	Yes	Yes	No	Yes	Yes
Color	Yes	Yes	Yes	No	Yes	Yes
Religion	Yes	Yes	Yes	No	Yes	Yes
National Origin	Yes	Yes	Yes	No	Yes	Yes
Sex	Yes	Yes	Yes	No	Yes <sup>5</sup>	Yes
Familial Status <sup>6</sup>	No	Yes	No	No	Yes	Yes
Disability	Yes	Yes	Yes	No	Yes	Yes
Age <sup>7</sup>	Yes	Yes	Yes	No	Yes	Yes
Genetic Information	No	No	Yes	No	No	No
Marital Status	Yes	Yes	Yes	No	Yes	Yes
Source of Income	No	Yes	No	No	Yes	Yes
Sexual Orientation	Yes	Yes	Yes	No	Yes	Yes

<sup>1</sup> The Business Necessity Exception means that but for the exception the business could not be conducted. D.C. Code § 2-1401.03(a). This exception cannot be justified by: (1) increased cost to business; (2) business efficiency; (3) comparative characteristics of one group as opposed to another; (4) stereotyped characterization of group as opposed to another; or (5) preferences of co-workers, employers, customers or any other person. *Id.* This exception does not apply to residential real estate transactions or Fair Housing Act-related allegations.

<sup>2</sup> Exceptions for a building where the owner or a member of his family occupies a unit with accommodations for: 4 families or less and where the owner-occupant anticipates needing to share a kitchen or bathroom OR two families living independently; sale or rental of single-family home sold or rented by owner, and owner does not own more than 3 single-family homes at once OR the home was sold or rented without (1) use of sale/rental facilities or service of an agent, broker, etc., and (2) “without the publication, posting, or mailing, after notice, of any advertisement in violation of [prohibition against advertisement unlawfully indicating preference based on a protected characteristic].” D.C. Code § 2-1401.24.

<sup>3</sup> Exceptions for a maximum or minimum age requirement for police officer and firefighter cadet programs. *Id.* at § 2-1401.12(b).

<sup>4</sup> Exceptions for a maximum or minimum age requirement for police officer and firefighter cadet programs. *Id.* at § 2-1401.42(b).

<sup>5</sup> Exception for admission policy for private undergraduate college or private preschool, elementary or secondary school (unless the college offers a course that is not available anywhere else in D.C.). *Id.* at § 2-1401.42.

<sup>6</sup> “One or more individuals under 18 years of age being domiciled with: (1) a parent or other person having legal custody of the individual; or (2) the designee, with written authorization of the parent, or other persons having legal custody of individuals under 18 years of age. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual under 18 years of age.” D.C. Code § 2-1401.02(11A).

<sup>7</sup> Applies to persons 18 years of age or older.

### Other Protected Categories:

- **Gender Identity or Expression**<sup>8</sup> is protected under Public Accommodations, Housing, Employment, Education, and Commercial Real Estate.
- **Family Responsibilities**<sup>9</sup> is protected under Public Accommodations, Housing, Employment, Education, and Commercial Real Estate.
- **Personal Appearance**<sup>10</sup> is protected under Public Accommodations, Employment, Education, and Commercial Real Estate.
- **Matriculation**<sup>11</sup> is protected under Public Accommodations, Housing, Employment, and Commercial Real Estate.
- **Political Affiliation** is protected under Public Accommodations, Housing, Employment, Education, and Commercial Real Estate.
- **Place of residence or business** is protected under Public Accommodations, Housing, and Commercial Real Estate.
- **Status as a victim of an intrafamily offense** is protected under Housing and Commercial Real Estate.

Washington, D.C. also specifically protects against **coercion** and **retaliation**. It is considered an unlawful discriminatory practice in D.C. to coerce, threaten, retaliate against, or interfere with a person's exercise or enjoyment of the rights granted under the Human Rights Act. D.C. Code § 2-1402.61(a). Additionally, it is unlawful to coerce or retaliate against someone who has made a claim under the Human Rights Act, or anyone who has assisted someone with making such a claim. *Id.* It is also considered an unlawful discriminatory practice "to require, request, or suggest that a person retaliate against, interfere with, intimidate or discriminate against a person, because that person has opposed any practice made unlawful by this chapter, or participated in any manner in an investigation, proceeding or hearing authorized under this chapter." *Id.* at § 2-1402.61(b). Further, it is an unlawful discriminatory practice to coerce or attempt to coerce someone to prevent another from complying with the provisions of the Human Rights Act. *Id.* at § 2-1402.61(c).

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<sup>8</sup> "A gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth." *Id.* at § 2-1401.02(12A).

<sup>9</sup> "The state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support." D.C. Code § 2-1401.02(12).

<sup>10</sup> "The outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual." *Id.* at § 2-1401.02(22).

<sup>11</sup> "The condition of being enrolled in a college, or university; or in a business, nursing, professional, secretarial, technical or vocational school; or in an adult education program." *Id.* at § 2-1401.02(18).

## Relief Available

Damages and a wide variety of other relief can be awarded by the Office of Human Rights or the Commission on Human Rights for a violation of the Human Rights Act's antidiscrimination provisions.

Compensatory Damages	<p>Compensatory damages are available, the calculation of which is based on type of discrimination and injury. (4 DCMR § 214.1)</p> <p>Damages provided for in Guidelines for Payment of Compensatory Damages, Civil Penalties, and Attorney's Fees under the Human Rights Act of 1977 is not a limitation of available damages. The Commission's intent is to award damages that can be proved to result from discrimination. (4 DCMR § 200.3)</p>
Punitive Damages	Not available.
Pre- and Post-Judgment Interest	<p>If damages are awarded, the respondent must pay 8% interest (per annum) on out of pocket expenses to the complainant, from the date incurred to the date of payment. If a balance remains on payment of the award after 30 days from the Commission's Final Decision and Order, the respondent must pay interest at the rate of 8% (per annum) until paid. (4 DCMR § 214.5)</p>
Equitable Relief	Available.
Attorneys' Fees	Available. (4 DCMR § 213)
Civil Penalty	<p>Civil penalties are available, but are not to exceed \$10,000 if there was only one other violation within the past five years, and not to exceed \$50,000 if there were two or more violations within the past seven years. (4 DCMR § 212.6)</p>
Other Relief	<p>The matter to the D.C. Attorney General may bring any action necessary to preserve the status quo or to prevent harm after a complaint has been filed, including seeking temporary restraining orders or preliminary injunctions. The complainant may also bring an appropriate civil action to seek a temporary restraining order or preliminary injunction. (D.C. Code § 2-1403.07)</p> <p>If the Office of Human Rights finds probable cause that the holder of a permit, license, franchise, benefit or advantage issued by a D.C. government agency has engaged in or is engaging in an unlawful discriminatory practice, it may refer the facts of the complaint and the identity of persons involved to the proper agency for appropriate action. (D.C. Code § 2-1403.17)</p> <p>If the Commission on Human Rights determines that the holder of or applicant for any permit, license, franchise, benefit, exemption or advantage of the D.C. government has violated the Human Rights Act and not complied with the Commission's order, the Commission will refer the matter to the appropriate agency for the holder or applicant to show cause why the privileges related to said business should not be revoked, suspended, denied or otherwise restricted. (D.C. Code § 2-1403.17)</p> <p>The Commission on Human Rights is also authorized to take affirmative action to ensure respondent's cooperation, including but not limited to: (1) hiring, reinstating or upgrading employee(s), with or without back pay; (2) restoration to membership in a labor organization, admission/participation in a program, apprenticeship, on-the-job training, or other occupational training or retraining; (3) extending full, equal and unsegregated accommodations, facilities, etc. to all persons; (4) payment of compensatory damages to the aggrieved person; and (5) payment of hearing costs. (D.C. Code § 2-1403.13(a))</p>

## Administrative Bodies

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The administrative bodies responsible for handling complaints under the D.C. Human Rights Act are the Office of Human Rights and the Commission on Human Rights.

### Office of Human Rights

**Responsibilities.** The Office of Human Rights (“OHR”) is tasked with eradicating discrimination, increasing equal opportunity, and protecting human rights for those who live, work, or visit in the District of Columbia. OHR is primarily responsible for enforcing the District of Columbia Human Rights Act, the District of Columbia Family and Medical Leave Act, the District of Columbia Parental Leave Act, and the District of Columbia Language Access Act. OHR can investigate and adjudicate complaints of discrimination under the Equal Employment Opportunity Act, the Fair Housing Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Further, OHR “may make, issue, adopt, promulgate, amend, and rescind such rules and procedures as they deem necessary to effectuate and which are not in conflict with” the Human Rights Act. D.C. Code § 2-1403.01(b).

The District of Columbia OHR participates in the Fair Housing Assistance Program (FHAP)<sup>12</sup> and has a work-sharing agreement with the Equal Employment Opportunity Commission to process claims.<sup>13</sup>

**Composition.** (1) Office of the Director; (2) Education and Research; (3) Intake; (4) Mediation; (5) Investigations. D.C. Code § 2-1411.05.

1. The Office of the Director sets overall policy and performance targets for OHR, supervises and evaluates staff, administers the budget, and promotes conciliation after a

determination of probable cause is reached.

2. The Education and Research component of OHR studies patterns of discrimination in employment, public accommodations, and educational institutions, as well as educating D.C. residents, employers, community groups, and others about the Human Rights Act and federal anti-discrimination laws to prevent unlawful discrimination.
3. The Intake component of OHR advises prospective complainants on OHR’s functions and statutory responsibilities, evaluates complainant’s allegations, and completes the forms and procedures required for filing a complaint.
4. The Mediation component of OHR trains and oversees the mediators who assist the parties in reaching a voluntary settlement.
5. The Investigations component of OHR solicits and evaluates the evidence provided by the parties in order to prepare a written determination whether there is probable cause to believe the respondent has violated the Human Rights Act.

**Staff.** OHR’s 2014 Organizational Chart lists the following staff members:

1. Director; Deputy Director; Special Assistant/ HR Manager; Deputy Director; Receptionist;
2. Director of Policy and Communications; Policy and Communications Officer; Community Outreach Coordinator;
3. Youth Inclusion Program Coordinator;
4. Language Access Program Manager; Language Access Program Analyst;
5. Program Director Mediation; Mediator; Mediator Staff Assistant;

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<sup>12</sup> [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP/agencies#DC](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#DC)

<sup>13</sup> <http://www.eeoc.gov/field/washington/fepa.cfm>

6. Program Director Investigations/Intake; 2 Investigations/Intake Staff Assistants; Lead Investigator; 7 Investigators;
7. Chief Administrative Law Judge; 2 Administrative Law Judges;
8. General Counsel; Attorney Advisor.

**Budget.** OHR's budget for FY2014 is \$2,901,549, an increase of 19.1% from FY2013's budget of \$2,436,495. OHR's proposed FY2015 budget is \$3,404,909.

**Accountability.** OHR is required to annually report to the Mayor and the Council of the District of Columbia on its progress in enforcing the D.C. Human Rights Act. The Annual Report includes case dockets, case closures, and benefits achieved by successful complainants. Additionally, the Director reports other annual activities of OHR and the Commission, including community outreach, education programs, compliance programs, mediation, and fair housing. The Annual Report is issued to residents of D.C. and consists of data accumulated during the District's fiscal year, which runs from October 1 to September 30. OHR issues the report in the spring following the end of the fiscal year.

**Statistics.** In FY2013, OHR docketed 357 discrimination cases: 288 employment, 33 housing, 22 public accommodations, 5 educational institution, and 9 language access. The majority of cases brought were claims of discrimination on the basis of age, disability, national origin, race, and sex. 47% of cases settled during mediation.

In FY2012, OHR docketed 341 discrimination cases: 279 employment, 31 housing, 21 public accommodations, 3 educational institution, and 7 language access. Claimants often report discrimination based on multiple traits, with an average of two protected traits included in each docketed case (623 protected traits were

listed in the 341 docketed cases). During that time, OHR mediated 348 cases, with 41% of those mediations ending in settlement (totaling over \$2.7 million for Complainants). OHR found probable cause in 11.4% of cases that failed in mediation.

In FY2011, according to OHR's Annual Report, OHR mediated 332 cases, an increase from 127 cases in FY2010. Settlements in mediation in FY2011 totaled \$2,125,035, more than a 26% increase from FY2010. Parties appealed an OHR decision in 62 cases, but the OHR's decision prevailed in more than 90% of court reviews.

### **Human Rights Commission**

**Responsibilities.** The Commission is an agency within OHR that adjudicates private sector discrimination complaints under the Human Rights Act. The Commission is tasked with hearing and deciding cases of alleged unlawful discrimination in employment, real estate transactions, public accommodations, and education institutions upon OHR's determination that there is probable cause to believe unlawful discrimination has occurred. Further, the Commission "may make, issue, adopt, promulgate, amend, and rescind such rules and procedures as they deem necessary to effectuate and which are not in conflict with, the [Human Rights Act]." D.C. Code § 2-1403.01(b).

**Composition.** The Commission is composed of 15 Commissioners who are nominated by the Mayor and confirmed by the D.C. Council. Each Commissioner is appointed to a three-year term without compensation. The Commission has three officer positions – the Chairperson, the Vice-Chairperson, and the Secretary. 4 DCMR § 300.1. The Commission meets bi-monthly.

**Staff.** The staff appears to be primarily comprised of Administrative Law Judges and Law Clerks.

**Budget.** The Commission’s budget for FY2014 was \$324,000, down from \$348,000 in FY2013. The Commission’s requested FY2015 budget is \$352,000.

**Statistics.** At the May 2014 meeting of the Commission, it was announced that the Commission had a docket of 10 cases. According to the Commission’s website, the most recent case was decided October 22, 2013.

In FY2011, according to OHR’s Annual Report, 5 new cases were certified to the Commission and 5 cases were closed. The Commission had 54 pending cases at the time.

## **Methods of Enforcement**

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### ***Judicial (§ 2-1403.16)***

”Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate . . . .” If a person has filed a complaint with OHR, he cannot file a complaint in court unless the OHR complaint was dismissed on administrative grounds or was withdrawn, in which case the person may bring suit in a court of competent jurisdiction. Additionally, if a person brings suit in a court of competent jurisdiction alleging an unlawful discriminatory practice, he or she may not file the same complaint with OHR. The court may grant any relief it deems appropriate, including the remedies that may be granted by OHR and the Commission.

### **Time Limitations**

The private cause of action must be filed with a court of competent jurisdiction within one year of the unlawful discriminatory act or discovery of the act. If the complaint is timely filed with OHR, the statute of limitations will toll while the complaint is pending.

### ***Administrative (§ 2-1403)***

“Any person or organization, whether or not an aggrieved party, may file with the Office a complaint of a violation of the provisions of this chapter. . . .” The complaint may be one for general discrimination that is not specific to a person or incident.

### **Time Limitations (§ 2-1403.04)**

A complaint to OHR begins with a Written Complaint, which requires the complainant to submit an intake questionnaire within *one year* of a discriminatory act or from when the unlawful discriminatory act was discovered. The intake questionnaire may be submitted online or in person. An Intake Appointment is then scheduled within 2-4 weeks if OHR has jurisdiction. Mediation and the Initial Investigation are scheduled within 2-4 weeks of the Intake Interview. OHR may allow the parties up to 45 days to mediate a complaint. If Mediation is unsuccessful, a Full Investigation is carried out, which can take 5 months or longer, although fair housing complaints are resolved within 100 days of filing, when possible. After the Full Investigation, the legal team reviews the file and drafts a proposed Determination. The Director approves the Determination and then issues a final Letter of Determination. A Request for Appeal may be submitted to OHR within 15 days of the Determination. (See OHR’s Complaint Process & Timeline, *available at* <http://ohr.D.C.gov/complaints/process>.)

The time limitations for the Commission’s adjudication process are not readily available. The D.C. Code and Municipal Regulations do not set out any definitive timeline of events for the process. Additionally, there is no up-to-date information on the Commission’s website to provide information relevant to timelines. While certain aspects of the process are given definitive timelines (a hearing for respondent to answer charges must be set for between

ten and thirty days after notice is served, and respondent has thirty days from the Commission's decision and order to correct unlawful discriminatory behavior), there is no approximate timeline available for each stage to present a time limitation from beginning to end of the process.

### Step 1: Office of Human Rights Investigation

- **Intake.** The Director of OHR is permitted to investigate violations of the Human Rights Act and initiate complaints, either in the case of a one-time act of discrimination or for a complaint of ongoing discrimination. All complaints must be filed within one year of the unlawful discriminatory practice, or the discovery of the unlawful discriminatory practice. The Intake process is completed by an intake officer who determines if there is enough information to formally file the case and begin an investigation. § 2-1403.04(a-b).
- **Mediation.** Mediation is a required step for all complaints made to OHR. The mediation is conducted by certified OHR staff and Alternative Dispute Resolution professionals. During the mediation process, parties discuss the issues of the complaint to try to reach a mutually satisfactory agreement for all interested parties. If mediation is successful, the terms of the agreement from the mediation dictate the resolution of the complaint. If mediation is not successful, then OHR will proceed with investigating the complaint. D.C. Code § 2-1403.04(c).
- **Investigation.** Except for complaints alleging unlawful discrimination in residential real estate transactions, within 15 days of the filing OHR shall serve a copy on the respondent and all persons deemed a necessary party. Within 120

days of service on the respondent, OHR must determine whether it has jurisdiction, and if OHR determines it does have jurisdiction, it must then determine whether there is probable cause to believe the respondent committed the accused unlawful discriminatory practice. At the end of the investigation, an OHR attorney reviews the investigation and drafts a proposed finding. D.C. Code § 2-1403.05.

- **Conciliation.** OHR may, at any time after the complaint is filed, take steps to eliminate the unlawful discriminatory practice at issue by conference, conciliation, or persuasion. If OHR finds there is probable cause to believe that the respondent has committed or is still committing the unlawful discriminatory practice, the parties must attempt to conciliate within a maximum of 60 days. If no conciliation agreement is reached within the allotted time, OHR will certify the case to the Commission for a public hearing. Upon notice and agreement of all parties, a conciliation agreement is deemed an order of the Commission and is enforceable as such. Details of conciliation, except the terms of the conciliation agreement, are not to be made public by any OHR employee the respondent has given written consent. D.C. Code § 2-1403.06.

### Step 2: Commission Hearing

- **Notice of Hearing.** If conciliation fails, or prior to conciliation but after a finding of probable cause, OHR shall issue and serve written notice to the respondent, along with a copy of the complaint, and require the respondent to answer the charges at a public hearing before one or more Commissioners or a hearing examiner. The notice must inform the respondent that he or she may be represented by private counsel or a representative from



OHR. The hearing is to be held between ten and thirty days after the respondent has been served, at a place to be specified in the notice. The Chairperson of the Commission may consolidate two or more complaints of similar or identical issues against the same respondent. D.C. Code § 2-1403.10 and 4 DCMR § 401.

- **Hearing Tribunal.** Once the respondent has been notified of the hearing, a hearing tribunal, comprised of three members of the Commission, is appointed to adjudicate the complaint. The Commission may allow the hearing examiners to hear cases or questions and report back to the Commission. A hearing examiner may be employed by the D.C. government or selected from the Commission's list of qualified examiners. Members of the Commission may serve as hearing examiners. D.C. Code § 2-1403.11.
- **Conduct of Hearing.** The complainant's case is presented by an agent or attorney of OHR. If a Commissioner or hearing examiner was involved in the investigation, conciliation, or any decision related to the merits of the complaint, he or she may not be part of the hearing tribunal appointed to handle the complaint. Conciliation efforts are not allowed as evidence during the hearing. If the respondent does not answer the complaint, the hearing tribunal or examiner may enter a default, which may be set aside under appropriate circumstances, and the hearing may continue on the basis of evidence in support of the complaint. D.C. Code § 2-1403.12 and 4 DCMR § 405.1.

The hearing examiner's powers include, but are not limited to: (1) scheduling conferences and the hearing; (2) administering oaths or affirmations; (3) controlling the admission of evidence into the record; (4) ruling on procedural issues and motions that do

not affect the outcome of the hearing; and (5) recommending rulings to the Hearing Tribunal on substantive issues and motions that determine the outcome of the hearing process.

Any party is permitted to obtain discovery from another party for any matter not privileged, as long as it is likely to lead to admissible evidence. Parties may obtain discovery by (1) deposition by oral examination or written questions; (2) written interrogatories, not to exceed forty including parts and subparts at any one time; (3) production of documents or things; (4) physical and mental examinations; and (5) requests for admission.

- **Decision and Order.** At the end of the hearing, if the Commission finds that the respondent engaged in an unlawful discriminatory practice or otherwise violated the Human Rights Act, the Commission will issue a decision and order that requires the respondent to cease and desist from such unlawful discriminatory practice. The Commission serves the decision and order on the respondent. The Commission may take affirmative action to ensure respondent's cooperation, including but not limited to: hiring, reinstating or upgrading employee(s), with or without back pay; payment of compensatory damages to the aggrieved person; and payment of hearing costs. D.C. Code § 2-1403.13.

If the Commission finds that the respondent has not engaged in an unlawful discriminatory practice, the Commission issues an order dismissing the complaint as to the respondent and serves the respondent with the order.

### **Step 3: Enforcement of Judgment and Appellate Rights**

- **Judicial Review.** Judicial review in the D.C. Court of Appeals is available to anyone who has suffered a legal wrong, or was adversely affected or aggrieved by the decision and order of the Commission. D.C. Code § 2-1403.14.
- **Enforcement of Order.** The Commission’s decision and order are to be served on the respondent with notice that if the respondent does not cease and desist from the unlawful discriminatory practice and comply with the order within thirty days of service, then the Commission will send the matter to the Attorney General for the District of Columbia, or another appropriate agency, to enforce the decision and order. The Attorney General initiates whichever civil actions are necessary to obtain compliance, including restraining orders and injunctions. If the Attorney General’s civil proceedings are unsuccessful, then the Attorney General will initiate a criminal action. Enforcement actions are not available pending judicial review in the D.C. Court of Appeals. D.C. Code § 2-1403.15.

- Median household income: \$64,267
- Average household income: \$99,511
- Less than \$50,000: 40.9%
- \$50,000 to \$99,999: 25.9%
- \$100,000 to \$199,999: 21.9%
- \$200,000+: 11.5%

### Age

- Under 5 years: 5.7%
- Age 5-19: 15.5%
- Age 20-64: 67.3%
- Age 65+: 11.4%

## Summary and Recommendations

### Summary

The District of Columbia Human Rights Act provides protection for common protected characteristics, as well as several additional characteristics. It also provides explicit protection against retaliation for reporting discrimination and encouraging nondiscrimination policies or practices.

The Human Rights Act provides for administrative enforcement through the Office of Human Rights and the Commission on Human Rights, but also allows for private rights of action to allow complaints to be brought in courts of competent jurisdiction as well as judicial review by the D.C. Court of Appeals. The Human Rights Act includes compensatory damages, injunctive relief, pre- or post-judgment interest, equitable relief, attorneys’ fees, and civil penalties, but does not explicitly provide for punitive damages.

### Recommendations

1. **Strengthen the Commission’s ability**

## Demographics

The following are demographics for Washington, D.C., according to the 2012 American Community Survey:

### Race

- 50.4% Black/African American (non-Latino)
- 34.5% White (non-Latino)
- 9.9% Hispanic/Latino
- 3.5% Asian (non-Latino)
- 2.4% Other

### Income (by household)

**to disseminate data.** While D.C. has a sufficient legal framework for numerous protected characteristics with procedures to handle claims of unlawful discriminatory practice, the Commission on Human Rights does not appear to have sufficient capabilities to maintain its website or to provide the required updates. Much of the information on the Commission's website is outdated. For example, the Commission's Hearing Guide Book is from 2003 and contains information based on regulations that are reserved.

2. **Broaden the data provided by OHR.** There appears to be no information on how many complaints OHR receives in any given year, as opposed to the number of complaints docketed. Without this information, there is no way to determine the percentage of complaints OHR is actually investigating. The Commission's timeline for handling complaints from start to finish remains nebulous as it is not laid out in the Code or Municipal Regulations. It is also very difficult to find statistics and information on the Commission such as how many cases it receives each year, how many cases are pending, and how many cases have been closed.



# IV. State of Maryland

## Statute

The State of Maryland’s anti-discrimination statute is Title 20, State Government Article of the Annotated Code of Maryland (the “Anti-Discrimination Statute”).

## Protected Categories

	Public Accommodations	Housing <sup>1</sup>	Employment	Credit	Education	Commercial Real Estate <sup>2</sup>
Race	Yes	Yes	Yes	Yes	No	Yes
Color	Yes	Yes	Yes	Yes	No	Yes
Religion	Yes	Yes	Yes	Yes	No	Yes
National Origin	Yes	Yes	Yes	Yes	No	Yes
Sex	Yes	Yes	Yes	Yes	No	Yes
Familial Status <sup>6</sup>	No	Yes	No	No	No	No
Disability	Yes	Yes	Yes	Yes	No	Yes
Age <sup>7</sup>	Yes	No	Yes	Yes	No	Yes
Genetic Information	No	No	Yes	No	No	No
Marital Status	Yes	Yes	Yes	Yes	No	Yes
Source of Income	No	No	No	No	No	No
Sexual Orientation <sup>3</sup>	Yes	Yes	Yes	Yes	No	Yes

In addition to the categories listed above, the Anti-Discrimination Statute also protects against discrimination on the basis of race, color, religion, national origin, sex, disability, age, marital status or sexual orientation by persons licensed or regulated by a unit in the Department of Labor, Licensing and Regulation listed in § 2-108 of the Business Regulation Article. See § 20-401.

In 2014, Maryland Governor Martin O’Malley signed the Fairness for All Marylanders Act, a bill which adds **gender identity** as a protected class to the Anti-Discrimination Statute. See § 20-102.

<sup>1</sup> Exceptions given for: (i) the rental or sale of a single-family dwelling without the use of a broker or salesperson; and (ii) with respect to discrimination on the basis of sex, sexual orientation or marital status: (x) the rental of rooms if the owner maintains the dwelling as its principal residence, or (y) rental buildings with 4 units or less where the owner occupies one unit.

<sup>2</sup> Applies to an owner or operator of commercial property, an agent or employee of the owner or operator of commercial property, or a person that is licensed or regulated by the State.

<sup>3</sup> “Sexual orientation” includes only male or female homosexuality, heterosexuality, and bisexuality (i.e., transgender not included). However, see footnote #5 for the recent inclusion of gender identity to the Anti-Discrimination Statute.

<sup>4</sup> The Fairness for all Marylanders Act adds (i) sexual orientation as a protected class to the Anti-Discrimination Statute in the context of commercial real estate, and (ii) adds gender identity as a protected class to the Anti-Discrimination Statute in the context of discrimination in public accommodations, housing, employment, commercial real estate, and persons licensed or regulated by a unit in the Department of Labor, Licensing and Regulation. “Gender identity” is defined as the gender-related identity, appearance, expression, or behavior of an individual regardless of the individual’s assigned sex at birth.

Maryland specifically protects against **aiding, abetting, or attempting discriminatory acts**, meaning that a person may not (i) aid, abet, incite, compel, or coerce any person to commit a discriminatory act; (ii) attempt, directly or indirectly, alone or in concert with others, to commit a discriminatory act; or (iii) obstruct or prevent any person from complying with the Anti-Discrimination Statute or any order issued under the Anti-Discrimination Statute. See § 20-801.

Maryland also specifically protects against **retaliation** in the context of housing and employment. See §§ 20-606 and 20-708.

## Relief Available (§§ 20-1001-1037)

The Anti-Discrimination Statute is an exercise of the police power of the State of Maryland and is administered and enforced by the Maryland Commission on Civil Rights (the “Commission”), and, as provided in the Anti-Discrimination Statute, by State and federal courts.

Compensatory Damages	Actual damages are available.
Punitive Damages	<p>Punitive damages are available for some violations, including housing and public accommodations.</p> <p>Punitive damages are also available in housing discrimination cases for making complaints maliciously and for injury, intimidation, or interference with protected housing activities. (§§ 20-1103, 1104)</p>
Pre- and Post-Judgment Interest	Not available.
Equitable Relief	<p>Equitable relief is available. (§ 20-1011)</p> <p>Temporary injunctions are available in cases of discrimination involving public accommodations, housing, or employment. (§ 20-1011)</p> <p>In housing discrimination cases, a court may grant as relief any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering affirmative action. (§ 20-1035)</p>
Attorneys’ Fees	Reasonable attorneys’ fees, expert witness fees, and costs are available. (§ 20-1015)
Civil Penalty	If the Commission finds that a respondent has engaged in a discriminatory act under Subtitle 3 (Public Accommodation) or Subtitle 4 (Persons Licensed or Regulated by Department of Labor, Licensing and Regulation) of the Anti-Discrimination Statute, civil penalties are available: (i) up to \$500 if the respondent has not been adjudicated to have committed any prior discriminatory act, (ii) up to \$1,000 if the respondent has been adjudicated to have committed one other discriminatory act during the last 5 years; and (iii) up to \$2,500 if the respondent has been adjudicated to have committed two or more discriminatory acts during the last 7 years. (§ 20-1016)
Other Relief	<p>If there is a finding of probable cause to believe that a discriminatory act has been or is being committed, the Commission’s staff immediately will endeavor to eliminate the discrimination by conference, conciliation, or persuasion. A conciliation agreement may provide for binding arbitration, and may award appropriate relief, including monetary relief. (§ 20-1005)</p> <p>The Commission is permitted to bring an employment discrimination action on the complainant’s behalf if the complainant so elects. (§ 20-1012)</p> <p>In housing discrimination cases, if the Commission concludes at any time after the filing of a complaint that prompt judicial action is necessary, the Commission may bring a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. (§ 20-1037)</p>

## **Administrative Body**

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The administrative body responsible for handling complaints under the Maryland Anti-Discrimination Statute is the Maryland Commission on Civil Rights.

### ***Commission on Civil Rights***

**Responsibilities.** The Commission is an independent agency that represents the interest of Maryland to ensure equal opportunity through enforcement of the Anti-Discrimination Statute. The Commission serves individuals, businesses, and communities throughout Maryland, investigating complaints of discrimination in employment, housing, public accommodations and Maryland's commercial non-discrimination policy from members of protected classes. The Commission also processes cases for the U.S. Department of Housing and Urban Development (HUD) as part of the Fair Housing Assistance Program ("FHAP"),<sup>5</sup> and the Equal Employment Opportunity Commission (EEOC).<sup>6</sup>

In addition to receiving discrimination complaints, the Commission also provides services, information, and training support to agencies and individuals in Maryland through its Community Outreach & Education Program. The program offers workshops and seminars to agencies, businesses, and organizations throughout Maryland. Training modules currently available include: (i) sexual harassment prevention; (ii) sexual orientation law and awareness; (iii) fair housing, employment discrimination, and public accommodations law; (iv) conflict resolution; (v) private consultation with complainants and respondents to resolve problems relating to discrimination; and (vi) consultation on development of community education programs aimed at preventing discrimination.

**Composition.** The Commission consists of nine members appointed by the Governor with the advice and consent of the Maryland Senate. The term of a member is 6 years. Members may not receive compensation.

The Executive Director of the Commission is appointed by the Governor from a list of five names submitted by the Commission. The Deputy Director is appointed by the Executive Director with the approval of a majority of the members. Both the Executive and Deputy Directors are entitled to compensation.

**Staff.** Staff are hired by the State of Maryland. The Commission employs a general counsel and assistant general counsel(s). The general counsel and any assistant general counsel are special appointments in the State Personnel Management System. The office of the general counsel includes additional personnel as provided in the Maryland State budget. The Commission may also retain outside legal assistance to advise the commissioners in legal matters.

**Budget.** The Commission works with the Maryland Department of Budget and Management to set its annual operating budget. The Commission's budget for FY2014 is \$3,173,797 and for FY2015 is \$3,187,750.

**Accountability.** On or before January 1st of each year, the Commission must submit a report on its work to the Governor and the General Assembly.<sup>7</sup> These reports provide comprehensive data regarding discrimination complaints for the past year (and a comparison to previous years), as well as recommendations for how the Commission can improve. According to the most recent report, the Commission closed 737 discrimination complaints in 2013 (State of Maryland Commission on Civil

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<sup>5</sup> [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP/agencies#MD](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#MD)

<sup>6</sup> <http://www.eeoc.gov/field/baltimore/fepa.cfm>

<sup>7</sup> These reports may be found at <http://mccr.maryland.gov/Publications.html>.

Rights, 2013 Annual Report to the Governor and General Assembly of Maryland, January 2, 2014). Of those closures, 205 were closed due to administrative reasons (outside of the statute of limitations or the jurisdiction of the Commission, etc.), 158 resulted in settlements, 88 were withdrawn by the complainant and respondent because they reached a private settlement, and one resulted in a successful conciliation agreement.

**Statistics.** In 2013, the Commission received 729 individual complaints (up from 721 in 2012).

- 83% of the complaints received by the Commission in 2013 concerned employment (in 2012, 84% were employment-based complaints).
- 10% of the complaints received by the Commission in 2013 concerned housing (in 2012, 9% were housing-based complaints).
- 7% of the complaints received by the Commission in 2013 concerned public accommodations (in 2012, 7% were public accommodations-based complaints).

## Methods of Enforcement

### *Judicial Enforcement (§§ 20-1013, 20-1026)*

Maryland state law allows individuals who have experienced employment or housing discrimination to file a lawsuit in court. Employees may also choose to file a lawsuit in civil court 180 days of filing a charge with the Commission or a local agency. A private cause of action is not available to individuals who have experienced discrimination in public accommodations, commercial real estate, or credit.

### *Administrative Enforcement*

“Any person claiming to be aggrieved by an alleged discriminatory act may file a complaint with the Commission.” An individual may

initiate an inquiry by contacting the Commission by letter, telephone, in person, or through its online form concerning any discrimination regarding employment, housing, public accommodations or Maryland’s commercial non-discrimination policy. The Commission may also file a complaint on its own initiative. § 20-1004.

### **Time Limitations (§§ 20-1004, 1021)**

Anyone wishing to file a complaint alleging unlawful discrimination with the Commission in violation of the Anti-Discrimination Statute must file the complaint within (i) six months of the alleged unlawful incident in cases of discrimination by a place of public accommodation and/or employment, or (ii) one year of the alleged unlawful incident in the case of discriminatory housing practices.

#### ■ **Step 1: Commission Inquiry and Interview (§ 20-1004)**

After an inquiry is initiated, the Commission’s intake staff will conduct an interview with the individual concerning the alleged discrimination. The intake staff will then determine, based on the information provided, whether the individual has met the requirements to file an official complaint of discrimination. If the individual has met the requirements, the intake staff member will draft a “Charge of Discrimination” for the individual to review and sign. A complaint of discrimination is not official until the individual has signed the Charge of Discrimination form. Once the individual (now a “complainant”) has signed the Charge of Discrimination form, the form will be submitted to the intake supervisor for review and authorization. After the authorization process is complete and signed by the intake supervisor, the Charge of Discrimination will be served upon the person accused in

the complaint of the discriminatory act (the “respondent”) within 10 days. Any answer to the complaint by the respondent must be filed within 10 days of receipt of the complaint.

■ **Step 2: Investigation (§ 20-1005)**

Once a case is assigned for investigation, the “investigator” will conduct an investigation to determine the facts through interviewing witnesses, gathering and analyzing documents, conducting on-site visits, issuing subpoenas, and conducting fact finding conferences. If both the complainant and respondent consent, then a case can be forwarded to mediation in an attempt to resolve the matter. Both parties can opt for mediation at any time during the investigation process.

After completing an investigation, the investigator will draft a written finding and make a determination of whether there is probable cause to believe discrimination occurred. In housing discrimination cases, unless it is impracticable to do so, the Commission must complete the investigation and make a determination within 100 days after the filing of the complaint.

If the Commission determines that the matter involves the legality of a State or local zoning or other land use law or ordinance, the Commission must immediately refer the matter to the Attorney General for appropriate action.

■ **Step 3: Determination and Conciliation (§ 20-1005)**

If the Investigator determines there is probable cause to believe that the complainant was discriminated against, the Commission’s staff will make a “good faith effort” to conciliate the matter. Conciliation efforts focus on bringing the discriminatory

practice or policy into compliance with the law and providing full remedy and relief for the complainant. A conciliation agreement may provide for binding arbitration, and may award appropriate relief, including monetary relief.

If the investigator determines there is not probable cause to believe that the complainant was discriminated against, a written finding of no probable cause will be issued and the case will be subsequently dismissed. The complainant then will have fifteen days to file a written “Request for Reconsideration” with the Commission’s Deputy Director. Once the Deputy Director has reviewed the Complainant’s request, a decision will be made to either uphold the finding issued by the investigator or remand the case back to the Investigator for further investigation.

■ **Step 4: Administrative Hearing (§§ 20-1005, 20-1008)**

If conciliatory efforts fail, the case will be forwarded to the Commission’s Office of the General Counsel. The Office of the General Counsel enforces subpoenas under Anti-Discrimination Statute, and defends the Commission in any litigation involving the Commission, including personnel matters and the Commission’s final decisions and orders. A hearing shall take place before the Office of Administrative Hearings (OAH) and be held in the county where the alleged discriminatory act occurred.

■ **Step 5: Enforcement of Judgment and Appellate Rights (§§ 20-1009, 20-1011, § 10-222)**

An order issued by the administrative law judge presiding over the hearing is the final order of the Commission. If the Commission determines that the complainant or respondent has refused to



comply with the Commission's order, the Commission is authorized to file suit in the appropriate court of the county in which the discriminatory act occurred.

Any party aggrieved by the Commission's final order may appeal directly to the circuit court in the county in which the discriminatory act occurred (see Maryland Rules of Procedure at Rule 7-200 *et. seq.* concerning appellate review of administrative agency decisions). The appeal is initiated by filing a timely petition with the applicable circuit court. Such petition must identify the Commission's order and provide a basis for the petitioner's standing in the case. The petitioner must file a petition within 30 days after (i) the date of the Commission's final order, (ii) the date the Commission sent notice of the final order, or (iii) the date the petitioner received notice of the Commission's order, whichever is latest (see Md. Rule 7-203).

## Demographics

The following are demographics for the State of Maryland based on the 2012 American Community Survey:

### Race

- 54.7% White (non-Latino)
- 29.0% African-American (non-Latino)
- 8.2% Hispanic/Latino
- 5.6% Asian (non-Latino)
- 2.6% Other (non-Latino)

### Income (by household)

- Median household income: \$72,999
- Average household income: \$94,941
- Less than \$50,000: 33.7%

- \$50,000 to \$99,999: 31.2%
- \$100,000 to \$199,999: 26.7%
- \$200,000+: 8.3%

### Age

- Under 5: 6.3%
- Age 5-19: 19.9%
- Age 20-64: 61.4%
- Age 65+: 12.4%

## Summary and Recommendations

### Summary

Maryland's Anti-Discrimination Statute generally provides protection for common protected classes, as well as for the recent additions of sexual orientation and gender identity. It also provides explicit protection against retaliation in the context of housing and employment discrimination.

The Anti-Discrimination Statute is enforced by the Commission. Complaints may be brought to the Commission by individuals, or the Commission may file a complaint on its own initiative. The Anti-Discrimination Statute includes compensatory damages, punitive damages and civil penalties in some cases, injunctive relief, and attorneys' fees, but does not explicitly provide for pre- or post-judgment interest. The statute also provides for conciliation efforts and arbitration, as well as an appeals process for dismissed complaints.

### Recommendations

The State of Maryland should consider the following recommendations to strengthen its civil and human rights protections:

1. **Add additional protected categories.** The State of Maryland should add additional protected categories for source of income

in housing discrimination and victims of domestic violence in housing and employment discrimination. Without the source of income protection, landlords are permitted to refuse housing to individuals who rely on public assistance, such as Housing Choice Vouchers and Social Security benefits, or even child support payments to pay for housing. Further, without protections for victims of domestic violence, landlords and employers are permitted to refuse housing and employment to victims of domestic violence.

2. **Increase Accessibility/Visibility of the Commission.** The Commission identified as an issue the low number of discrimination complaints it received, particularly in housing cases, and believes that certain types of discrimination may be underreported in the State of Maryland (see 2013 Annual Report). To encourage reporting by the public, the Commission should work to increase its accessibility and visibility in the community. It should seek to build partnerships with local advocacy and community organizations, and continue to work on outreach and educating the public on the rights afforded by the Anti-Discrimination Statute.
3. **Financial Relief for Public Accommodations Complainants.** The Anti-Discrimination Statute does not mandate any type of financial relief for the complainant in public accommodations cases. The Commission believes that this contributes to the low number of public accommodation complaints that it receives (see 2013 Annual Report). While the Commission does have the authority to fine an entity that violates public accommodations anti-discrimination protections, the fine goes directly into Maryland's General Fund. This resolution does not mirror the options available

for a complainant who is a victim of employment or housing discrimination. Thus, the statute should be amended to include an option for financial relief for the complainant. Such relief would provide incentives to victims of discrimination to report abuse of the law instead of ignoring known violations.

4. **Uniform Application of Hate Crimes Laws.** Every year, the Commission receives a copy of every Maryland Supplementary Hate Bias Incident Report Form filed by law enforcement officials around the State and compiled by the Maryland State Police. These forms are completed when there is evidence to initially suggest that a hate-motivated crime may have occurred against a victim, and may be used in the Commission's investigations. The Commission's 2013 Annual Report found significant discrepancies in Maryland counties' reporting of hate crimes. The Commission believes that the number of cases reported by each jurisdiction depends on the training of the law enforcement officials (see 2013 Annual Report). For example, County X law enforcement may find reason to believe that an incident qualifies as a potential hate crime and will fill out the Hate Bias Incident Report Form, while law enforcement in County Y does not draw that same conclusion or take similar steps. The Commission has recommended that the Governor, General Assembly, and relevant state and local agencies review how the state identifies and handles hate crimes related incidents to achieve: (i) uniform identification and application of the law; and (ii) accurate reporting practices to the Commission and other stakeholders so that community-based initiatives can be identified and developed to address trends and areas of high demand (see 2013 Annual Report).

# V. Montgomery County, Maryland

## Statute

Montgomery County’s human rights ordinance is Chapter 27 of the Montgomery County Code (“Human Rights and Civil Liberties”).

## Protected Categories

	Public Accommodations	Housing <sup>1</sup>	Employment <sup>2</sup>	Credit	Education	Commercial Real Estate <sup>3</sup>
Race	Yes	Yes	Yes	No	No	Yes
Color	Yes	Yes	Yes	No	No	Yes
Religion	Yes (religious creed)	Yes (religious creed)	Yes (religious creed)	No	No	Yes (religious creed)
National Origin	Yes	Yes	Yes	No	No	Yes
Sex	Yes	Yes	Yes	No	No	Yes
Familial Status	No	Yes (presence of children)	No	No	No	Yes (presence of children)
Disability	Yes	Yes	Yes	No	No	Yes
Age	No	Yes	Yes	No	No	Yes
Genetic Information	No	No	Yes	No	No	No
Marital Status	Yes	Yes	Yes	No	No	Yes
Source of Income	No	Yes	No	No	No	Certain provisions
Sexual Orientation <sup>3</sup>	Yes	Yes	Yes	No	No	Yes

The definitions of many of these categories are found in Section 27-6.

### Other Protected Categories:

- **Ancestry** is protected under Public Accommodations, Housing, Employment and Commercial Real Estate.
- **Gender Identity** is protected under Public Accommodations, Housing, Employment and Commercial Real Estate.

<sup>1</sup> Exceptions include dwellings with no more than 2 rental units where the owner occupies a unit; some religious organizations; some housing for the elderly or with services; occupancy restrictions; and certain exceptions related to source of income in housing.

<sup>2</sup> Exceptions include bona fide occupational qualifications reasonably necessary to the normal operation of the business; religious associations; religious accommodations that cause undue hardship; certain exceptions related to genetic status and medical professionals; certain exceptions related to genetic monitoring of biological effects of toxic substances in the workplace; and reasonable grooming standards.

<sup>3</sup> Defined as real estate used, in whole or in part, for business, industrial, or agricultural purposes. Exemptions include some religious, charitable, or educational organizations, and certain inquiries related to age or credit.

- **Family Responsibilities** is protected under Housing, Employment, and Commercial Real Estate.

The Montgomery County Code specifically protects against **intimidation**. It prohibits willfully or maliciously injuring a person or her property with the intent to intimidate her because of her race, religion, national origin, disability, sexual orientation, or gender identity. § 27-22. Each section of the Montgomery County Code also contains a protection against **retaliation**. See § 27-11(a)(3) (public accommodations); § 27-12(g) (housing); § 27-16(f) (commercial real estate); § 27-19(c) (employment).

## Relief Available

Damages and a wide variety of other relief can be awarded for a violation of the Montgomery County Code’s antidiscrimination provisions. § 27-8.

Compensatory Damages	Damages may be awarded, and may include, among other things, compensation for property damage, personal injury, unreimbursed travel or other expenses, financial losses, and up to \$500,000 for humiliation and embarrassment. Consequential damages are also available, such as lost wages from employment discrimination or higher housing costs from housing discrimination.
Punitive Damages	Punitive damages are not available.
Pre- and Post-Judgment Interest	Pre-judgment interest is set at 6% per year and can be awarded from the date of the discriminatory act; post-judgment interest is set at 10% per year.
Equitable Relief	Equitable relief can be awarded, and can include relief to prevent discrimination or violation of the Code.
Attorneys’ Fees	Costs and reasonable attorneys’ fees may be awarded to a party that substantially prevails. Costs and reasonable attorneys’ fees may also be awarded to the respondent if the complainant filed or maintained a complaint that was frivolous or not in good faith. (§ 27-7(i)(3))
Civil Penalty	The case review board may impose a civil penalty of up to \$50,000 for housing discrimination, up to \$5,000 for employment or public accommodations discrimination, up to \$1,000 for intimidation or commercial real estate discrimination, and up to \$500 for any other violation.
Other Relief	<p>The Montgomery County Code provides that “any other relief” may be awarded.</p> <p>The Code also provides that civil penalties and damages payable to the County may instead be paid in kind through community service. (§ 27-24(a))</p> <p>Any appropriate legal relief, including a temporary restraining order or a preliminary injunction, may be requested any time after the filing of a complaint, to preserve the status quo or prevent irreparable harm. (§ 27-27-7(m))</p> <p>If the case review board issues a determination that a person has violated this law, the Director of the Office of Human Rights may refer the decision to any state or county agency that has licensed or franchised the person or has a contract with the person. § 27-7(j); see also § 27-15.</p> <p>A parent or legal guardian may be held liable for damages resulting from a violation of the Code by his or her child under the age of 18, but only after being afforded a reasonable opportunity to be heard, and with a limit of \$5,000. (§ 27-23)</p> <p>The Code establishes a fund for victims of hate and violence and provides for its funding, guidelines for distribution, and limits on compensation to victims. (§ 27-26)</p>

## Administrative Bodies

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The administrative body responsible for handling complaints under the Montgomery County human rights ordinance is the Commission on Human Rights, assisted by the Office of Human Rights.

### Office of Human Rights

**Responsibilities.** The Executive Director may receive, investigate, resolve, or conciliate complaints alleging discrimination, and is tasked with issuing regulations for carrying out his or her responsibilities. §§ 27-4(b), 27-5(a)(9); see also §§ 27-7(b), 27-21. When a person with a real estate license is found to have violated the Code, the Executive Director is required to transmit the complaint and findings to the real estate commission. § 27-15(c). The Office of Human Rights also processes cases for the Equal Employment Opportunity Commission through a work-sharing agreement.<sup>4</sup>

The Office of Human Rights is tasked with educating County residents about discriminatory lending practices. § 27-4(d).

The Executive Director is responsible for coordinating interagency fair housing activities. § 27-26A.

**Composition.** The Office of Human Rights has an appointed Executive Director, who assists the Commission in implementing this portion of the Code. § 27-4(a). The County Executive may also assign additional staff to the Office, or engage the services of volunteers who may be reimbursed for out-of-pocket costs. § 27-4(b).

**Staff.** Currently, the budget covers eight full-time positions, as well as 8.60 Full-Time Equivalents. See <http://www.montgomerycountymd.gov/OMB/Resources/Files/omb/pdfs/FY15/psprec/hrc.pdf>.

**Budget.** The recommended budget for the Office of Human Rights for FY2015 is \$1,023,278; the FY2014 approved budget was \$942,673. See *id.*

**Accountability.** Each year, the Office must compile a written report detailing information about all complaints received alleging housing discrimination and the outcome of those complaints. § 27-5(11)(C).

**Statistics.** Despite multiple reporting requirements, current statistics from the Office are difficult to locate. According to the FY2015 recommended budget overview, 96% of investigations are completed within 24 months of filing, and there was a 10% decrease in the amount of time it took to close a case. See <http://www.montgomerycountymd.gov/OMB/Resources/Files/omb/pdfs/FY15/psprec/hrc.pdf>. According to the FY2014 recommended budget overview, “From July 2012 to December 2012, the office closed 91 employment cases, 13 real estate and housing cases, and 8 public accommodations cases.” <http://www.montgomerycountymd.gov/OMB/Resources/Files/omb/pdfs/fy14/psprec/hrc.pdf>.

### Commission on Human Rights

**Responsibilities.** The Commission on Human Rights has responsibility for initiating and receiving discrimination complaints. It must also approve conciliation agreements before they are enforceable orders of the Commission, and it has responsibility to appoint case review boards to consider and decide complaints certified to the Commission. § 27-5(a)(9).

The Commission has myriad other responsibilities as well. They include researching, analyzing, and disseminating information about programs to eliminate discrimination; conducting programs to promote equal opportunity; promoting goodwill and understanding; cooperating with interested

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<sup>4</sup> <http://www.eeoc.gov/field/baltimore/fepa.cfm>

citizens, groups, and organizations; cooperating with the County Executive and governmental agencies; studying and investigating conditions that could result in discrimination; advising about discrimination and laws or policies that promote equal opportunities; working to eliminate discrimination; keeping a record of its hearings and activities; providing reports to the County Executive and County Council; and issuing regulations. § 27-5(a). The Commission is also responsible for many interagency tasks specific to housing discrimination, including testing and maintaining informational resources. § 27-26A.

The Commission must meet at least once a month for 9 months each year. It meets at 7:00 p.m. on the fourth Monday of each month. Eight members of the Commission constitute a quorum, and a majority vote of those present is required for official action by the Commission. § 27-3. The Commission makes recommendations about its budget to the County Executive and County Council. § 27-4(c).

**Composition.** The Commission is composed of 15 members, appointed by the County Executive and confirmed by the County Council; members should be “broadly representative of the diverse population of the County.” Each member serves a 3-year term, without compensation. § 27-2(a).

**Staff.** The County Executive selects a Commission chair after considering the Commission’s recommendations. § 27-3.

**Accountability.** The Commission has a number of reporting requirements. It is required to keep a record of its hearings and activities and minutes of all other meetings, records which are subject to the State Public Information Act and Open Meetings Act. § 27-5(a)(10). In addition, as part of its yearly budget submission, the Commission must report the number of complaints filed and statistics regarding the nature and disposition of complaints in the prior year. § 27-2(d).

Further, the Commission is required to provide a number of reports to the County Executive and County Council. Each quarter, it provides a written or oral report of its activities and recommendations. Each year, it provides an annual written report summarizing its activities, goals, needs, and recommendations. § 27-5(a)(11).

**Statistics.** Statistics from the Commission are difficult to locate. Although the Commission has a number of reporting requirements, statistics could not be located and the annual report was not available on the Office of Human Rights’ website, despite there being a link for it.

## **Methods of Enforcement**

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### *Judicial (§ 27-9)*

The antidiscrimination provisions of the Montgomery County Code can be enforced through a civil action under Maryland law. However, standing for individuals is limited to “any person subjected to an act of discrimination or intimidation.” The County Attorney may also file a civil action to enforce this law.

The Commission (acting through the County Attorney) may file a lawsuit to compel compliance with a court order issued in a civil action arising under this law.

Individuals, the County Attorney, and the Commission are all entitled to recover costs and reasonable attorneys’ fees when they are the prevailing party.

### *Administrative (§ 27-7)*

The antidiscrimination provisions of the Montgomery County Code can be enforced through the filing of an administrative complaint. Any person or legal entity may file an administrative complaint, as standing extends to “[a]ny person subjected to a discriminatory

act or practice in violation of this Article, or any group or person seeking to enforce this Article or Article X.” Complaints must be written and sworn or affirmed, and they must state the particulars of the violation, the name and address of the respondent, and “any other information required by law or regulation.” § 27-7(a).

### Time Limitations

Administrative complaints must be filed within one year of the alleged discriminatory act or practice. Sec. 27-7(d).

#### ■ Step 1: Executive Director Investigation

**First Phase: Investigation.** The Executive Director of the Office of Human Rights may receive complaints alleging discrimination and is responsible for investigating, resolving, or conciliating these complaints. §§ 27-4(b), 27-7(e). Similarly, the Commission or any Commissioner may initiate and receive complaints alleging discrimination, and it is responsible for taking any action necessary to resolve a complaint. § 27-5(a)(9); *see also* § 27-7(b). After receiving a complaint, the Executive Director provides the complaint or a synopsis of the complaint to the respondent.

In conducting the investigation, the Executive Director may conduct testing to corroborate the complaint. He may also issue subpoenas, conduct discovery, and require the parties to attend a fact-finding conference.

**Second Phase: Determination.** Based on the investigation, the Executive Director must render a determination as to whether there are reasonable grounds to believe a violation has occurred, and send that determination to the parties.

**If Reasonable Grounds:** If the Director determines that there are

reasonable grounds, the Director must attempt to conciliate the matter. Conciliation conferences are informal, and anything said or done during those conferences are not admissible in any subsequent hearing.

- **If conciliation is successful,** the agreement must be reduced to writing and approved by the Commission. Once approved by the Commission, the agreement is binding and enforceable, and the Commission may enforce the agreement. See § 27-5(a)(9)(A).
- **If conciliation is unsuccessful,** the Director must “promptly” certify the complaint to the Commission.

**If No Reasonable Grounds:** If the Director determines the complaint lacks reasonable grounds and the complainant appeals within 30 days, the Director must certify the complaint to the Commission (see Step 3).

#### ■ Step 2: Commission / Case Review Board Hearing

When the Director certifies a complaint to the Commission, the Commission must appoint a case review board of three members of the Commission to decide each certified complaint. § 27-7(f), (h); *see also* §§ 27-2(b), 27-5(a)(9)(B).

If there is a hearing, the County Attorney may intervene on behalf of the County to enforce this law, and the County is entitled to its costs and reasonable attorneys’ fees if it is a prevailing party.

Either the case review board or a hearing examiner conducts the hearing in accordance with Commission rules. Relevant law, including federal, Maryland,

and Montgomery County law and case law, must be applied to the facts.

**Decision and Order.** The case review board issues a final decision, which is binding on the parties. It may order payment of damages, costs and attorneys' fees, and "any other relief."

If the hearing is conducted by a hearing examiner, the examiner must forward to the case review board a recommended decision and order. The board must issue the final decision and may hear oral argument and adopt, reverse, modify, or demand the examiner's recommended decision.

■ **Step 3: Enforcement of Judgment and Appellate Rights**

The Commission may enforce a conciliation agreement that it has approved. § 27-5(a)(9)(A).

**Appeal of Finding of No Reasonable Grounds.** The Complainant may appeal a determination of no reasonable grounds within 30 days, and the Director must certify the complaint to the Commission. The Commission then appoints a case review board for the appeal. The board may hear oral argument, but it must dismiss the complaint, order further investigation by the Director, or set the matter for a hearing. § 27-7(f)(2). There are no appellate rights if the case review board upholds the Director's finding that there are no reasonable grounds. § 27-7(k).

**Appeal of Decision and Order.** Any party may seek full appellate review of a case review board's final decision (except a decision to uphold the Director's finding that there are no reasonable grounds). § 27-7(k).

## **Demographics**

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The following are demographics for Montgomery County, according to the 2012 American Community Survey:

### **Race**

- 49.2% White (not Hispanic)
- 17.0% Hispanic/Latino
- 16.7% African-American (not Hispanic)
- 13.9% Asian (not Hispanic)
- 2.9% Other/Two or More Races (not Hispanic)

### **Income (by household)**

- Median household income: \$96,985
- Average household income: \$130,415
- Less than \$50,000: 23.8%
- \$50,000 to \$99,999: 27.5%
- \$100,000 to \$199,999: 31.8%
- \$200,000+: 16.9%

### **Age**

- Under 5: 6.6%
- Age 5-19: 19.4%
- Age 20-64: 61.6%
- Age 65+: 12.4%

## **Summary and Recommendations**

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### **Summary**

Montgomery County's human rights law generally prohibits discrimination against common protected classes, including source of income. It also prohibits discrimination against many less common protected categories, including genetic information,



ancestry, family responsibilities, and gender identity. It further provides explicit protection against intimidation and retaliation.

The Code provides for administrative enforcement by any person, but limits judicial enforcement to persons who have been the subject of the discriminatory act, which may mean that standing for judicial enforcement is more limited under the County Code than it is under most federal and state antidiscrimination laws. The Code provides for a wide array of remedies, including damages, attorneys' fees, civil penalties, and injunctive relief, but it does not provide for punitive damages. It lacks an appeals process for findings of no reasonable grounds in the administrative process, if the case review board upholds the finding of no reasonable grounds.

### **Recommendations**

Based on a comparison of protections afforded in the surrounding jurisdictions, Montgomery County should amend its Code in the following ways to strengthen its civil and human rights protections:

1. **Add additional protected areas.** Most of the jurisdictions in the region prohibit discrimination on the basis of credit and education, and Montgomery County should amend its human rights law to add protections in those areas. Further, it should provide protection in housing and employment for victims of domestic violence, an exceptionally vulnerable community.
2. **Strengthen the remedies available.** Montgomery County should amend its ordinance to provide for recovery of punitive damages, as punitive damages are appropriate for willful and knowing violations of the Code. In addition, Montgomery County should strengthen the language providing that attorneys' fees *may* be awarded to a prevailing party to say

they *shall* be awarded, allowing for more individuals to be represented by counsel in discrimination cases, and helping ensure that victims of discrimination have a knowledgeable, experienced advocate working on their behalf.

3. **Eliminate barriers to judicial enforcement.** Montgomery County should amend the judicial standing provision of its Code to grant standing to "aggrieved persons." By limiting standing to persons who have been the subject of a discriminatory act, Montgomery County has made its antidiscrimination law more difficult to enforce than most federal and state antidiscrimination laws.
4. **Provide a right to appeal a finding of no reasonable grounds in court.** Currently the Code provides that a finding of no reasonable grounds cannot be appealed once the case review board has upheld that finding. Based on anecdotal experience with this process over a number of years, the lack of appellate review outside of the administrative process is a serious problem for the protection of human rights in Montgomery County.
5. **Improve the dissemination of data.** While the Commission on Human Rights and the Office of Human Rights have a number of reporting requirements, current statistics about enforcement by either body were difficult to locate. The Commission on Human Rights and the Office of Human Rights should post their reported data on the Office of Human Rights' website and ensure that the most recent annual report is available at the website's "annual report" link.

# V. Prince George's County, Maryland

## Statute

The Prince George's County Human Rights Ordinance is contained in Subtitle 2, Division 12 of the Prince George's County Code ("Human Relations Commission").

## Protected Categories

	Public Accommodations	Housing	Employment	Credit	Education	Commercial Real Estate
Race	Yes	Yes	Yes	Yes	Yes	Yes
Color	Yes	Yes	Yes	Yes	Yes	Yes
Religion	Yes	Yes	Yes	Yes	No	Yes
National Origin	Yes	Yes	Yes	Yes	Yes	Yes
Sex	Yes	Yes	Yes	Yes	Yes	Yes
Familial Status <sup>1</sup>	Yes	Yes <sup>2</sup>	Yes	Yes	No	Yes
Disability	Yes	Yes	Yes	Yes	Federal law only	Yes
Age	Yes	Yes <sup>3</sup>	Yes	Yes	No	Yes
Genetic Information	No	No	No	No	No	No
Marital Status	Yes	Yes	Yes	Yes	No	Yes
Source of Income	No	No <sup>4</sup>	No	No	No	No
Sexual Orientation	Yes	Yes	Yes	Yes	Yes	Yes

The definitions of many of these categories are found in Section 2-186.

### Other Protected Categories:

- **Occupation** is protected under Public Accommodations, Housing, Employment, Credit, Education, and Commercial Real Estate.
- **Political Opinion** is protected under Public Accommodations, Housing, Employment, Credit, Education, and Commercial Real Estate.

<sup>1</sup> Defined as one or more individuals under 18 years of age being domiciled with a parent or legal guardian (or their designee). Also includes any person who is pregnant or in the process of securing custody of an individual under 18 years of age.

<sup>2</sup> Exception for retirement or senior citizen homes.

<sup>3</sup> Exception for retirement or senior citizen homes.

<sup>4</sup> One restriction on landlords refusing to consider the income of both spouses to determine whether a married couple meets income requirements. § 2-219.01.

- **Personal Appearance** is protected under Public Accommodations, Housing, Employment, Credit, Education, and Commercial Real Estate.

Prince George’s County’s human rights law also protects against **retaliation**, making it unlawful to cause or coerce (or attempt to cause or coerce) someone to retaliate against people because they lawfully opposed an act or failure to act that is a violation of the Ordinance, or because they filed a complaint or participated in any way in a proceeding under the Ordinance. § 2-209.

The Ordinance further contains a Section regarding discrimination by law enforcement officers, authorizing the Commission to investigate and hold a hearing regarding a complaint against any officer operating within Prince George’s County (except a member of the Prince George’s County Police Department<sup>5</sup>) alleging police harassment, excessive force, or the “use of language which would demean the inherent dignity of any person.” § 2-229.

## Relief Available (§§ 2-195, 2-195.01, 2-197)

Damages and a wide variety of other relief can be awarded by the Commission for a violation of the Human Rights Ordinance.

Compensatory Damages	Compensatory damages are available. In the case of employment discrimination, this may include back pay and “reimbursement of actual expenses caused by wrongful conduct of the respondent to a complainant employee.” (§ 2-195(b)) The Commission can also award damages for humiliation and embarrassment, capped at \$100,000. (§ 2-195.01(a)(3))
Punitive Damages	Not available.
Pre- and Post-Judgment Interest	Post-Judgment interest is available, but pre-judgment interest is not. (§ 2-195.01(a)(4))
Equitable Relief	The Commission is authorized to issue a “cease and desist” order to anyone found to have engaged in a discriminatory action and “to take such affirmative action as equity and justice may require and prospective relief as is necessary to effectuate the purposes of the [Ordinance].” (§ 2-195).
Attorneys’ Fees	Not available.
Civil Penalty	The Commission may impose a civil fine up to \$5,000, but only for discrimination in public accommodations or employment. (§ 2-195.01(b))
Other Relief	If a complainant or respondent refuses to comply with a Commission order, the County (on behalf of the Commission) may initiate a suit in equity to enforce compliance. (§ 2-197(b))

## Administrative Body

The administrative body responsible for handling complaints under the Prince George’s County Human Rights Ordinance is the Human Relations Commission.

## Human Relations Commission

**Responsibilities.** The Commission is tasked with investigating, mediating, and adjudicating complaints of discrimination. The Commission is required to meet at least once per month. The Commission processes cases for the

<sup>5</sup> Complaints against the Prince George’s County Police Department are forwarded to the Chief of Police and to the Citizen Complaint Oversight Panel. § 2-231.

Equal Employment Opportunity Commission through a work-sharing agreement.<sup>6</sup>

**Composition.** The Commission consists of 13 Commissioners. Each Commissioner is appointed by the County Executive and serves a three-year term. The County Executive appoints an Executive Director, who is charged with overseeing administrative staff. The Commission is also authorized to establish special “Hearing Panels” consisting of at least 3 members, relating to Housing, Employment, Law Enforcement, Education, Commercial Real Estate, and other areas it deems necessary.

**Staff.** Per the Commission’s FY2013 Annual Report, the Commission employs 8 investigators and 2 mediators.

**Budget.** The Commission’s budget is part of the Office of Community Relations’ budget and is submitted to the County Executive. The Commission’s approved budget for FY2014 is \$919,100. The proposed budget for FY2015 is \$940,900.

**Accountability.** The Commission is required to make an annual report to the County Executive and Council on or before October 1 of each year, outlining its activities during the preceding fiscal year. The report must include statistics on the number and types of complaints filed and the disposition of those complaints. The report is also required to include any affirmative action or programs undertaken during the year for the betterment of human relations or any other matters relevant to the Commission’s authorized activities. The report is required to be made public by the County Executive. The County Executive is also authorized to require interim reports (including reports of investigations) upon request.

**Statistics.** The following statistics are derived from the Commission’s FY2013 annual report:

- The Commission handled 320 investigations of alleged discrimination. Of those investigations, 194 were closed with no cause findings, and 8 were closed with cause findings.
  - 118 investigations were closed within 180 days (which is the goal set by the Commission for timely investigations). The current average number of days an investigation remains open and unresolved is 250.
- The Commission held 6 hearings and issued 6 decisions. Of those decisions, 2 were appealed, though none were overturned.
- The Commission held 40 mediations and 6 conciliations. Of those, 20 mediations closed with settlement, while 4 cases reached resolution through conciliation.

## **Methods of Enforcement**

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### *Judicial (§§ 2-197 & 2-200)*

The Ordinance provides for a “nonexclusive remedy,” namely that “any person who is aggrieved” by any prohibited act may bring an appropriate action in law or equity in the Circuit Court to seek damages, redress of injury or injunctive relief arising out of any such prohibited act, in addition to pursuing the procedures and seeking the remedies established by the Ordinance. The statute does not require the exhaustion of administrative remedies, so individuals are not required to seek any relief/remedies in an administrative process as a condition of seeking enforcement from a court or other agency. However, Section 2-185 states that the Ordinance is intended to assure that a complaint filed with the Commission may proceed more promptly

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<sup>6</sup> <http://www.eeoc.gov/field/baltimore/fepa.cfm>

than possible under with federal or State law, but is not intended to create a duplicative or cumulative process to those existing under similar or identical federal or State laws. As such, once a complaint is fully adjudicated under a similar or identical federal or State law, it should not be reprocessed by the Commission if the effect is duplicative or cumulative.

The Commission is permitted to initiate a suit in equity in Circuit Court to enforce compliance with its orders.

### **Administrative (§§ 2-193, 2-201–2-206)<sup>7</sup>**

Any person wishing to file a complaint alleging discrimination under the Ordinance (the “complainant”) must appear *in person* at the Commission’s office and file with the Executive Director, using a form provided by the Commission, a signed statement setting forth the suspected violation. The complainant must first contact the Commission to schedule an appointment with one of its investigators. The complainant must make every effort to bring the following to the appointment:

1. Valid picture ID, preferably a driver’s license;
2. Name and address of the company/ establishment and/or person(s) that the complainant is filing the complaint against (the “respondent”);
3. Contact information for the respondent; and
4. Names, addresses and telephone numbers of any potential witnesses that the complainant would like the Investigator to interview.

**Note:** The Human Rights Ordinance does not specify who has standing as a complainant, other than to state that the complainant “may be a member of the Commission or its

staff.” A Hearing Panel of the Commission is authorized to file a complaint if it has received “reliable information” that a violation of the Ordinance has occurred. A complaint by the Panel can be initiated on a majority vote of the Panel and will be filed in the name of a Panel member. § 2-193(d).

### **Time Limitations (§ 2-201)**

With the exception of housing discrimination (discussed below), a Commission investigation into alleged discrimination must be initiated within 180 days of the date of the alleged violation.

In cases of housing discrimination, the investigation must be initiated within 30 days of receipt of a statement alleging the discriminatory housing practice (or alleging that an event is about to occur). The statement must be filed no more than 360 days after the date of the alleged violation. Housing discrimination investigations must be completed within 100 days of receipt of the complaint unless it is impracticable to do so. If the Commission cannot complete the investigation within 100 days, it is required to notify the complainant and respondent in writing of why it cannot complete the investigation within 100 days.

The Commission is required to make a final administrative disposition of a complaint within 1 year of the date it receives the complaint unless it is impracticable to do so. If the Commission is unable to issue a final administrative disposition within 1 year, it must notify the complainant and respondent in writing of why it cannot complete the investigation within 1 year.

#### **■ Step 1: Complaint Processing**

**Processing.** Once a complaint has been filed, the investigator assigned to the case

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<sup>5</sup> See also <http://www.princegeorgescountymd.gov/sites/HumanRelations/Pages/default.aspx> for more information on the investigative process, consistent with this report.

by the Executive Director will discuss the complaint with the complainant and consult federal and local guidelines to determine if the complaint can be processed by the Commission. Once the investigator has processed the complaint, the following will occur:

1. The Commission will notify the respondent that a complaint of discrimination has been lodged.
2. The Commission will forward standard complaint documents, which includes a Request for Information (“RFI”), to the respondent.
3. The Commission will inquire as to whether or not the respondent is interested in Alternative Dispute Resolution as a means to resolving the matter.
4. Once the RFI information is received from the respondent, the information requested will be forwarded to the Investigator who initiated the intake, at which point the case will then be referred to the Alternative Dispute Resolution Team for mediation.

### ■ Step 2: Alternative Dispute Resolution

The Commission’s Alternative Dispute Resolution (“ADR”) Program is a voluntary, informal meeting between the complainant and the respondent wherein a neutral third party assists the parties in reaching an agreement to resolve the dispute. Attorneys may accompany parties for consultation purposes; however, the attorney will be placed in a location separate from the meeting. The ADR Program is offered as a more efficient alternative to the full investigative process. The parties are allowed to tailor their own agreement. If mediation via the ADR Program is unsuccessful, then the

investigation will continue.

### ■ Step 3: Investigation

**Investigation and Finding.** The investigation may involve witness interviews, comparative analysis, additional requests for information, and fact finding in the field. Once the investigation has concluded, the investigator will render a finding and issue a Letter of Determination.

**Preservation and Stay of Proceedings.** If at any time after a complaint has been filed the Commission determines that action must be taken to preserve the status quo or prevent irreparable harm, the Commission may transmit the matter to the County Attorney for necessary action, including temporary restraining orders and preliminary injunctions. § 2-193(e).

If the complaint under investigation involves alleged facts that would constitute a crime under Maryland law, or if any person involved in the case under investigation has been charged with a crime, the Commission is required to provide written notice to the State’s Attorney of Prince George’s County of the nature of the matter under investigation. If the State’s Attorney determines that the investigation could jeopardize any criminal proceedings, the State’s Attorney is required to notify the Commission in writing and request that no formal hearing be held (or subpoena issued) until termination of the criminal proceedings. The Commission is required to stay the proceedings until it has been notified that criminal proceedings have been terminated. § 2-207.

**Dismissal.** If the investigation concludes that there is not reasonable cause to believe that discrimination occurred, the Executive Director may dismiss the charge. If a complainant wishes to appeal

the decision to dismiss the complaint, they must do so within 30 days of the date of dismissal. The appeal is directed to the Commission, which is allowed to take action as it deems appropriate. § 2-202.

#### ■ **Step 4: Conciliation (§ 2-203)**

If the Executive Director determines that there is reasonable cause to believe that discrimination occurred, an attempt at conciliation must be made within 20 days of the determination.

If the parties agree to resolution of the matter through conciliation, the terms must be made in writing, and the agreement will not be deemed to be an admission of the violation of any law. If a majority of the Commission approves a consent agreement, it can be incorporated into an order of the Commission. By incorporating the agreement into a Commission order, it becomes enforceable just as any other Commission order would be.

With the exception of housing discrimination cases, the Executive Director can dismiss a complaint if the Director feels that the complainant refused to accept an offer from the respondent which is deemed a reasonable, good faith conciliation attempt. The complainant is permitted to appeal this decision to the full Commission within 30 days of the date of dismissal.

In housing discrimination cases, the Executive Director is not permitted to dismiss a complaint for failure of the complainant to accept a reasonable, good faith conciliation attempt.

Conciliation agreements in housing discrimination cases are made public by default, unless the complainant and respondent otherwise agree and the Executive Director determines that

disclosure is not required to further the purposes of the Ordinance.

If the conciliation process fails, the matter goes to a formal hearing before the Commission.

#### ■ **Step 5: Commission Hearing (§§ 2-204–2-206)**

No later than 90 days after the Executive Director makes a finding of cause (and conciliation has failed), the Commission issues written notice to the respondent, requiring the respondent to answer the charges at a public hearing. The Chair of the Commission then determines whether the case should be heard before the full Commission or a tribunal consisting of an appropriate Committee or Panel. The hearing is public, and a transcript is kept.

**Commission's Responsibilities.** The Executive Director is responsible for presenting the case in support of the complaint. Commissioners who previously participated in the investigation or were involved in the complaint itself are not allowed to participate in the hearing as a witness or in deliberations of the tribunal.

**Parties' Rights and Responsibilities.** The respondent may file a written answer to the complaint and appear at the hearing in person, and is permitted to be represented by counsel. The respondent is permitted to submit testimony, may cross-examine witnesses, and is permitted to use the Commission's compulsory powers (*i.e.*, subpoenas) upon timely request and concurrence by a majority of the Commission.

**Other Hearing Requirements.** Testimony taken at the hearing is required to be under oath and recorded. The Commission is allowed to permit amendments to the complaint and the answer.

**Result of Hearing.** After receiving all evidence, the Commission takes a majority vote. If the Commission determines that the respondent has engaged in discriminatory action or wrongful practice under the Ordinance, it states its findings, then issues a “cease and desist” order and orders any other relief it deems necessary. The order is required to be “reasonably related” to the violation. § 2-195. If the Commission determines that no discriminatory act has taken place under the Ordinance, the Commission will state its findings of fact and issue an order dismissing the complaint. § 2-196.

■ **Step 6: Enforcement of Judgment and Appellate Rights (§ 2-197)**

A determination of the Commission is a conclusive finding. The Commission is authorized to file suit in Maryland Circuit Court to enforce compliance with its order if it determines that the complainant or respondent has refused to comply.

Any party aggrieved by a final decision of the Commission is entitled to file an appeal pursuant to the Maryland Rules of Procedure concerning appellate review of administrative decisions. See Md. Rule 7-200, *et seq.* Generally, the petition is made in the applicable Circuit Court and (1) requests judicial review, (2) identifies the order or action of which review is sought, and (3) states whether the petitioner was a party to the proceeding (if the petitioner was not a party, he must state the basis of his standing to seek review). Md. Rule 7-202. The petition must be filed within 30 days after receiving notice of the Commission’s decision. Md. Rule 7-203.

## **Demographics**

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The following are demographics for Prince George’s County, according to the 2012 American Community Survey:

### **Race**

- 63.4% African-American (non-Latino)
- 15.0% White (non-Latino)
- 15.0% Hispanic/Latino
- 4.1% Asian (non-Latino)
- 2.5% Other (non-Latino)

### **Income (by household)**

- Median household income: \$73,568
- Average household income: \$88,474
- Less than \$50,000: 31.0%
- \$50,000 to \$99,999: 35.1%
- \$100,000 to \$199,999: 27.9%
- \$200,000+: 5.9%

### **Age**

- Under 5: 6.8%
- Age 5-19: 20.5%
- Age 20-64: 63.2%
- Age 65+: 9.6%

## **Summary and Recommendations**

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### **Summary**

The Prince George’s County Human Rights Ordinance generally provides protection for common protected classes, with the notable exception of source of income, and expands the protected classes to include occupation, political opinion, and personal appearance.



The Ordinance provides for administrative enforcement through the Human Relations Commission, which is explicitly designed to provide a more efficient process than through the courts; the Ordinance also provides for a private action to be brought in Maryland courts. The Ordinance includes compensatory damages, post-judgment interest, civil penalties (in certain circumstances), and equitable relief, but does not explicitly provide for pre-judgment interest, attorneys' fees, or punitive damages.

## Recommendations

Based on a comparison of the protections afforded in the surrounding jurisdictions, Prince George's County should amend its ordinance in the following ways to strengthen its civil and human rights protections:

1. **Add additional protected categories.** Prince George's County should add an additional protected category for source of income in housing. Without this protection, landlords are permitted to refuse housing to individuals who rely on public assistance, such as Housing Choice Vouchers and Social Security benefits, or even child support payments to pay for housing. Without such protections, many low-income individuals are legally discriminated against and prevented from obtaining safe, secure housing. Prince George's County should also add protected categories in housing and employment for other vulnerable populations, including status as a victim of domestic violence, family responsibilities, and gender identity, and add protections in public accommodations for gender identity.
2. **Strengthen the remedies available.** While compensatory damages, limited civil penalties, post-judgment interest, and some injunctive relief are available, Prince George's County should amend its ordinance to provide for the recovery of punitive damages and attorneys' fees,

as well as to remove the limitation of civil penalties to just public accommodations and employment discrimination. The current relief and penalties may not provide sufficient economic harm to deter potential violations of the Ordinance. Awarding attorneys' fees to successful complainants would allow for more individuals to be represented by counsel in discrimination proceedings, helping ensure that victims of discrimination have a knowledgeable, experienced advocate working on their behalf.

3. **Eliminate barriers to filing a complaint.** Prince George's County should remove the requirement that all discrimination complaints with the Commission be filed in person and further simplify the steps and information required to file a complaint. Most crucially, it should eliminate the requirement that complainants must present a photo ID to file a complaint, which acts as a barrier to many of the most vulnerable complainants. Complainants should not be turned away simply because they are unable to attend a meeting in-person with an investigator, failed to follow proper procedures, or do not have a photo ID, when those procedures do not serve a legitimate purpose.
4. **Restrict power of Director to dismiss a complaint.** Currently the Ordinance permits the Executive Director to dismiss any non-housing discrimination case if the Director feels that the complainant refused to accept an offer from the respondent which is deemed a reasonable, good faith conciliation attempt. Although this provision is appealable, it provides too much power to the Executive Director, preventing the complainant from being the sole individual who can decide whether a conciliation offer is sufficient. This provision should be removed.

# VI. Commonwealth of Virginia

## Statute

There are several statutes in the Code of Virginia that protect against unlawful discriminatory practices. This Report focuses on only two, the Virginia Human Rights Act, which is Title 2.2, Chapter 39 of the Code of Virginia (“Human Rights Act”), and the Virginia Fair Housing Law, which is Title 36, Chapter 5.1 of the Code of Virginia (“Fair Housing Law”).<sup>1</sup>

## Protected Categories

	Public Accommodations	Housing <sup>2,3</sup>	Employment <sup>4</sup>	Credit	Education <sup>5</sup>	Commercial Real Estate
Race	Human Rights Act	Fair Housing Law	Human Rights Act	No	Human Rights Act	Human Rights Act
Color	Human Rights Act	Fair Housing Law	Human Rights Act	No	Human Rights Act	Human Rights Act
Religion	Human Rights Act	Fair Housing Law	Human Rights Act	No	Human Rights Act	Human Rights Act
National Origin	Human Rights Act	Fair Housing Law	Human Rights Act	No	Human Rights Act	Human Rights Act
Sex	Human Rights Act	Fair Housing Law	Human Rights Act	No	Human Rights Act	Human Rights Act
Familial Status <sup>6</sup>	No	Fair Housing Law	No	No	No	No
Disability	Human Rights Act	Fair Housing Law	Human Rights Act	No	Human Rights Act	Human Rights Act
Age	Human Rights Act	Fair Housing Law	Human Rights Act	No	Human Rights Act	Human Rights Act
Genetic Information	No	No	No	No	No	No
Marital Status	Human Rights Act	Human Rights Act	Human Rights Act	No	Human Rights Act	Human Rights Act
Source of Income	No	No	No	No	No	No
Sexual Orientation	No	No	No	No	No	No

<sup>1</sup> References to statute sections herein are references to statute sections contained in the Code of Virginia, unless otherwise noted.

<sup>2</sup> The Human Rights Act refers to “real estate transactions”, but does not specifically refer to “housing” or “residential or commercial real estate transactions.” Accordingly, it is unclear from the express provisions of the Human Rights Act whether it would protect against discrimination because of marital status in housing and because of any of the protected categories in commercial real estate transactions. Notwithstanding, a county may adopt an ordinance prohibiting discrimination in commercial real estate transactions. § 15.2-725.

<sup>3</sup> Exceptions given for buildings with 4 units or less where the owner occupies one unit; religious organizations; private clubs; educational institutions that require that both sexes not occupy any single dwelling; and retirement or senior citizen homes. §§ 36-96.2 and 36-96.7.

<sup>4</sup> A Commonwealth of Virginia state employee can file a grievance relating to discrimination on the basis of political affiliation, in addition to certain other protected categories. § 2.2-3004.

<sup>5</sup> A public charter school is subject to all federal and state laws and regulations and constitutional provisions prohibiting discrimination on the basis of creed, ancestry or need for special education services, in addition to certain other protected categories. § 22.1-212.6.

<sup>6</sup> Defined as one or more individuals under 18 years of age being domiciled with a parent or legal guardian (or their designee). Also includes any person who is pregnant or in the process of securing custody of an individual under 18 years of age.

<sup>7</sup> Elderliness means an individual who has attained his fifty-fifth birthday.

The definitions of some of these categories are found in Section 36-96.1:1 of the Fair Housing Law.

The Human Rights Act also protects against discrimination because of **childbirth** or **related medical conditions**. The Human Rights Act does not have express provisions regarding protection against retaliation, intimidation, or coercion.

The Human Rights Act does not repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination. § 2.2-3902. Some of the other statutes in the Code of Virginia that protect against unlawful discriminatory practices are identified in the Appendix to this Chapter.

If a complaint is filed with the Office of the Attorney General of Virginia, Division of Human Rights alleging an unlawful discriminatory practice under a state statute that is enforced by a specific state agency, the Division of Human Rights will refer the complaint to that agency.

## **Human Rights Act**

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The Virginia Human Rights Act is Title 2.2, Chapter 39 of the Code of Virginia (“Human Rights Act”). The Human Rights Act prohibits discrimination on the basis of a number of protected categories in places of public accommodation, including educational institutions, and in real estate transactions and employment. The categories protected are race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status and disability. § 2.2-3901.

The Human Rights Act provides that the terms “because of sex or gender” or “on the basis of sex or gender” include because of or on the basis of pregnancy, childbirth or related medical conditions. Women affected by pregnancy, childbirth or related medical conditions “shall be treated the same for all purposes as persons not so affected but similar in their abilities or disabilities.” § 2.2-3901.

The Human Rights Act provides for private rights of action only in limited employment discrimination cases involving employers with more than five but less than 20 employees.

The Human Rights Act does not repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination. § 2.2-3902. Some of the other statutes in the Code of Virginia that protect against unlawful discriminatory practices are identified in the Appendix to this Chapter.

If a complaint is filed with the Office of the Attorney General of Virginia, Division of Human Rights alleging unlawful discriminatory practice under a state statute that is enforced by a specific state agency, the Division of Human Rights will refer the complaint to that agency.

## Relief Available (§ 12 of Human Rights Regulations and § 2.2-3903)

Equitable relief and attorneys' fees can be awarded for a violation of the Human Rights Act.

Compensatory Damages	Not available.
Punitive Damages	Not available.
Pre- and Post-Judgment Interest	Not available.
Equitable Relief	<p>The Division of Human Rights may issue recommendations to eliminate the discriminatory practice:</p> <ul style="list-style-type: none"> <li>• Hiring, reinstating, promoting or upgrading the position of the complainant, with or without back pay, and providing such fringe benefits as the complainant has been denied;</li> <li>• Restoring or admitting the complainant to membership in a labor organization, a training program, guidance program or other occupational training program, using the objective criteria for admission of persons to such programs;</li> <li>• Leasing, renting or selling property at issue to the complainant;</li> <li>• Extending to the complainant the full and equal enjoyment of the goods, services, facilities, privileges or accommodations of the respondent;</li> <li>• Admitting the complainant to a public accommodation or educational institution;</li> <li>• Reporting as to the manner of compliance;</li> <li>• Posting notices in a conspicuous place setting forth requirements for compliance with this chapter or other information that the Division of Human Rights deems necessary to explain the Human Rights Act; and</li> <li>• Revising personnel policies and procedures, including the undertaking of affirmative efforts.</li> </ul> <p>§ 12 of Human Rights Regulations.</p>
Attorneys' Fees	Available. § 12 of Human Rights Regulations.
Civil Penalty	Not available.
Other Relief	<p>For cases filed in a general district court or circuit court for a violation of § 2.2-3903(B), which is limited to actions brought against employers employing more than five but less than 20 persons, back pay and attorneys' fees can be awarded as follows:</p> <ul style="list-style-type: none"> <li>• The court may award up to 12 months' back pay with interest at the judgment rate as provided in § 6.2-302. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the 12-month limitation.</li> <li>• The court may award up to 12 months' back pay with interest at the judgment rate as provided in § 6.2-302.</li> <li>• In any case where the employee prevails, the court shall award attorneys' fees from the amount recovered, not to exceed 25 percent of the back pay awarded.</li> </ul> <p>The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee. (§ 2.2-3903(C))</p>

## Administrative Body

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The administrative body responsible for handling complaints under the Human Rights Act is the Office of the Attorney General of Virginia, Division of Human Rights (formerly the Virginia Council on Human Rights),<sup>8</sup> a division of the Department of Law of the Office of the Attorney General of Virginia. § 2.2-520.

### Division of Human Rights

**Responsibilities.** The duties of the Division of Human Rights include, but are not limited to, receiving, investigating, seeking to conciliate, referring to another agency, holding hearings pursuant to the Virginia Administrative Process Act (§ 2.2-4000 *et seq.*), and making findings and recommendations upon complaints alleging unlawful discriminatory practices. § 2.2-520(B).

The Division processes cases for the Equal Employment Opportunity Commission through a work-sharing agreement.

**Composition.** The Division of Human Rights is a division of the Department of Law of the Office of the Attorney General of Virginia that was created by the Human Rights Act. § 2.2-520.

**Staff.** The Office of the Attorney General of Virginia has approximately 300 attorneys.<sup>9</sup> It is not known how many of these attorneys work in the Division of Human Rights. The Director is an individual appointed by the Governor of the Commonwealth of Virginia to perform the duties and responsibilities outlined in the Human Rights Act. § 2 of Human Rights Regulations. A hearing officer is a person qualified from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of the Commonwealth of Virginia. § 2 of Human Rights Regulations.

**Budget.** The Division of Human Rights' budget is part of the Office of the Attorney General of Virginia's budget, which currently is approximately \$48.6 million.<sup>10</sup> The specific budget for the Division of Human Rights was not located.

**Accountability.** No information found.

**Statistics.** No information found.

## Methods of Enforcement

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### Judicial (§§ 2.2-3903; 2.2-521)

The Human Rights Act does not provide a private right of action to enforce its provisions, with the exception of employment matters involving employers employing more than five but less than 20 persons. § 2.2-3903(B). In general, an employee of an employer employing more than five but less than 15 persons may file a lawsuit in court alleging employment discrimination when such employer discharges the employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation. In addition, an employee of an employer employing more than five but less than 20 persons may file a lawsuit in court alleging employment discrimination when such employer discharges the employee on the basis of age. That being said, we did not locate any reported court decisions involving successful Human Rights Act claims.

In addition, whenever the Attorney General has reasonable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, the Attorney General may request permission from the judge of the local circuit court to serve a subpoena on anyone who refuses to produce data and information related to the investigation. § 2.2-521.

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<sup>8</sup> The website of the Division of Human Rights is [http://www.ag.virginia.gov/Programs%20and%20Resources/Human\\_Rights/index.html](http://www.ag.virginia.gov/Programs%20and%20Resources/Human_Rights/index.html).

<sup>9</sup> Fain, T. (2014). \$48.6 million: Attorney General's Office. Daily Press. Retrieved from <http://www.dailypress.com/news/politics/dp-nws-budget-item-virginia-20-20140816,0,7015814.story>

<sup>10</sup> *Id.*

## Time Limitations

Any court action must be filed within 300 days from the date the employee was fired or, if the employee has filed a complaint with the Division of Human Rights or a local human rights or human relations agency or commission within 300 days of the firing, the court action must be filed within 90 days from the date that the Division of Human Rights or a local human rights or human relations agency or commission has rendered a final decision on the complaint. § 2.2-3903(C).

### *Administrative (§ 2.2-520)*

A complaint alleging an unlawful discriminatory practice under a statute of the Code of Virginia may be filed with the Division of Human Rights pursuant to Section 2.2-520 of the Code of Virginia. The Division of Human Rights has regulations, the Human Rights Regulations, that supplement the Human Rights Act and set forth the specific process for filing an administrative complaint.

Pursuant to the Human Rights Regulations, any person, agency, or organization may file a complaint on behalf of a person claiming to be aggrieved. The complaint must be made in writing, but does not need to name the person on whose behalf the complaint is made. The person making the complaint, however, is required to provide the Division of Human Rights orally with the name, address and telephone number of the person on whose behalf the complaint is made. During the Division of Human Rights' investigation, the Director will verify the complaint with the person on whose behalf the complaint is made. The Division of Human Rights may reveal the identity of the complainants to federal, state, or local agencies that have agreed to keep such information confidential. § 3 of Human Rights Regulations.

## Time Limitations

A complaint must be filed with the Division of Human Rights not later than 180 days from the day upon which the alleged discriminatory practice occurred. § 3 of Human Rights Regulations.

### ■ **Step 1: Director Investigation (§§ 9, 10 and 11 of Human Rights Regulations)**

**First Phase: Investigation.** Upon filing of a complaint, the Director is tasked with investigating the allegations. The Director must dismiss a complaint if it is not timely filed, or if it fails to state a claim under the Human Rights Act.

**Second Phase: Determination.** Upon completion of the investigation, the Director must render a determination as to whether there is reasonable cause to believe that a violation of the Human Rights Act has occurred. There are two possible determinations: (1) There is reasonable cause to believe a violation has occurred or is occurring; or (2) The complaint lacks reasonable cause to believe a violation has occurred.

**If Reasonable Cause:** If the Director determines that there is reasonable cause to believe a violation has occurred or is occurring, the Director will endeavor to eliminate the discriminatory practice by informal methods of conference, conciliation and negotiation.

- If conciliation or negotiated settlement is successful, the terms of the agreement will be reduced to writing and must be signed by the complainant, respondent and the Director within 10 working days of the agreement.
- If conciliation is unsuccessful, or when the Director determines

that the conciliation process will not be in the best interest of the complainant or the Commonwealth of Virginia, the Director will set the matter for public hearing or refer the complaint to the appropriate federal agency.

**If No Reasonable Cause:** If the Director determines that there is not reasonable cause to believe that the Human Rights Act has been violated, the Director will dismiss the complaint.

■ **Step 2: Public Hearing (§ 11 of Human Rights Regulations)**

If the Director sets the matter for a hearing, notice of the time and place of the hearing is mailed to the parties at least 20 working days before the date of the hearing. The hearing is public and is recorded by an official reporter. The transcript of the hearing is publicly available upon request.

**Parties' Rights and Responsibilities.**

Parties involved in a public hearing may be assisted by counsel, or by an authorized representative. All testimony must be given under oath or affirmation. All parties are given an opportunity to present oral argument. Any party who fails to appear at a hearing or to respond to a request for information by a specified date, unless it can establish good cause for missing the hearing or failing to provide the information, will be deemed to have waived all further rights to appear, present evidence, or petition for rehearing or reconsideration.

**Division of Human Rights' Responsibilities.** A case will be heard by a hearing officer appointed by the Division of Human Rights from a list obtained from the Supreme Court of the Commonwealth of Virginia. The hearing

officer is not bound by statutory rules of evidence or technical rules of procedure, and the hearing officer has discretion to exclude irrelevant, immaterial and/or unduly repetitious evidence.

**Result of Hearing.** The hearing officer's findings of fact and conclusions of law are stated in writing and are filed with the Division of Human Rights within 30 working days of the date of completion of the hearing.

■ **Step 3: Vote of the Division of Human Rights (§ 12 of Human Rights Regulations)**

If the Division of Human Rights votes to accept the hearing officer's findings that the respondent has not engaged in a discriminatory practice, it will issue an order dismissing the complaint. A copy of the order will be furnished to the complainant and the respondent.

If the Division of Human Rights votes to accept the hearing officer's findings that the respondent has committed an unlawful discriminatory practice, it will state its findings and may issue recommendations to eliminate the discriminatory practice.

If the Division of Human Rights votes not to accept the hearing officer's findings, it will return the findings to the hearing officer for further consideration, or appoint a new hearing officer and set a new public hearing.

■ **Step 4: Enforcement of Judgment and Appellate Rights (§ 9 of Human Rights Regulations)**

A complainant that disagrees with the Director's decision to dismiss the complaint can petition the Division of Human Rights within 10 working days for a review of the decision. Upon petition for review, the Division of Human Rights

will establish a panel of three members to hear the petition. If it is determined within 30 working days after the petition for review that there is not reasonable cause to believe the respondent has engaged in a discriminatory practice, the Division of Human Rights will issue an order dismissing the complaint and furnish a copy of the order to all parties.

The Human Rights Regulations do not expressly set forth the appellate rights of a complainant if the complainant is not satisfied with the outcome of the public hearing.

## Fair Housing Law

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The Virginia Fair Housing Law is Title 36, Chapter 5.1 of the Code of Virginia (“Fair Housing Law”).

The Fair Housing Law prohibits discrimination on the basis of race, color, religion, national origin, sex, elderliness,<sup>11</sup> familial status<sup>12</sup> and handicap<sup>13</sup> in any residential real estate

transaction. It prohibits discrimination in the sale or rental of residential property, as well as the making or purchasing of loans or providing other financial assistance related to real estate and selling, brokering, insuring or appraising of residential real property. Finally, it prohibits coercion, intimidation, and other threats. §§ 36-96.3(A), 36-96.4(A) and (B), 36-96.5 and 36-96.6(A). Several common protected categories are not protected under the Fair Housing Law, including students, source of income, sexual orientation, and marital status. However, these categories may be protected under a local ordinance.

The Commonwealth of Virginia law also exempts certain conduct from specific provisions of the Fair Housing Law. For example, conduct that may otherwise constitute “unlawful discriminatory conduct” may be exempt from the Fair Housing Law if it relates to a single-family house sold or rented by an owner, provided that such private individual does not own more than three single family houses at any one time. § 36-96.2.

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<sup>11</sup> “Elderliness” means an individual who has attained his fifty-fifth birthday. § 36-96.1:1.

<sup>12</sup> “Familial status” means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term “familial status” also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of the Virginia Fair Housing Law, “in the process of securing legal custody” means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction. § 36-96.1:1.

<sup>13</sup> “Handicap” means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person’s major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of, or addiction to a controlled substance as defined in the Commonwealth of Virginia or federal law. Neither the term “individual with handicap” nor the term “handicap” shall apply to an individual solely because that individual is a transvestite. § 36-96.1:1.



## Relief Available (§ 18 VAC 135-50-480 of the Fair Housing Regulations and §§ 36-96.18(C), 36-96.18(D) and 36-96.18(E))

Damages and attorneys' fees can be awarded for a violation of the Fair Housing Law's anti-discrimination provisions.

Compensatory Damages	Compensatory damages are available. (§ 18 VAC 135-50-480 of the Fair Housing Regulations and § 36-96.18(C))
Punitive Damages	Punitive damages are available. (§ 18 VAC 135-50-480 of the Fair Housing Regulations and § 36-96.18(C))
Pre- and Post-Judgment Interest	Not available.
Equitable Relief	Equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief. (§ 18 VAC 135-50-480 of the Fair Housing Regulations) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or persons. (§ 18 VAC 135-50-480 of the Fair Housing Regulations) Subject to certain limits, equitable relief may be granted, including any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or order such affirmative action as may be appropriate. (§ 36-96.18(C))
Attorneys' Fees	Reasonable attorneys' fees and costs are available. (§ 18 VAC 135-50-480 of the Fair Housing Regulations and § 36-96.18(C))
Civil Penalty	Not available.
Other Relief	Relief granted may not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving bona fide purchasers, encumbrancer or tenant, without actual notice of the filing of a complaint with the Fair Housing Board or Real Estate Board or civil action under the Fair Housing Law. (§ 36-96.18(D)) Upon timely application, the Attorney General may intervene in a civil action, if the Attorney General certifies that the case is of general public importance. Upon intervention, the Attorney General may obtain such relief as would be available to the private party. (§ 36-96.18(E))

### Administrative Bodies

The administrative body responsible for handling complaints under the Fair Housing Law is the Fair Housing Office of the Virginia Department of Professional and Occupational Regulation ("Fair Housing Office"). The Fair Housing Law is administered and enforced by the Fair Housing Board, although the Real Estate Board is responsible for fair housing cases involving real estate licensees or their employees. Both the

Fair Housing Board and Real Estate Board (each a "Board") investigates housing discrimination through the Fair Housing Office.

#### *Fair Housing Board and Real Estate Board*

**Responsibilities.** Each Board has the power, under the Fair Housing Law, to (i) initiate and receive complaints, (ii) conduct investigations of violations, (iii) attempt to resolve complaints by conference and conciliation,<sup>14</sup> and, upon

<sup>14</sup> "Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board. § 36-96.1:1.

failure of such efforts, issue a charge and refer it to the Attorney General for action, (iv) perform all acts necessary and proper to carry out the provisions of the Virginia Fair Housing Law, and (v) promulgate and amend necessary regulations. § 36-96.8. The Fair Housing Office participates in the Fair Housing Assistance Program (FHAP).<sup>15</sup>

**Fair Housing Board.** The Fair Housing Board administers and enforces federal and state fair housing laws, investigates housing discrimination through the Fair Housing Office, and oversees an education-based certification program for housing providers. § 54.1-2344.

**Real Estate Board.** The Real Estate Board administers and enforces the Fair Housing Law with respect to real estate licensees or their agents or employees who have allegedly violated the Fair Housing Law. § 54.1-2344.

### Composition.

**Fair Housing Board.** The Fair Housing Board is composed of 15 members: 12 members representing various relevant industries and three citizen members, each appointed for terms of four years. § 54.1-2344.

**Real Estate Board.** The Real Estate Board is composed of nine members: seven members who have been licensed real estate brokers or salespersons for at least five consecutive years before their appointment and two citizen members, each appointed for terms of four years. § 54.1-2104.

**Staff.** No information found.

**Budget.** No information found.

**Accountability.** No information found.

**Statistics.** The Fair Housing Office receives an average of 180 complaints per year.<sup>16</sup> A breakdown of the complaints received by the Fair Housing Office in 2013 by protected category is as follows:

1. Disability – 41%
2. Race – 26%
3. Familial Status – 12%
4. Color/Sex/National Origin/Religion/Elderliness – 22%

## Methods of Enforcement

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### *Judicial (§§ 36-96.16 and 36-96.18)*

**Individual.** The Fair Housing Law permits an “aggrieved person” to commence a civil action with respect to an alleged discriminatory housing practice. § 36-96.18. “Aggrieved person” means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that he or she will be injured by a discriminatory housing practice that is about to occur. § 36-96.1:1.

### Time Limitations

An aggrieved person may commence a civil action in an appropriate United States district court or state court no later than two years after the alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under the Fair Housing Law, whichever occurs last. § 36-96.18(A).

If an aggrieved person submits a complaint through the administrative process under the

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<sup>15</sup> [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP/agencies#VA](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#VA)

<sup>16</sup> Virginia Fair Housing Office. *Department of Professional and Occupational Regulation*. Retrieved from <http://www.dpor.virginia.gov/FairHousing/>

Fair Housing Law, that person may commence a civil action no later than 180 days after the conclusion of the administrative process, or not later than two years after the alleged discriminatory housing practice, whichever is later. § 36-96.18(B).

An aggrieved person may commence a civil action whether or not a complaint has been filed with a Board and without regard to the status of any such complaint. If the Board or a federal agency has obtained a conciliation agreement with the consent of an aggrieved person, that person may not file a court action with respect to the alleged discriminatory housing practice that forms the basis for such complaint, except for the purpose of enforcing the terms of such an agreement. § 36-96.18(B).

**A Board.** If a Board concludes at any time following the filing of an administrative complaint that prompt judicial action is necessary to carry out the purposes of the Virginia Fair Housing Law, the Board may authorize a civil action by the Attorney General for appropriate temporary or preliminary relief. Upon receipt of such authorization, the Attorney General must promptly commence and maintain such an action. The commencement of a civil action may not affect the initiation or continuation of administrative proceedings by the Board. § 36-96.15.

### **Time Limitations**

Not later than 30 days after a charge is referred by a Board, the Attorney General must commence and maintain a civil action seeking relief on behalf of the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur. Any aggrieved person with respect to the issues to be determined in the civil action may intervene as of right. §§ 36-96.16(A)-(B).

If the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may grant any relief which a court could grant with respect to such discriminatory housing practice in a private civil action. Any relief so granted that would accrue to an aggrieved person in connection with such action must also accrue to the aggrieved person in the civil action pursued by the Attorney General. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award such relief if that aggrieved person has not complied with discovery orders entered by the court in the course of the action. § 36-96.16(C).

### **Administrative (§§ 36-96.9 and 36-96.20)**

Aggrieved persons may initiate an administrative action with the Fair Housing Board or, for complaints involving real estate licensees or their employees, the Real Estate Board regarding an alleged discriminatory housing practice. § 36-96.9.

If the Real Estate Board has reasonable cause to believe that a real estate broker, real estate salesperson, licensed real estate brokerage firm, or their agents or employees have engaged in discriminatory housing practices prohibited by the Virginia Fair Housing Law, the Board may initiate an administrative hearing to determine whether to revoke, suspend or fail to renew the license or licenses in question. § 36-96.20.

### **Time Limitations**

A complaint filed with a Board must be filed in writing within one year after the alleged discriminatory housing practice occurred or terminated. § 36-96.9(A). Aggrieved persons may provide information to be included in a complaint by telephone to the Fair Housing Office staff. The staff will put the information on a complaint form and send the form to the aggrieved person to be signed in accordance

with § 18 VAC 135-50-340(A) of the Fair Housing Regulations. § 18 VAC 135-50-330 of the Fair Housing Regulations.

A Board must commence proceedings with respect to a complaint within 30 days after receipt of the complaint, and must complete the investigation within 100 days thereof unless it is impracticable to do so (in which case it notifies the parties in writing of the reasons therefor). § 36-96.10(A).

■ **Step 1: Board Investigation (§§ 36-96.10 - 14)**

**First Phase: Investigation.** Once the Fair Housing Office accepts a complaint for investigation, the complaint is assigned to an investigator. During the investigative process, a trained professional from the Alternative Dispute Resolution Section coordinates the conciliation process.

- If conciliation is successful, the investigation will be suspended.
- If conciliation is unsuccessful, or if one of the parties does not want to attempt conciliation, the investigation continues until it is complete.

**Second Phase: Determination.** After the investigation is complete, the investigator writes a final investigative report (FIR). The FIR summarizes the information obtained during the investigation. The FIR is presented to the Fair Housing Board or the Real Estate Board at its next regularly scheduled meeting. The Board must, within 100 days after the filing of a complaint, determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or the Board

has approved a conciliation agreement resolving the issues in the complaint (in which case it notifies the parties in writing of the reasons therefor). § 36-96.11.

- **Conciliation:** After the complaint is filed but before charges are filed or the Board dismisses the complaint, the Board must, to the extent feasible, engage the parties in conciliation. A conciliation agreement between the respondent and the complainant may provide for binding arbitration of the dispute arising from the complaint. Conciliation agreements are subject to approval by the Board and, upon referral by the Board in connection with the Board's reasonable belief that a respondent has breached the agreement, enforcement by the Attorney General. Generally, conciliation agreements are public. §§ 36-96.13(A)-(D).

If conciliation is successful and both parties reach an agreement, the Board may vote to accept the conciliation agreement.

If conciliation is unsuccessful, or if the Board fails to accept an agreement, the Board will either dismiss the complaint or determine if reasonable cause exists to support a charge of discrimination.

- **If Reasonable Grounds:** If the Board determines that reasonable cause exists to believe that a discriminatory housing practice has occurred, the Board issues a charge on behalf of the aggrieved person

or persons and immediately refers the charge to the Attorney General, who brings a civil suit in circuit court seeking relief for the complainant. § 36-96.14 and § 18 VAC 135-50-530 of the Fair Housing Regulations. The Board may not issue a charge after a trial has begun in a civil suit commenced by the aggrieved party. § 36-96.14 and § 18 VAC 135-50-550 of the Fair Housing Regulations.

- **If No Reasonable Grounds:** If the Board determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred, the Board must promptly dismiss the complaint, notifying the parties within 30 days of such determination. The Board must make public disclosure of each dismissal. § 36-96.12 and § 18 VAC 135-50-530 of the Fair Housing Regulations.

- **Step 2: Enforcement of Judgment and Appellate Rights**

Neither the Fair Housing Law nor the Fair Housing Regulations expressly set forth appellate rights if the complainant is not satisfied with a Board's determination to dismiss a complaint. Notwithstanding, an aggrieved person may commence a civil action no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge, or not later than two years after the alleged discriminatory housing practice, whichever is later. § 36-96.18(B).

## Demographics

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The following are demographics for the Commonwealth of Virginia, according to the 2012 American Community Survey:

### Race

- 64.8% White
- 19.1% African-American
- 7.9% Hispanic/Latino
- 5.5% Asian
- 2.7% Other

### Income (by household)

- Median household income: \$63,636
- Average household income: \$86,343
- Less than \$50,000: 39.7%
- \$50,000 to \$99,999: 30.7%
- \$100,000 to \$199,999: 22.4%
- \$200,000+: 7.3%

### Age

- Under 5: 6.3%
- Age 5-19: 19.6%
- Age 20-64: 61.6%
- Age 65+: 12.3 %

## Summary and Recommendations

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### Summary

Virginia's Human Rights Act generally provides protection for common protected classes, with the notable exception of sexual orientation. The Code of Virginia provides for administrative enforcement through the Office

of the Attorney General of Virginia, Division of Human Rights. The Human Rights Regulations provide that the Division of Human Rights may issue recommendations to eliminate a discriminatory practice. The Human Rights Act provides for private rights of action only in limited employment discrimination cases involving employers with more than five but less than 20 employees. The Human Rights Regulations provide for equitable relief, and the Human Rights Act provides for equitable relief and attorneys' fees, but only in limited employment discrimination cases.

Virginia's Fair Housing Law generally provides protection for common protected classes with respect to housing, with the notable exceptions of source of income, marital status, childbirth and related medical conditions, and sexual orientation. The Fair Housing Law also prohibits coercion, intimidation, and other threats. The Fair Housing Law provides for administrative enforcement through the Fair Housing Board, although the Real Estate Board is responsible for fair housing cases involving real estate licensees or their employees. Both the Fair Housing Board and Real Estate Board investigate housing discrimination through the Fair Housing Office. The Fair Housing Law and the Fair Housing Regulations provide for compensatory damages, equitable relief, attorneys' fees and punitive damages, but do not explicitly provide for pre- or post-judgment interest or civil penalties.

### **Recommendations**

Based on our review of Virginia's Human Rights Act and Fair Housing Law, and a comparison of the protections afforded in the surrounding jurisdictions, Virginia should amend its Human Rights Act and Fair Housing Law in the following ways to strengthen its civil and human rights protections:

1. **Add Private Rights of Action for Broader Set of Protected Categories.** Virginia should add to the Human Rights Act private

rights of action for all protected categories of discrimination and not limit private rights of action to certain employment discrimination cases.

2. **Add Additional Protected Categories.** Virginia should add additional protected categories, such as source of income, marital status, childbirth and related medical conditions and sexual orientation under the Fair Housing Law and sexual orientation under the Human Rights Act.
3. **Strengthen the Remedies Available.** The Human Rights Act significantly limits the damages available. Punitive damages are not allowed, and courts are not able to order reinstatement of successful claimants. Moreover, attorneys' fees are limited to 25% of the back pay recovered. These limitations may serve as a disincentive to filing a claim under the Human Rights Act, and should be lessened.
4. **Revise Office of the Attorney General, Division of Human Rights Complaint Questionnaire.** The questionnaire to be completed to determine whether a complaint will be investigated does not include a box to check for a complaint related to credit or based on marital status. At a minimum, it seems that marital status should be included as a protected category in the complaint questionnaire given that it is protected under the Human Rights Act.
5. **Establish a Formal Appeals Process.** Neither the Fair Housing Law nor the Fair Housing Regulations expressly set forth the appellate rights of a complainant if the complainant is not satisfied with a Board's determination to dismiss a complaint. The Fair Housing Law and the Fair Housing Regulations should be amended to provide for a reasonable administrative appeals process, allowing for reconsideration of a decision to dismiss a discrimination complaint.

## Other Code of Virginia Statutes

The Human Rights Act does not repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination. § 2.2-3902. There are other statutes in the Code of Virginia that protect against unlawful discriminatory practices, including the following:

### Credit

Section of Code of Virginia	Protected Categories
§ 6.2-501  (Financial Institutions and Services; Equal Credit Opportunities)	Prohibits a creditor from discriminating against any applicant, with respect to any aspect of a credit transaction: (1) on the basis of race, color, religion, national origin, sex or marital status, or age, provided the applicant has the capacity to contract; or (2) because all or part of the applicant's income derives from any public assistance or social services program.

### Education

Section of Code of Virginia	Protected Categories
§ 22.1-203.3  (Education; Programs, Courses of Instruction and Textbooks; Religious viewpoint expression; student expression)	Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions.
§ 22.1-212.6  (Education; Programs, Courses of Instruction and Textbooks; Establishment and operation of public charter schools; requirements)	A public charter school shall be subject to all federal and state laws and regulations and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services and shall be subject to any court-ordered desegregation plan in effect for the school division or, in the case of a regional public charter school, any court-ordered desegregation plan in effect for relevant school divisions.
§ 51.5-42  (Persons with Disabilities; Rights of Persons with Disabilities; Discrimination against otherwise qualified persons with disabilities by educational institutions prohibited)	No public educational institution or private educational institution, or agent of either, that is a recipient of state funds shall deny admission to the institution, or full and equal access to and enjoyment of any of its educational or extracurricular programs, to an otherwise qualified person with a disability because of such disability.

### Employment

Section of Code of Virginia	Protected Categories
§ 2.2-2203.3  (Administration of Government; Authorities; Employees; employment; personnel rules)	Race, religion, color, sex, or national origin.
§ 2.2-3004  (Administration of Government; State Grievance Procedure; Grievances qualifying for a grievance hearing; grievance hearing generally)	Race, color, religion, political affiliation, age, disability, national origin or sex.

<p>§ 2.2-4200</p> <p>(Administration of Government; Fair Employment Contracting Act, Declaration of Policy, discrimination prohibited in awarding contracts; definitions)</p>	<p>Race, color, religion, sex, or national origin (related to employment practices of the Commonwealth of Virginia, its agencies, and government contractors).</p> <p>In the awarding of contracts, contracting agencies shall not engage in an unlawful discriminatory practice as defined in § 2.2-3901.</p>
<p>§ 2.2-4311</p> <p>(Administration of Government; Virginia Public Procurement Act; Employment discrimination by contractor prohibited; required contract provisions)</p>	<p>Race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor.</p>
<p>§ 22.1-306</p> <p>(Education; Teachers, Officers and Employees; Definitions)</p>	<p>Race, color, creed, political affiliation, handicap, age, national origin, or sex.</p>
<p>§ 23-38.110</p> <p>(Educational Institutions; Restructured Higher Education; Financial and Administrative Operations Act; Procurement; discrimination prohibited; participation of small, women-owned, and minority-owned business enterprises)</p>	<p>The policies shall implement a system of competitive negotiation for professional services pursuant to subsections A, B, and E of § 2.2-4302.2; shall prohibit discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation or award of contracts; shall incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354; and shall consider the impact on correctional enterprises under § 53.1-47.</p> <p>In the solicitation and awarding of contracts, no covered institution shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law.</p>
<p>§ 51.5-41</p> <p>(Persons with Disabilities; Rights of Persons with Disabilities; Discrimination against otherwise qualified persons with disabilities by employers prohibited)</p>	<p>No employer shall discriminate in employment or promotion practices against an otherwise qualified person with a disability solely because of such disability.</p>
<p>§ 54.1-515</p> <p>(Professions and Occupations; Asbestos, Lead and Home Inspection Contractors and Workers; Employer discrimination; penalty)</p>	<p>Any employer who discriminates against or otherwise penalizes an employee who complains to or cooperates with the Board or any other governmental agency in administering this chapter is subject to the penalties in § 54.1-517.</p>
<p>§ 62.1-129.1</p> <p>(Waters of the State, Ports and Harbors; Virginia Port Authority; Employees; employment; personnel rules; health insurance; retirement plans)</p>	<p>Employees of the Virginia Port Authority shall be employed on such terms and conditions as established by the Authority. The Board of Commissioners of the Authority shall develop and adopt personnel rules, policies, and procedures to give its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, religion, color, sex, or national origin.</p>



# VIII. Arlington County, Virginia

## Statute

The Arlington County Human Rights Ordinance is Chapter 31 of the Arlington County Code (“Human Rights”).

## Protected Characteristics

	Public Accommodations	Housing <sup>1</sup>	Employment	Credit	Education	Commercial Real Estate <sup>2</sup>
Race	Yes	Yes	Yes	Yes	Yes	Yes
Color	Yes	Yes	Yes	Yes	Yes	Yes
Religion	Yes	Yes	Yes	Yes	No	Yes
National Origin	Yes	Yes	Yes	Yes	Yes	Yes
Sex	Yes	Yes	Yes	Yes	Yes <sup>3</sup>	Yes
Familial Status <sup>4</sup>	No	Yes	No	No	No	No
Disability	Yes	Yes	Yes	Yes	Federal law only	Yes
Age	Yes	Yes	Yes <sup>5</sup>	Yes	No	Yes
Genetic Information	No	No	No	No	No	No
Marital Status	Yes	Yes	Yes	Yes	No	Yes
Source of Income	No	No	No	No	No	No
Sexual Orientation	Yes	Yes	Yes	Yes	Yes	Yes

The definitions of many of these categories are found in Section 31-2.

Arlington County also specifically protects against **retaliation**, meaning that it is unlawful to take action against persons because they (1) opposed a practice they believe is unlawful under the Human Rights Ordinance, (2) complied with or encouraged others to comply with the Ordinance, (3) filed a complaint alleging violations of the Ordinance, or (4) participating in a hearing or

<sup>1</sup> Exceptions given for buildings with 4 or fewer units where the owner occupies one unit; religious organizations; private clubs; educational institutions that require that both sexes not occupy any single dwelling.

<sup>2</sup> Defined as land or improvements, or interest in such land or improvements, that is offered for sale or lease and that can be used for business, trade, or professional purposes under existing law or by changes in law contemplated under the offering, and which is not a dwelling.

<sup>3</sup> Exception for contact sports.

<sup>4</sup> Defined as one or more individuals under 18 years of age being domiciled with a parent or legal guardian (or their designee). Also includes any person who is pregnant or in the process of securing custody of an individual under 18 years of age.

<sup>5</sup> Only applies to persons at least forty years of age.

investigation under the Ordinance. Coercing another person to commit retaliation is also unlawful under the code. The law further prohibits directly or indirectly **coercing** someone to commit an act made unlawful by the Human Rights Ordinance. See § 31-3(G).

## Relief Available (§§ 31-7, 31-8, 31-13)

Damages and limited other relief can be awarded by the Commission for a violation of the Human Rights Ordinance’s antidiscrimination provisions.

Compensatory Damages	Compensatory damages are available. (§ 31-7(E)(2))
Punitive Damages	Not available.
Pre- and Post-Judgment Interest	Not available.
Equitable Relief	Equitable relief is available, namely “placement or restoration of any person in or to such status in which the Commission finds he or she would be but for respondent’s violation(s).” (§ 31-7(E)(2))
Attorneys’ Fees	Not available.
Civil Penalty	Not available.
Other Relief	The Commission is permitted to bring an action in the appropriate court if it determines that a violation has occurred and appropriate remedies have not been made. (§ 31-8) If the individual who violates the Ordinance is a public contractor, the contractor may be declared ineligible for public contracts until it is determined that the contractor will comply with the recommendations made by the Human Rights Commission. (§ 31-10(A)) An individual in violation of the Ordinance may lose or be refused public financial assistance for their program or activity until it is determined that they will comply with the recommendations of the Human Rights Commission. (§ 31-10(B))

## Administrative Body

The administrative body responsible for handling complaints under the Arlington Human Rights Ordinance is the Human Rights Commission.

### Human Rights Commission

**Responsibilities.** The Human Rights Commission holds primary responsibility to receive, investigate, and conciliate complaints from those who believe they have been victims of unlawful discrimination. The Commission meets the second Thursday of each month at 7:30 pm.

The Commission processes cases for the Equal Employment Opportunity Commission

through a work-sharing agreement.<sup>6</sup>

**Composition.** The Commission consists of 12 members who all reside in Arlington County and are appointed by the County Board. Members are required to be “broadly representative of the community, to the extent practicable.” Commissioners serve for a three-year term.

**Staff.** The Commission also has 2 investigators and 1 administrative staff member. The County Manager appoints an Executive Director of the Commission and such staff as may be authorized.

**Budget.** The Commission’s budget is part of the Office of the County Manager’s Budget. The Commission’s budget for FY2014 is

<sup>6</sup> <http://www.eeoc.gov/field/washington/fepa.cfm>

\$884,674, and FY2015 is \$994,919.

**Accountability.** The Commission is required to make, at least annually, a written report of its activities to the County Board along with its recommendations concerning measures to be taken to further the purposes of the Ordinance. The Commission is required to maintain records of its hearings in accordance with the Virginia Freedom of Information Act. However, there are no provisions in the Ordinance requiring minutes of Commission meetings to be kept or made public, and such minutes are not available online.

**Statistics.** Statistics from the Commission are difficult to locate. According to a 2010 Fair Housing Report, there were 38 human rights complaints filed with the Commission during FY2008. The Commission received 300 inquiries which did not result in complaints being filed. In FY2009, the Commission received 65 complaints and 320 inquiries. The Ordinance does not define “inquiry,” and it is unknown why so few inquiries resulted in complaints.

## **Methods of Enforcement**

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### ***Judicial (§ 31-8)***

The Ordinance provides a private right of action to “[a]ny person who is aggrieved by any act prohibited” by the Ordinance, so standing for a court action is broader than standing for an administrative complaint. In filing a case in court, an individual is permitted to seek damages, redress of injury, or injunctive relief arising out of any prohibited act as provided for by applicable law. The statute does not require the exhaustion of administrative remedies, so individuals are not required to seek any relief/remedies in an administrative process as a condition of seeking enforcement from a court or other agency. § 31-13.

The Commission is also permitted to seek judicial enforcement if it believes a violation

has been committed and remedial measures have not been taken. § 31-8.

### ***Administrative (§ 31-7)***

A complaint may be filed with the Commission by “any person alleging that a violation of [the Ordinance] has been committed against such person,” meaning only the victim of discrimination may file a complaint with the Commission. The standing to file an administrative complaint is narrower than the standing to file a complaint in court. Administrative complaints must be “formal,” meaning they must be filed on a form supplied by the Commission and sworn to or affirmed (non-formal complaints must be “formalized” within seven days of receipt by the Commission). § 31-7(A).

### ***Time Limitations***

The Executive Director of the Commission may dismiss a complaint if the alleged violation ended more than 180 days before the complaint was filed. Further, complaints are considered automatically dismissed a year after filing unless:

1. The parties reach a conciliation agreement;
2. The Commission has issued findings and recommendations;
3. The Commission previously dismissed the complaint; or
4. The Commission determines there is good cause for extending the time limitation. However, the Commission may not extend time beyond two years from the filing date of the complaint.

### **■ Step 1: Executive Director Investigation (§ 31-7(B))**

**First Phase: Investigation.** Upon filing of a complaint, the Executive Director is tasked with investigating the allegations.

The Executive Director may dismiss a complaint if it fails to allege adequately a violation of the Ordinance or is otherwise facially deficient. If the Executive Director determines the complaint is not deficient on its face, a determination is made after the investigation.

**Second Phase: Determination.** Upon completion of the investigation, the Executive Director must render a determination in writing as to whether there are reasonable grounds to believe a violation of the Ordinance has occurred, and listing the facts supporting the determination. “Reasonable grounds” means it is more likely than not that a violation occurred. There are three possible determinations: (1) there are reasonable grounds to believe a violation has occurred; (2) the complaint lacks reasonable grounds to believe a violation has occurred; or (3) the available evidence does not permit a determination as to whether there are reasonable grounds to believe a violation has occurred.

**If Reasonable Grounds:** If the Director determines that there are reasonable grounds to believe a violation has occurred, the Director is empowered at any time to attempt to conciliate and resolve the complaint with all interested parties. Conciliation conferences are informal and what is stated during those conferences is required to remain confidential and not used as evidence before the Commission.

- If conciliation is successful, the agreement may be reduced to a written agreement (which can be later enforced by the Commission).
- If conciliation is unsuccessful, the Director shall refer the

matter to the Commission for determination as to whether to hold a public hearing.

**If No Reasonable Grounds:** If the Director believes the complaint lacks reasonable grounds to believe a violation of the Ordinance has occurred, the Director must dismiss the complaint and advise the complainant in writing that the dismissal will be final in ten business days unless the complainant files a request for a review with the Commission.

**If Not Enough Evidence to Decide:** If the Director determines that the available evidence does not permit a determination as to whether there are reasonable grounds to believe a violation of the Ordinance has occurred, the Director must send written notice to the parties (with the reasons for such determination) and refer the matter to the Commission for a determination as to whether to hold a public hearing.

■ **Step 2: Commission Investigation (§ 31-7(C))**

The Commission determines whether to hold a public hearing in the following instances:

1. The Executive Director determines there are reasonable grounds to believe a violation has occurred AND determines that conciliation was unsuccessful or should not be attempted;
2. The Executive Director determines that there are not reasonable grounds to believe a violation has occurred AND the complainant has filed a request with the Commission to review that determination AND the

Commission has determined that the complaint should not be dismissed or referred to the Executive Director for further investigation or conciliation; or

3. The Executive Director determines that the available evidence does not permit a determination as to whether there are reasonable grounds to believe a violation has occurred.

The Commission's decision is based on "its sole discretionary judgment as to how enforcement of [the Ordinance] would be best served, and other considerations deemed relevant, such as the time and expense to the parties if a hearing is held and the seriousness of the alleged violation." If the Commission determines not to hold a public hearing, it can either dismiss the complaint or take action as it deems appropriate.

### ■ **Step 3: Commission Hearing (§ 31-7(D & E))**

If the Commission decides to hold a public hearing, the parties must be notified at least 14 calendar days before the hearing. The hearing is public, and records of the hearing must be open for inspection and copying pursuant to Virginia's Freedom of Information Act.

#### **Parties' Rights and Responsibilities.**

Parties involved in a public hearing may be represented by counsel. They have a right to present their case by oral or documentary evidence (given under oath or affirmation), submit rebuttal evidence, and conduct cross-examination (as permitted by the Commission). Written statements prior to the hearing are permitted (and may be requested by the Commission). The burden of persuasion is upon the complainant to prove by a preponderance of the evidence that the respondent has committed one or

more violations of the Ordinance.

**Commission's Responsibilities.** The Commission has the sole discretion to include or exclude evidence. The Executive Director is responsible for assuring the development of the evidentiary record and may introduce evidence, examine witnesses, or make argument before the Commission if the Director determines it is necessary to do so. The Commission is required to maintain records of its hearings in accordance with the Virginia Freedom of Information Act.

**Result of Hearing.** After the Commission takes evidence, it determines by a preponderance of the evidence whether the respondent has committed or is committing the alleged violation(s) of the ordinance. If the Commission determines that a violation has taken place, it must state its findings and may issue recommendations, both of which are required to be served "promptly" on the parties. If the Commission determines that a violation has not occurred, the Commission must state its findings and dismiss the complaint, with "prompt" notice given to the parties.

### ■ **Step 4: Enforcement of Judgment and Appellate Rights (§ 31-8)**

The Commission's decision and recommendations are judicially enforceable. The Commission can, with County Board approval, seek enforcement of its decisions in court if necessary. The Commission is permitted to bring an action in any court of competent jurisdiction to prove that there was a violation, secure compliance with the Ordinance, and/or obtain redress or relief for any person injured by the violation.

The Ordinance does not discuss or provide any appellate rights of complainants before the Commission.

## Demographics

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The following are demographics for Arlington County, according to the 2012 American Community Survey:

### Race

- 63.8% White (non-Latino)
- 15.1% Hispanic/Latino
- 9.5% Asian (non-Latino)
- 8.4% African-American (non-Latino)
- 3.2% Other (non-Latino)

### Income (by household)

- Median household income: \$102,459
- Average household income: \$132,066
- Less than \$50,000: 20.4%
- \$50,000 to \$99,999: 28.5%
- \$100,000 to \$199,999: 33.4%
- \$200,000+: 17.7%

### Age

- Under 5: 5.7%
- Age 5-19: 11.5%
- Age 20-64: 73.9%
- Age 65+: 8.8%

## Summary and Recommendations

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### Summary

The Arlington County Human Rights Ordinance generally provides protection for common protected classes, with the notable

exception of source of income. It also provides explicit protection against retaliation for reporting discrimination and encouraging nondiscrimination policies or practices.

The Ordinance provides for administrative enforcement through the Human Rights Commission and its Executive Director, but also allows for private rights of action to be brought in Virginia courts. The Ordinance includes both compensatory damages and injunctive relief, but does not explicitly provide for pre- or post-judgment interest, attorneys' fees, punitive damages, or civil penalties. It also lacks an appeals process for complaints dismissed by the Commission.

### Recommendations

Based on a comparison of the protections afforded in the surrounding jurisdictions, Arlington should amend its ordinance in the following ways to strengthen its civil and human rights protections:

1. **Add additional protected categories.** Arlington should add additional protected categories, most importantly source of income in housing. Without this protection, landlords are permitted to refuse housing to individuals who rely on public assistance, such as Housing Choice Vouchers and Social Security benefits, or even child support payments to pay for housing; many low-income individuals are legally discriminated against and prevented from obtaining safe, secure housing. Arlington should also add protected categories in housing and employment for other vulnerable populations, including victims of domestic violence, gender identity, and family responsibilities, and add protections in public accommodations for gender identity.
2. **Strengthen the remedies available.** While compensatory damages and some

injunctive relief are available, Arlington should amend its ordinance to provide for the recovery of punitive damages, civil penalties, and attorneys' fees. Compensatory damages and injunctive relief in many cases may not provide sufficient economic harm to deter potential violations of the Ordinance. Awarding attorneys' fees to successful complainants would allow for more individuals to be represented by counsel in discrimination proceedings, helping ensure that victims of discrimination have a knowledgeable, experienced advocate working on their behalf.

3. **Eliminate barriers to filing a complaint.** Arlington should relax the requirement that a complainant file a "formal" complaint that is on a specified form and empower its staff to take formal complaints through other reasonable avenues. Complainants should not be turned away simply because they failed to follow proper procedures, when those procedures do not serve a legitimate purpose.
4. **Establish a formal appeals process.** Currently the Ordinance does not have any process by which an individual can appeal a decision of the Human Rights Commission.



# IX. Fairfax County, Virginia

## Statute

The Fairfax County Human Rights Ordinance is Chapter 11 of the Fairfax County Code (“Human Rights Code” or “the Ordinance”).

## Protected Categories

	Public Accommodations <sup>1</sup>	Housing <sup>2</sup>	Employment	Credit	Education <sup>3</sup>	Commercial Real Estate <sup>4</sup>
Race	Yes	Yes	Yes	Yes	Yes	Yes
Color	Yes	Yes	Yes	Yes	Yes	Yes
Religion	Yes	Yes	Yes	Yes	No <sup>5</sup>	Yes
National Origin	Yes	Yes	Yes	Yes	Yes	Yes
Sex	Yes <sup>6</sup>	Yes	Yes	Yes	Yes <sup>7</sup>	Yes
Familial Status <sup>8</sup>	No	Yes <sup>9</sup>	No	No	No	No
Disability	Yes	Yes	Yes	Yes	Yes	Yes
Age <sup>10</sup>	Yes	Yes	Yes	Yes	Yes	Yes
Genetic Information	No	No	No	No	No	No
Marital Status	Yes	Yes	Yes	Yes	Yes	Yes
Source of Income	No	No	No	No	No	No
Sexual Orientation	No	No	Only in public sector (state government) employment <sup>11</sup>	No	No	No

<sup>1</sup> Exceptions for a bona fide private club or other establishments not in fact open to the public.

<sup>2</sup> Exceptions given for rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

<sup>3</sup> The Fairfax County Human Rights Ordinance only applies to private education.

<sup>4</sup> Non-residential real estate means any real property used for other than residential purposes.

<sup>5</sup> Religious discrimination is generally impermissible in private education, but it is permissible to give preference to persons of the same religion or denomination as the educational institution or to make a selection of applicants or individuals that is reasonably calculated to promote the religious principles for which it is established or maintained.

<sup>6</sup> Exception for contact sports.

<sup>7</sup> Exception for contact sports.

<sup>8</sup> Defined as one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

<sup>9</sup> Familial status protection not applicable to “housing for older persons,” which means housing: (i) provided under any federal, state, or local program that is lawfully determined to be specifically designed and operated to assist elderly persons, as defined in the federal, state or local program; or (ii) intended for, and solely occupied by, persons 62 years of age or older; or (iii) intended for, and solely occupied by, at least one person 55 years of age or older per unit.

<sup>10</sup> Means any individual who is at least 40 years of age.

<sup>11</sup> See Executive Order 1, Gov. Terence McAuliffe, signed Jan. 11, 2014, available at <https://governor.virginia.gov/policy/executive-orders/eo-1-equal-opportunity/>.



The definitions of many of these categories are found in Section 11-1-2.

Fairfax County also specifically protects against **retaliation**. Accordingly, it is unlawful to engage in economic retaliation, to harm any person or property, or to otherwise retaliate against any person because that person: (1) has opposed any violation of the Human Rights Code; (2) has complied with the Human Rights Code; (3) has filed a complaint alleging a violation of the Human Rights Code; (4) has testified or participated in any proceeding under the Human Rights Code; or (5) has exercised any right conferred in the Human Rights Code. The Ordinance further prohibits **coercing** someone to commit an act that is unlawful under the Human Rights Code. See § 11-1-9.

## Relief Available (§§ 11-1 and 11-2 et seq.)

Damages and a wide variety of other relief are available for violations of the Human Rights Code.

Compensatory Damages	Compensatory damages are available. (§ 11-2-18(d)(2))
Punitive Damages	<p>Punitive damages “without limitation otherwise imposed by state law” are available:</p> <ul style="list-style-type: none"> <li>• In a civil action brought by the County Attorney in cases in which: (1) a person or group is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by the Human Rights Ordinance; (2) any group of persons has been denied any of the rights granted by the Human Rights Ordinance and such denial raises an issue of general public importance; or (3) a respondent breaches a conciliation agreement. (§ 11-2-18(d)(2))</li> <li>• In a civil action brought by a private party, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur. (§ 11-2-19(c))</li> </ul>
Pre- and Post-Judgment Interest	Not available.
Equitable Relief	Equitable relief is available, namely “placement or restoration of any person in or to such status in which the Commission finds he or she would be, but for respondent’s violation(s).” (§ 11-1-15(a))
Attorneys’ Fees	<p>Reasonable attorneys’ fees and costs are available:</p> <ul style="list-style-type: none"> <li>• When a person solicits or accepts compensation of any kind for the release or removal of any prohibited restrictive covenant and related reversionary interest. (§ 11-2-7(c))</li> <li>• In any court proceeding in which the County Attorney commences a civil action upon referral of charge by the Human Rights Commission. (§ 11-2-17(d))</li> <li>• In a civil action brought by a private party, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur. (§ 11-2-19(c))</li> </ul>
Civil Penalty	A civil penalty is available in a civil action brought by the County Attorney in cases in which: (1) a person or group of persons is engaged in a pattern or practice of discrimination; (2) any group of persons has been denied any of the rights granted by the Human Rights Ordinance and such denial raises an issue of general public importance; or (3) a respondent breaches a conciliation agreement. The civil penalty may not exceed \$50,000.00 for a first violation or \$100,000.00 for any subsequent violation. (§ 11-2-18(d)(2))
Other Relief	<p>The Human Rights Ordinance is a non-exclusive remedy for aggrieved persons. Nothing in the Ordinance prevents any person from exercising any right or seeking any remedy to which he or she might otherwise be entitled, nor must a person pursue any remedy contained in the Ordinance prior to seeking relief from a court or other agency, except as otherwise provided by applicable state or federal laws. (§ 11-1-20)</p> <p>If the Commission declares a respondent to be in violation of the Human Rights Code, that respondent may be deemed ineligible for award of a public contract or ineligible to negotiate with the County, or may have any public financial assistance to his program or activities terminated, until the Commission is satisfied that the respondent will comply with the recommendations of the Commission and the provisions of the Human Rights Code. (§ 11-1-17)</p>

## Administrative Body

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The administrative body responsible for handling complaints under the Fairfax County Human Rights Ordinance is the Fairfax County Human Rights Commission (“Human Rights Commission” or “Commission”).

### Human Rights Commission

**Responsibilities.** The Human Rights Commission receives and investigates complaints from any person alleging violations of the Human Rights Ordinance. The Commission also investigates, on its own initiative, suspected violations of the Ordinance.

The Human Rights Commission participates in the Fair Housing Assistance Program (FHAP).<sup>12</sup> The Commission also processes cases for the Equal Employment Opportunity Commission through a work-sharing agreement.<sup>13</sup>

**Composition.** The Commission consists of 12 members who are residents of Fairfax County and who are broadly representative of the racial, sexual, religious, ethnic, disabled, and age groups in the County. The members are appointed by the Board of Supervisors and are entitled to receive such compensation as the Board of Supervisors directs.

**Staff.** The County Board of Supervisors appoints a Director of the Commission upon the joint recommendation of the Commission and the County Executive. The Director serves full time in that capacity. The Board of Supervisors authorizes the Commission to employ such additional staff personnel as are deemed warranted to secure effective compliance with the County’s Human Rights Code.

According to the Fairfax County Office of Human Rights and Equity Programs Fiscal Year 2013 Adopted Budget Plan (“Budget

Plan”), there are 14 positions authorized for the Human Rights Division of the County’s Office of Human Rights and Equity Programs.

**Budget.** The Commission’s budget, which is part of the budget for the Human Rights Division of the County’s Office of Human Rights and Equity Programs, was \$1,075,511 in FY2013.

**Accountability.** The Commission is required to file with the County Board of Supervisors on or before April 1 of each year a full written record of its activities under the provisions of the Ordinance and its recommendations concerning measures to be taken to further the purposes of the Ordinance.

At the end of each investigation carried out under the Ordinance, the Commission must prepare a final investigative report that may contain: (1) the names and dates of contacts with witnesses; (2) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent; (3) a summary description of other pertinent records; (4) a summary of witness statements; and (5) answers to interrogatories.

The Commission must make available to the aggrieved person and the respondent, at any time, upon request following completion of the Commission’s investigation, information derived from an investigation and any final investigative report relating to that investigation.

**Statistics.** The most recent statistics on housing discrimination complaints located were from Fairfax County’s 2011 Analysis of Impediments. *Fairfax County- Fair Housing Analysis of Impediments; Five-Year Fair Housing Planning Document (2011-2015); Efforts to Affirmatively Further Fair Housing*, (“the Analysis of Impediments”), available at <http://www.fairfaxcounty.gov/ohrep/hrd/publications/analysis-of-impediments.pdf>.

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<sup>12</sup> [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP/agencies#VA](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#VA)

<sup>13</sup> <http://www.eeoc.gov/field/washington/fepa.cfm>

Provided within the Analysis of Impediments is the following table regarding fair housing complaints filed with the Commission (which includes housing discrimination arising under federal law as well as Fairfax County law) between 2006 and June 1, 2010:

***Complaints of Housing Discrimination Filed with the Fairfax County Human Rights Commission, 2006 through June 1, 2010***

	Complaints Filed**	Race/Color	Religion	National Origin	Sex	Disability	Familial Status	Elderly	Marital Status	Retaliation	Allegation Total
2006	12	2	1	2	0	7	0	0	0	2	14
2007	23	6	2	9	3	4	4	1	0	1	30
2008	11	5	0	3	1	6	0	0	0	1	16
2009	41 (1)*	9	8	14	4	17	3	2	0	6	63
2010	8* (6)***	2	1	3	1	5	0	0	1	1	14
<b>TOTAL</b>	<b>95</b>	<b>24</b>	<b>12</b>	<b>31</b>	<b>9</b>	<b>39</b>	<b>7</b>	<b>3</b>	<b>1</b>	<b>11</b>	<b>137</b>
<b>Percent of Allegations</b>		<b>17.5%</b>	<b>8.7%</b>	<b>22.6%</b>	<b>6.5%</b>	<b>28.4%</b>	<b>5.1%</b>	<b>2.1%</b>	<b>0.7%</b>	<b>8.0%</b>	

\*One (1) investigation remained to be completed at the time the Analysis of Impediments was issued.  
 \*\*Complaints filed through June 1, 2010.  
 \*\*\*Six (6) investigations remained to be completed at the time the Analysis of Impediments was issued.  
 Note: A complaint may contain more than one allegation of housing discrimination. Total percentages may not add up to 100% due to rounding.  
 Source: Fairfax County Human Rights Commission.

The Analysis of Impediments further noted that From January 1, 2006 to June 1, 2010, there were 95 administrative complaints filed with the Commission, 88 of which had been closed as of the issuance of the Analysis of Impediments. Of the seven complaints remaining, one was filed in 2009 and six were filed in 2010. Of the 88 complaints completed or closed, 20 (22.7%) were conciliated, three (3.4%) had received a finding of probable cause, and 65 (73.9%) were deemed to be no cause cases.

The Analysis of Impediments also stated that during 2009, 41 housing discrimination complaints were filed with the Commission, which was substantially higher than in previous years. All but one of the 41 cases had been closed as of the issuance of the Analysis of Impediments. Of the 40 cases filed and closed in 2009, ten (25%) were conciliated, three (7.5%) had received a finding of probable cause, 26 (65%) were classified as no cause cases, and one (2.5%) was withdrawn by the complainant.

Between August 2008 and the issuance of the Analysis of Impediments, there had been only two complaints filed with the Commission by civil rights or fair housing organizations.

In analyzing the types of complaints it received, the Commission noted that 5.1% of the complaints it received were based on familial status, which is far below national averages of complaints filed with HUD (22%) and substantially equivalent agencies (19%). In contrast, however, 22.6% of the complaints received by the Commission were related to national origin discrimination, a rate which exceeds national averages for HUD (9%) and other substantially equivalent agencies (14%). The Commission assessed that the likely cause of these differences from the national averages is the particular demographics of Fairfax County, which has seen a rapid increase in immigration.

## Methods of Enforcement

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### *Judicial (§ 11-1-20)*

The Ordinance provides a private right of action to “[a]ny person who is aggrieved by any act prohibited” by the Ordinance. In filing a case in court, an individual is permitted to seek damages, redress of injury, or injunctive relief arising out of any prohibited act as provided for by applicable law. The Ordinance does not require the exhaustion of administrative remedies, so individuals are not required to seek any relief/remedies in an administrative process as a condition of seeking enforcement from a court or other agency.

The Commission is also permitted to seek judicial enforcement if it believes a violation has been committed, is being committed, or is about to be committed. § 11-1-11(b)(12).

### *Administrative (§ 11-1-13(a))*

A complaint may be filed with the Commission by “by any person alleging that a violation of [the Ordinance] has been committed.” All complaints must be formalized on a form supplied by the Commission within a “reasonable time.”

### **Time Limitations (§§ 11-1-22 and 11-2-24)**

A complaint filed under the Ordinance must be dismissed by the Director of the Commission (“Director”) if the complainant knew or should have known that the alleged violation of the Ordinance ceased more than one year prior to the date of filing of the complaint.

#### ■ **Step 1: Director’s Investigation and Determination (§ 11-1-13(b))**

**Investigation.** Upon the filing of a complaint, the Director is tasked with investigating the allegations. The Director may dismiss a complaint if it fails to allege adequately a violation of the Ordinance

or is otherwise deficient. If the Director determines the complaint adequately alleges a violation of the Ordinance and is not deficient, the Director conducts and investigation and makes a determination.

(1) **If There Are Reasonable Grounds:** If the Director determines that there are reasonable grounds to believe a violation of the Ordinance has occurred, he or she shall then determine: (i) whether conciliation should be attempted; or (ii) whether the matter should be referred directly to the Commission for a determination as to whether or not to hold a public hearing.

- If conciliation is successful and agreed to by the vote of the Commission, the complaint will be resolved.
- If conciliation is unsuccessful, the matter is forwarded to the Commission for a determination of whether to hold a public hearing.

(2) **If There Are No Reasonable Grounds:** If the Director determines that the complaint lacks reasonable grounds to believe a violation of the Ordinance has occurred, he or she will dismiss the complaint and advise the complainant in writing that such dismissal will become final unless, within ten business days of date of notice of the dismissal, the complainant files with the Commission a request for:

- Reconsideration of the determination by the Director; and/or
- An appeal to the Commission in which the Commission shall afford the complainant an opportunity to appear before the Commission in person or by representative, or by letter,

as the complainant may desire. The Commission Chairperson may appoint a Hearing Tribunal consisting of a minimum of three members of the Commission, sitting as the Commission.

After its review, the Commission may dismiss the complaint, direct the Director to continue the investigation or proceed with conciliation efforts, or determine to hold a public hearing on the allegations in the complaint.

**(3) If There Is Not Enough Evidence to Decide:** If the Director determines, after investigation, that the available evidence does not permit a determination as to whether or not there are reasonable grounds to believe a violation of the Ordinance has occurred, he or she will:

- Provide the parties a written notice that includes a statement of the reasons for such determination; and
- Refer the matter to the Commission for a determination of whether to hold a public hearing.

■ **Step 2: Commission's Determination Whether to Hold a Public Hearing (§ 11-1-13(b)(5)(D))**

The Commission determines by majority vote whether to hold a public hearing in the following instances:

(1) When there is a determination by the Director that there are reasonable grounds to believe that a violation of the Ordinance has occurred, AND:

- A determination by him or her that conciliation should not be attempted; or

- A determination by him or her that conciliation has been attempted and has been unsuccessful.

(2) When there is a determination by the Director that there are no reasonable grounds to believe that a violation of the Ordinance has occurred, but:

- The complainant has filed a proper request for an appeal of such determination; AND
- The Commission has concluded upon reviewing such determination that the complaint should not be dismissed and that the complaint should not be referred to the Director for further investigation.

(3) When there is a determination by the Director that the available evidence does not permit a determination as to whether there are reasonable grounds to believe that a violation of the Ordinance has occurred.

The Commission bases its determination of whether to hold a public hearing on its judgment as to how enforcement of the Ordinance would be best served. If the Commission determines not to hold a public hearing, it either dismisses the complaint or takes such action as it deems appropriate and consistent with the purposes of the Ordinance and the powers of the Commission.

■ **Step 3: Commission Hearing (§ 11-1-14)**

If the Commission decides to hold a hearing, the parties must be notified at least 14 calendar days before the hearing. The hearing is open to the public.

**Parties' Rights and Responsibilities.**

Each party is entitled:

- To be represented by privately retained counsel of his or her choice;

- To present his or her case or defense by oral or documentary evidence, to be given under oath or by affirmation;
- To submit rebuttal evidence; and
- To conduct such cross-examination as may be required for a full and true disclosure of the facts.

**Commission’s Responsibilities.** The Director is responsible for assuring the development of the evidentiary record before the Commission and may introduce evidence, examine or cross-examine witnesses, or make argument if he or she deems it advisable in order to fully apprise the Commission of the facts or the applicable law.

The Commission must keep a full record of the hearing, which is public and open to inspection by any person. Any party may request that the Commission furnish it a copy of the hearing record and must reimburse the Commission for the cost of producing a copy.

**Result of Hearing.** If after a public hearing the Commission determines that the respondent has committed or is committing the alleged violation(s) of the Ordinance, the Commission states its findings and may issue recommendations, providing notice to the respondent to cease and desist from any violation(s) and to take any appropriate actions.

If the Commission finds that the respondent has not engaged in the alleged violation(s) of the Ordinance, the Commission will state its findings and dismiss the complaint.

■ **Step 4: Civil Action by County Attorney (§§ 11-2-15, 11-2-17, 11-2-18)**

Upon failure to resolve a complaint by conciliation and after consultation with the Office of the County Attorney, the Commission will issue a charge and immediately refer the charge to the County Attorney. Within 30 days, the County Attorney will commence and maintain a civil action seeking relief on behalf of the Commission and the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur.

In the event of a breach of a conciliation agreement by a respondent, the Commission may authorize a civil action by the County Attorney. Within 90 days of the breach, the County Attorney may commence a civil action in circuit court for appropriate relief.

The County Attorney may enforce a subpoena issued under the Ordinance in circuit court.

■ **Step 5: Enforcement of Judgment and Appellate Rights (§§ 11-1-15(b), 11-1-13(C), and 11-1-17(d)).**

If the Commission makes a finding of probable cause that a violation of the Ordinance occurred and the respondent fails to adequately take appropriate action, the Commission may, through the County Attorney, seek prevention of or relief from a violation of the Ordinance through enforcement authorities.

In addition, the Commission has the right to pursue, through the County Attorney, appropriate legal remedies to enforce a conciliation agreement, including, but not limited to, the right to file an action for breach of contract in court.

Any respondent adversely affected by enforcement of the Ordinance by Fairfax County agencies (see “Other Relief” section of the “Relief Available” chart above) has the right to appeal pursuant to Chapter 11 of the Ordinance.

## Demographics

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The following are demographics for Fairfax County, according to the 2012 American Community Survey:

### Race

- 54.6% White (non-Latino)
- 17.5% Asian (non-Latino)
- 15.5% Hispanic/Latino
- 8.9% African-American (non-Latino)
- 3.5% Other (non-Latino)

### Income (by household)

- Median household income: \$109,383
- Average household income: \$138,632
- Less than \$50,000: 18.4%
- \$50,000 to \$99,999: 26.5%
- \$100,000 to \$199,999: 35.4%
- \$200,000+: 19.6%

### Age

- Under 5: 6.7%
- Age 5-19: 19.6%
- Age 20-64: 63.6%
- Age 65+: 9.9%

## Summary and Recommendations

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### Summary

The Fairfax County Human Rights Ordinance generally provides protection for commonly-protected classes, with the exception of sexual orientation (which is protected only in state government employment) and source of income. It also provides protection against retaliation for: (1) opposing any practice based on a good faith belief that it is unlawful under the Human Rights Code; (2) complying with the terms of the Human Rights Code; (3) having a complaint filed in his or her behalf; (4) filing a complaint or testifying, assisting, or participating in any manner in any investigation, proceeding, or hearing under the Human Rights Code; or (5) exercising or attempting to exercise any right conferred in the Human Rights Code.

The Ordinance provides for administrative enforcement through the Human Rights Commission, through appropriate legal remedies pursued by the County Attorney and through County agency enforcement, but it also provides a private right of action for claims to be brought in Virginia courts. The Ordinance includes compensatory damages and injunctive relief, and punitive damages, civil penalties, and attorneys’ fees in some circumstances, but does not explicitly provide for pre- or post-judgment interest.

### Recommendations

1. **Add additional protected categories.** Fairfax County should add additional protected categories, most importantly sexual orientation. The absence of protections from discrimination based on sexual orientation means that Fairfax County is out of alignment with the other D.C.-area jurisdictions. Fairfax County should also add protections for additional categories: source of income, status as

a victim of domestic violence, gender identity, and family responsibilities.

2. **Expand access to attorneys' fees awards.** Fairfax County should modify the Ordinance to allow for the award of attorneys' fees in all discrimination cases, not just for limited situations. Awarding attorneys' fees to successful complainants would allow for more individuals to be represented by counsel in discrimination proceedings, helping ensure that victims of discrimination

have a knowledgeable, experienced advocate working on their behalf.

3. **Strengthen punitive damages.** Similar to attorneys' fees awards, Fairfax County should modify the Ordinance to allow for the award of punitive damages for all violations of the Ordinance. Compensatory damages and injunctive relief in many cases may not provide sufficient economic harm to deter potential violations of the Ordinance.



# X. City of Alexandria, Virginia

## Statute

The Alexandria Human Rights Ordinance is Chapter 4 of Title 12 of the Alexandria Code of General Ordinances (“Human Rights Code”).

## Protected Categories

	Public Accommodations	Housing <sup>1</sup>	Employment <sup>2</sup>	Credit	Education	Commercial Real Estate <sup>3</sup>
Race	Yes	Yes	Yes	Yes	Yes	Yes
Color	Yes	Yes	Yes	Yes	Yes	Yes
Religion	Yes	Yes	Yes	Yes	No	Yes
National Origin	Yes	Yes	Yes	Yes	Yes	Yes
Sex	Yes	Yes	Yes	Yes	Yes	Yes
Familial Status <sup>4</sup>	No	Yes	No	No	No	No
Disability	Yes	Yes	Yes	Yes	Yes	Yes
Age	Yes	Yes	Yes	Yes	No	Yes
Genetic Information	No	No	No	No	No	No
Marital Status	Yes	Yes	Yes	Yes	No	Yes
Source of Income	No	No	No	No	No	No
Sexual Orientation	Yes	Yes	Yes	Yes	Yes	Yes

The definitions of many of these categories are found in Section 12-4-3.

The City of Alexandria protects against **retaliation**, making it unlawful to use economic reprisal or intimidation, to harm or threaten to harm, to retaliate against or to interfere with, any person who

<sup>1</sup> Exceptions given for single family house sold or rented by owner; housing with 4 units or less where the owner occupies one unit; religious organizations; housing intended solely for the elderly or for minors; educational institution, hospital, nursing home, or religious or correctional institution that require that both sexes not occupy any single dwelling.

<sup>2</sup> Exceptions given for bona fide occupational qualification reasonably necessary to the normal operation of a business or enterprise; observance of bona fide seniority system or employee benefit plan; contribution rates for group insurance; employment agencies providing services only to elderly persons or to minors; standards of compensation based on a bona fide seniority or merit system or employee location.

<sup>3</sup> Defined as land or any improvement thereon, or both, or an interest in land or any improvement thereon, that is offered for sale or lease and that is being utilized, or may be utilized, by a commercial or industrial use under the City of Alexandria Zoning Ordinance, whether such use is a permitted or special use.

<sup>4</sup> Defined as one or more individuals who have not attained the age of 18 years and who are domiciled with: (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of a parent or other person having legal custody, with the written permission of the parent or other person. The term “familial status” also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. The provisions regarding familial status do not apply with respect to housing for older persons.

has opposed any unlawful practice under this chapter, or who has directly or indirectly complied with this chapter, or who has exercised or attempted to exercise any right under this chapter. See § 12-4-11(2), (3). The law further prohibits directly or indirectly **coercing** someone to commit an act made unlawful by the Human Rights Code. See § 12-4-11(1).

## Relief Available (§§ 2-4-22, 12-4-24)<sup>5</sup>

Damages and a wide variety of other relief can be awarded by the Commission for a violation of the Human Rights Code’s antidiscrimination provisions.

Compensatory Damages	The Commission can recommend compensatory damages appropriate for the violation that occurred.
Punitive Damages	The Commission can recommend punitive damages appropriate for the violation that occurred.
Pre- and Post-Judgment Interest	Not available.
Equitable Relief	“If, at any time after a complaint has been filed, the commission believes that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the commission may after consultation with the City Attorney or his or her designee, certify the matter to the City Attorney to petition a court of competent jurisdiction for injunctive relief.” (§ 12-4-22)
Attorneys’ Fees	Not available.
Civil Penalty	Following a public hearing, the Commission may recommend to the City Manager the imposition of a \$5,000 civil penalty against any person found to have violated any section of the Human Rights Code. (§ 1-1-11) While the Code is silent as to who is paid, according to a source at the Office of Human Rights, the civil penalty is paid to the city.
Other Relief	If a person who is a respondent in a proceeding before the Commission fails to comply with recommendations issued by the Commission, the Commission may bring an appropriate action in any court of competent jurisdiction to secure a judicial order or judgment requiring the person to provide appropriate relief to any complainant and/ or any other individual who has been injured as a result of the person’s violation of this chapter. (§ 12-4-24)

## Administrative Bodies

The Human Rights Commission is responsible for administration of Alexandria’s Human Rights Code while the Office of Human Rights is responsible for its enforcement.

### Office of Human Rights

**Responsibilities.** The Office investigates allegations of discrimination in Housing and Commercial Real Estate, Public Accommodations, Health and Social Services, Education, City Contracts, and Credit. The

Office also processes cases for the Equal Employment Opportunity Commission through a work-sharing agreement.<sup>6</sup>

**Staff.** The Office of Human Rights Staff is comprised of the Human Rights Director, investigators, the ADA Program Manager, and an Administrative Assistant.

### Human Rights Commission

**Responsibilities.** The Human Rights Commission has the power to receive, investigate, and mediate complaints alleging

<sup>5</sup> See [https://library.municode.com/HTML/10349/level3/PTIITHCOGEOR\\_TIT12EDSOSEWE\\_CH4HURI.html](https://library.municode.com/HTML/10349/level3/PTIITHCOGEOR_TIT12EDSOSEWE_CH4HURI.html); see also <http://www.alexandriava.gov/humanrights/info/default.aspx?id=570>

<sup>6</sup> <http://www.eeoc.gov/field/washington/fepa.cfm>

unlawful discrimination, negotiate settlements, conduct studies and hold hearings, and advise the City Council or City Manager on human rights issues affecting the City. The Human Rights Director serves as the staff liaison to the Human Rights Commission and works closely with the Commission in implementing and carrying out its programs. The Office provides the Commission with resources that enable it to address a wide range of issues that impact residents of, and visitors to, Alexandria. The Human Rights Commission periodically raises issues of concern to the Office of Human Rights. After researching such issues, the Office reports back to the Commission. Together, they formulate an appropriate response, frequently through large-scale community outreach and education efforts.

**Composition.** The Commission has 14 members, each appointed by the City Council. Nine members are “at large”; the remaining five represent the Commission on Aging, the Economic Opportunities Commission, the Commission on Persons with Disabilities, the Commission for Women, and the Landlord Tenant Relations Board.

**Budget.** In the exercise of its powers and the performance of its duties the Commission shall not expend funds in excess of those appropriated to it by the City Council and those received by it from approved grants. See § 12-4-15. Grants may be received, with the City Council’s approval, from federal, state, local, and other public or private agencies, organizations and institutions, including but not limited to foundations, colleges, and universities. See *id.* Information on the amount of the Commission’s annual budget is difficult to locate.

**Accountability.** The Commission is required to maintain records of its hearings in accordance with the Virginia Freedom of Information Act. However, there are no provisions in the Code requiring minutes of Commission meetings to

be kept or made public, and such minutes are not available online.

**Statistics.** Statistics about the number or types of complaints filed with the Commission are difficult to locate.

## Methods of Enforcement

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### *Judicial*

**Private right of action.** Alexandria’s Human Rights Code does not appear to provide a private right of action for judicial enforcement.

**Interlocutory relief.** If, at any time after a complaint has been filed, the Commission believes that filing a civil action to preserve the status quo or to prevent irreparable harm appears advisable, the Commission may certify the matter to the City Attorney to petition a court of competent jurisdiction for injunctive relief. See § 12-4-22.

### *Administrative*

Complaints may be filed “only by (i) any person claiming to have been injured by actions or conduct that are unlawful under this chapter (a ‘complainant’), or (ii) the human rights director where the director has probable cause to believe that one or more persons have been the subject of an unlawful discriminatory practice under this chapter.” See § 12-4-16.

**Filing Process.** All complaints shall be made in writing, be under oath or affirmation, and be accompanied by an affidavit.

1. **Intake Process.** To begin the intake process, a complainant must complete an Intake Questionnaire Form and return it to the Office of Human Rights.
2. **Interview with Complainant.** A Human Rights Investigator reviews the Intake Questionnaire Form, determines whether the Office of Human Rights has jurisdiction

over the complaint, and conducts a detailed interview with the complainant to assess the facts relevant to the claim. If a complainant decides to move forward with a formal complaint, the Investigator will prepare a complaint for the complainant's signature.

3. **Mediation Program.** At some point during the filing process, the Intake Investigator may ask a complainant to consider mediation.

### Time Limitations

A complaint must be filed within 300 days after the date of the actions or conduct alleged to be in violation of the Code, except that a complaint alleging housing discrimination may be filed within 365 days of the alleged violation. See § 12-4-16.

#### ■ Step 1: Investigation and determination of probable cause (§ 12-4-17)

**Director's Investigation.** Upon the filing of a complaint by a complainant, the Director will undertake an investigation to determine whether there is probable cause to believe discrimination occurred. That investigation must be completed within 180 days from the date of the filing of a complaint, unless additional time is allowed by the Commission.

**Confidential Conference.** At any time following the filing of a complaint, the Director may convene a conference to mediate the issues in dispute between the parties. The Director may also convene a confidential hearing, over which a panel of Commission members shall preside, to obtain advice from the panel in one or more of the areas set forth in § 12-4-15(a)(17).

**Director's Determination of Probable Cause.** Upon completion of the investigation, the Director will issue a written decision containing the Director's determination as to whether

there is probable cause to believe discrimination occurred.

**If Probable Cause.** If the Director determines that there is probable cause, the director shall immediately endeavor to eliminate the unlawful discriminatory practice complained of in accordance with § 12-4-18.

**If No Probable Cause.** If the Director determines that there is no probable cause, that determination will constitute the final decision of the Commission, which is not subject to judicial review.

#### ■ Step 2: Conciliation (§12-4-18)

**Conciliation.** The Director's effort initially consists of conciliation and persuasion. Conferences and other efforts at conciliation and persuasion are informal and may be conducted by the Director or any member of his or her staff. Nothing said or done during the conciliation efforts can be made public or used as evidence in a subsequent proceeding brought under the Human Rights Code unless all parties agree to do so in writing. § 12-4-18.

**Conciliation Agreement.** If conciliation succeeds, the terms of the conciliation are reduced to writing and signed by or on behalf of the parties and, where the complaint was filed by a complainant, also by the Director. The Director then notifies the Commission through its chairperson that a conciliation agreement has been entered into by the parties.

- **Public Disclosure.** Conciliation agreements may be made public but any public disclosure cannot reveal the identities of the parties involved, except with the consent of all parties.

- **Effect of Conciliation Agreement.** The signing of an agreement shall not constitute an admission on the part of any signatory of a violation of any provision of the Human Rights Code or any other law.

**Breach of Conciliation Agreement.** In the event the Director has reason to believe that a party to a conciliation agreement has breached the agreement, the Director will promptly notify the Commission. The Commission will promptly schedule a public hearing to determine if the agreement has been breached. If upon all the evidence at the hearing the Commission determines that the conciliation agreement has been breached, the Commission may refer the matter back to the Director for further efforts toward conciliation or may, after consultation with the City Attorney, refer the matter to the City Attorney and recommend appropriate legal action to enforce the agreement.

- **Step 3: Commission Hearings and Decisions (§ 12-4-21)**

**Public Hearing.** In the event that a signed conciliation agreement is not reached within 30 days from the determination of probable cause on a complaint filed by a complainant, or within 30 days of the filing of a complaint by the Director, or within additional time allowed by the Commission, the Director will promptly notify the Commission, and the Commission will then schedule a public hearing as soon as possible to determine if a violation of the Human Rights Code has been committed.

**Appearance at Proceedings.** Each party may appear at the hearing in person or by a duly authorized representative, including an attorney. Each party may present testimony and evidence and has the right

to cross-examine. Upon direction of the Commission, part or all of the proceedings shall be transcribed. Any transcription will be public and open to inspection by any person. All testimony must be taken under oath administered by the chairperson or his or her representative.

**Commission Findings.** If the Commission determines, upon a preponderance of the evidence, that the respondent has violated any provision of the Human Rights Code, the Commission will, within 30 days of announcing its determination, issue a written decision containing: (i) its determination; (ii) the facts upon which the determination is based; (iii) an order requiring the respondent to undertake specified actions designed to bring respondent into compliance; (iv) recommendations, if any, regarding the relief that the respondent should provide any complainant and/or other persons injured by respondent's violation; and (v) recommendations, if any, to the city manager regarding the levying of civil penalties against the respondent under § 12-4-24.1.

Although the Code is silent as to who bears the burden of proof, the Office of Human Rights takes the position that the burden is on the movant.

**Advisory Opinions.** To terminate a controversy or to remove uncertainty, upon the request of the Director or any person, the Commission, in its discretion, may issue an advisory opinion declaring that, upon the facts presented, a particular practice, program or regulation does not violate the Human Rights Code. Such opinions are advisory only and shall not preclude the Commission from making a different determination in processing a formal complaint. See § 12-4-27.

#### ■ **Step 4: Enforcement of Judgment and Appellate Rights**

The Commission's decision and recommendations are judicially enforceable. The Commission can, with County Board approval, seek enforcement of its decisions in court if necessary. The Commission is permitted to bring an action in any court of competent jurisdiction to prove that there was a violation, secure compliance with the Code, and/or obtain redress or relief for any person injured by the violation. See § 12-4-24.

#### **Enforcement of Commission's Order.**

If a person who is a respondent in a proceeding before the Commission fails to comply with an order issued by the Commission, the Commission may, after consulting with and receiving the approval of the City Attorney, bring an appropriate action, through the City Attorney, in any court of competent jurisdiction to secure a judicial order requiring the person to comply with the Commission's order or otherwise to come into compliance with the provisions of the Human Rights Code.

#### **Enforcement of Commission's Recommendations.**

If a person who is a respondent in a proceeding before the Commission fails to comply with recommendations issued by the Commission, the Commission, after consulting with and receiving a recommendation from the City Attorney and thereafter receiving authorization from the City Council, may bring an appropriate action, through the City Attorney, in any court of competent jurisdiction to secure a judicial order or judgment requiring the person to provide appropriate relief to any complainant in the proceeding, and/or any other individual, who has been injured as a result of the person's violation of the Code.

**Appeal.** Any person aggrieved by the Commission's decision may have the decision reviewed by a court of competent jurisdiction. However, the Director's determination of no probable cause shall constitute the final decision of the Commission and is not subject to judicial review.

A review proceeding shall be instituted by filing with the court a petition for review naming the Commission as respondent within 30 days of service of the decision to be reviewed. A copy of the petition shall be served upon the City Attorney, who will represent the Commission in the review proceeding. The court, on motion of the petitioner, may issue a writ of certiorari requiring the agency to transmit the record of the proceeding before the Commission on or before a certain date. See § 12-4-23

**Effect of Petition for Review.** The filing of a petition for review will not operate to delay an application to the court for the enforcement of the Commission's order. If an application has been made to the court for enforcement of the order, the petitioner, at any time after the filing of his or her petition, may make a motion to the court to delay enforcement (a "stay").

**Motion to Stay Enforcement.** A motion to stay enforcement shall be made after notice to the Commission, and a stay pending the review will be granted unless it appears to the court that immediate enforcement of the order is essential to the public health or safety. In the order granting a stay, the court may make any provision required to serve the ends of justice.

**Appeal Hearing.** The court, sitting without a jury, will hear the appeal on the record transmitted by the Commission and any additional evidence as may be

necessary to resolve any controversy as to the correctness of the record. The court has discretion to receive additional evidence.

**Court's Decision.** The court may affirm the decision of the Commission or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced.

## Demographics

The following are demographics for the City of Alexandria, according to the 2012 American Community Survey:

### Race

- 53.6% White (non-Latino)
- 21.1% African-American (non-Latino)
- 16.0% Hispanic/Latino
- 5.9% Asian (non-Latino)
- 3.4% Other (non-Latino)

### Income (by household)

- Median household income: \$83,996
- Mean household income: \$114,286
- Less than \$50,000: 26.8%
- \$50,000 to \$99,999: 31.3%
- \$100,000 to \$199,999: 29%
- \$200,000+: 13%

### Age

- Under 5: 7.2%
- Age 5-19: 11.2%
- Age 20-64: 72.4%
- Age 65+: 9.2%

## Summary and Recommendations

### Summary

The Alexandria Human Rights Code generally provides protection for common protected classes, with the notable exception of source of income. It also provides explicit protection against retaliation for reporting discrimination and encouraging nondiscrimination policies or practices.

The Code is administered by the Human Rights Commission and its Executive Director, and enforced by the Office of Human Rights. The Code provides for compensatory damages, punitive damages, civil penalties and injunctive relief (through a petition to a court), but does not explicitly provide for pre- or post-judgment interest or attorneys' fees. The Code allows for the Commission's decisions to be appealed to a court of competent jurisdiction, except that a Director's finding of no probable cause cannot be appealed.

### Recommendations

Based on a comparison of the protections afforded in the surrounding jurisdictions, Alexandria should amend its Code in the following ways to strengthen its civil and human rights protections:

1. **Remove barriers to judicial enforcement.** Alexandria should amend the Code to provide for a private right of action for judicial enforcement and make standing for judicial enforcement available to "any aggrieved person."
2. **Add additional protected categories.** Alexandria should add additional protected categories, most importantly source of income in housing, victims of domestic violence and family responsibilities in housing and employment, and gender identity in housing, employment, and public accommodations. Without these

protections, discrimination would continue to be permitted against vulnerable populations.

3. **Strengthen the remedies available.** While compensatory damages, punitive damages, civil penalties, and some injunctive relief (through a petition to a court) are available, Alexandria should amend its Code to provide for the recovery of pre- or post-judgment interest, expanded injunctive relief, and attorneys' fees. Damages in many cases may not provide sufficient economic harm to deter potential violations of the Code. Awarding attorneys' fees to successful complainants would allow for more individuals to be represented by counsel in discrimination proceedings, helping ensure that victims of discrimination have a knowledgeable, experienced advocate working on their behalf.
4. **Eliminate barriers to filing an administrative complaint.** Alexandria should relax the requirement that a

complainant file a "formal" complaint that is on a specified form and empower its staff to take formal complaints through other reasonable avenues. Complainants should not be turned away simply because they failed to follow proper procedures, when those procedures do not serve a legitimate purpose.

5. **Broaden the statistical data provided by OHR.** There appears to be no statistical data on the OHR or the Human Rights Commission such as how many cases it receives each year, how many cases are pending, how many cases have been closed, average timeline of complaints from start to finish, the percentage of complaints being investigated, or any other statistics on the effectiveness of the OHR or the Commission. The OHR and the Commission should increase their capabilities to track and disseminate this information.

