

HOUSE BILL 679

P5, D5

9lr2502
CF SB 872

By: **The Speaker (By Request – Workplace Harassment Commission) and Delegate Jones**

Introduced and read first time: February 7, 2019

Assigned to: Appropriations and Rules and Executive Nominations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2019

CHAPTER _____

1 AN ACT concerning

2 **Workplace Harassment – Prohibitions, Liability, ~~and~~ Enforcement, and**
3 **Prevention Training**

4 FOR the purpose of prohibiting certain individuals granted special access to the State
5 legislative complex from unlawfully harassing or discriminating against certain
6 individuals; requiring the Department of General Services, if requested by a certain
7 individual, to revoke access granted to a person who violates a certain provision of
8 this Act or a regulated lobbyist who violates a certain provision of law; altering the
9 definition of “employee” for the purposes of certain laws governing discrimination in
10 employment; altering the definition of “employer” for the purposes of certain laws
11 governing discrimination in employment to include certain employers when an
12 employee files a complaint alleging harassment; prohibiting an employer from
13 engaging in harassment of an employee; providing that an employer is liable for
14 certain acts or omissions and under certain circumstances in an action concerning a
15 violation of certain provisions of law based on harassment; altering the time period
16 within which a certain complaint alleging harassment is required to be filed;
17 providing that a complaint filed with a local human relations commission within a
18 certain time period is deemed to have complied with a certain provision of this Act;
19 altering the time period within which a complainant may bring a certain civil action
20 alleging harassment; providing that certain required sexual harassment prevention
21 training for State employees may consist of webinar, computer-based, or online
22 training under certain circumstances; specifying that a certain representative
23 designated for a unit of the University System of Maryland shall be the unit’s Title
24 IX Coordinator; defining certain terms; providing for the construction and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 application of this Act; and generally relating to workplace harassment.

2 BY repealing and reenacting, with amendments,
3 Article – General Provisions
4 Section 5–508
5 Annotated Code of Maryland
6 (2014 Volume and 2018 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – State Government
9 Section 20–601, 20–606(a), 20–1004, and 20–1013(a)
10 Annotated Code of Maryland
11 (2014 Replacement Volume and 2018 Supplement)

12 BY adding to
13 Article – State Government
14 Section 20–611
15 Annotated Code of Maryland
16 (2014 Replacement Volume and 2018 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – State Personnel and Pensions
19 Section 2–203.1(c) and (d)(1)
20 Annotated Code of Maryland
21 (2015 Replacement Volume and 2018 Supplement)

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

24 **Article – General Provisions**

25 5–508.

26 (a) This section does not apply to a State official of the Legislative Branch or a
27 State official of the Judicial Branch.

28 (b) A State official may not, based on any characteristic protected by law,
29 unlawfully harass or discriminate against:

30 (1) an official or employee;

31 (2) an intern, a page, or a fellow in any branch of State government;

32 (3) an individual regulated lobbyist; or

33 (4) a credentialed member of the press.

1 **(C) (1) IN THIS SUBSECTION, “STATE LEGISLATIVE COMPLEX” MEANS**
2 **THE FOLLOWING STATE–OCCUPIED BUILDINGS:**

3 **(I) THE STATE HOUSE;**

4 **(II) THE DEPARTMENT OF LEGISLATIVE SERVICES BUILDING;**

5 **(III) THE HOUSE OF DELEGATES OFFICE BUILDING; AND**

6 **(IV) THE SENATE OFFICE BUILDINGS.**

7 **(2) IF AN INDIVIDUAL WHO IS EXEMPT FROM REGISTRATION UNDER §**
8 **5–702(B)(1) OF THIS TITLE IS GRANTED SPECIAL ACCESS TO THE STATE**
9 **LEGISLATIVE COMPLEX, THE INDIVIDUAL MAY NOT, BASED ON ANY**
10 **CHARACTERISTIC PROTECTED BY LAW, UNLAWFULLY HARASS OR DISCRIMINATE**
11 **AGAINST:**

12 **(I) AN OFFICIAL OR EMPLOYEE;**

13 **(II) AN INTERN, A PAGE, OR A FELLOW IN ANY BRANCH OF STATE**
14 **GOVERNMENT;**

15 **(III) ANOTHER INDIVIDUAL REGULATED LOBBYIST; OR**

16 **(IV) A CREDENTIALLED MEMBER OF THE PRESS.**

17 **(3) THE DEPARTMENT OF GENERAL SERVICES SHALL REVOKE THE**
18 **SPECIAL ACCESS TO THE STATE LEGISLATIVE COMPLEX GRANTED TO A PERSON**
19 **WHO VIOLATES THIS SUBSECTION OR A REGULATED LOBBYIST WHO VIOLATES §**
20 **5–714 OF THIS SUBTITLE IF THE REVOCATION IS REQUESTED BY:**

21 **(I) THE SPEAKER OF THE HOUSE OR THE SPEAKER’S**
22 **DESIGNEE;**

23 **(II) THE PRESIDENT OF THE SENATE OR THE PRESIDENT’S**
24 **DESIGNEE; OR**

25 **(III) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF**
26 **LEGISLATIVE SERVICES OR THE EXECUTIVE DIRECTOR’S DESIGNEE.**

27 **Article – State Government**

28 20–601.

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

2 (b) (1) “Disability” means:

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

5 2. a mental impairment or deficiency;

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

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

10 (2) “Disability” includes:

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

13 2. blindness or visual impairment;

14 3. deafness or hearing impairment;

15 4. muteness or speech impediment; and

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

18 (ii) retardation and any other mental impairment or deficiency that
19 may have necessitated remedial or special education and related services.

20 (c) (1) “Employee” means:

21 (I) an individual employed by an employer; **OR**

22 (II) **AN INDIVIDUAL WORKING AS AN INDEPENDENT**
23 **CONTRACTOR FOR AN EMPLOYER.**

24 (2) Unless the individual is subject to the State or local civil service laws,
25 “employee” does not include:

26 (i) an individual elected to public office;

27 (ii) [an individual chosen by an elected officer to be on the officer’s
28 personal staff;

1 (iii)] an appointee on the policy making level; or

2 [(iv)] (III) an immediate adviser with respect to the exercise of the
3 constitutional or legal powers of an elected office.

4 (d) (1) “Employer” means:

5 (i) a person that:

6 1. is engaged in an industry or business; and

7 2. **A.** has 15 or more employees for each working day in
8 each of 20 or more calendar weeks in the current or preceding calendar year; **OR**

9 **B. IF AN EMPLOYEE HAS FILED A COMPLAINT ALLEGING**
10 **HARASSMENT, HAS ONE OR MORE EMPLOYEES FOR EACH WORKING DAY IN EACH OF**
11 **20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR;**
12 and

13 (ii) an agent of a person described in item (i) of this paragraph.

14 (2) “Employer” includes the State to the extent provided in this title.

15 (3) Except for a labor organization, “employer” does not include a bona fide
16 private membership club that is exempt from taxation under § 501(c) of the Internal
17 Revenue Code.

18 (e) (1) “Employment agency” means:

19 (i) a person that regularly undertakes with or without
20 compensation to procure:

21 1. employees for an employer; or

22 2. opportunities for employees to work for an employer; and

23 (ii) an agent of a person described in item (i) of this paragraph.

24 (2) Except for the United States Employment Service and the system of
25 State and local employment services receiving federal assistance, “employment agency”
26 does not include a unit of the United States, the State, or a political subdivision of the State.

27 (f) “Genetic information” has the meaning stated in § 27–909(a)(3) of the
28 Insurance Article.

1 (g) "Genetic test" has the meaning stated in § 27-909(a)(5) of the Insurance
2 Article.

3 (H) **"HARASSMENT" INCLUDES HARASSMENT BASED ON RACE, COLOR,**
4 **RELIGION, ANCESTRY OR NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, SEXUAL**
5 **ORIENTATION, GENDER IDENTITY, OR DISABILITY, AND RETAINS ITS JUDICIALLY**
6 **DETERMINED MEANING, EXCEPT TO THE EXTENT IT IS EXPRESSLY OR IMPLIEDLY**
7 **CHANGED IN THIS SUBTITLE.**

8 [(h)] (I) (1) "Labor organization" means:

9 (i) a labor organization engaged in an industry; and

10 (ii) an agent of an organization described in item (i) of this
11 paragraph.

12 (2) "Labor organization" includes:

13 (i) an organization of any kind, an agency, or an employee
14 representation committee, group, association, or plan:

15 1. in which employees participate; and

16 2. that exists, wholly or partly, for the purpose of dealing
17 with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other
18 terms or conditions of employment; and

19 (ii) a conference, general committee, joint or system board, or joint
20 council that is subordinate to a national or international labor organization.

21 [(i)] (J) "Religion" includes all aspects of religious observances, practice, and
22 belief.

23 20-606.

24 (a) An employer may not:

25 (1) fail or refuse to hire, discharge, or otherwise discriminate against any
26 individual with respect to the individual's compensation, terms, conditions, or privileges of
27 employment because of:

28 (i) the individual's race, color, religion, sex, age, national origin,
29 marital status, sexual orientation, gender identity, genetic information, or disability
30 unrelated in nature and extent so as to reasonably preclude the performance of the
31 employment; or

1 (ii) the individual's refusal to submit to a genetic test or make
2 available the results of a genetic test;

3 (2) limit, segregate, or classify its employees or applicants for employment
4 in any way that would deprive or tend to deprive any individual of employment
5 opportunities or otherwise adversely affect the individual's status as an employee because
6 of:

7 (i) the individual's race, color, religion, sex, age, national origin,
8 marital status, sexual orientation, gender identity, genetic information, or disability
9 unrelated in nature and extent so as to reasonably preclude the performance of the
10 employment; or

11 (ii) the individual's refusal to submit to a genetic test or make
12 available the results of a genetic test;

13 (3) request or require genetic tests or genetic information as a condition of
14 hiring or determining benefits; [or]

15 (4) fail or refuse to make a reasonable accommodation for the known
16 disability of an otherwise qualified employee; OR

17 (5) ENGAGE IN HARASSMENT OF AN EMPLOYEE.

18 **20-611.**

19 **IN AN ACTION ALLEGING A VIOLATION OF THIS SUBTITLE BASED ON**
20 **HARASSMENT, AN EMPLOYER IS LIABLE:**

21 **(1) FOR THE ACTS OR OMISSIONS TOWARD AN EMPLOYEE OR**
22 **APPLICANT FOR EMPLOYMENT COMMITTED BY AN INDIVIDUAL WHO:**

23 **(I) UNDERTAKES OR RECOMMENDS TANGIBLE EMPLOYMENT**
24 **ACTIONS AFFECTING THE EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT,**
25 **INCLUDING HIRING, FIRING, PROMOTING, DEMOTING, AND REASSIGNING THE**
26 **EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT; OR**

27 **(II) DIRECTS, SUPERVISES, OR EVALUATES THE WORK**
28 **ACTIVITIES OF THE EMPLOYEE; OR**

29 **(2) IF THE NEGLIGENCE OF THE EMPLOYER LED TO THE HARASSMENT**
30 **OR CONTINUATION OF HARASSMENT.**

31 20-1004.

1 (a) Any person claiming to be aggrieved by an alleged discriminatory act may file
2 a complaint with the Commission.

3 (b) The complaint shall:

4 (1) be in writing;

5 (2) state:

6 (i) the name and address of the person or State or local unit alleged
7 to have committed the discriminatory act; and

8 (ii) the particulars of the alleged discriminatory act;

9 (3) contain any other information required by the Commission; and

10 (4) be signed by the complainant under oath.

11 (c) (1) **(I) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
12 **SUBSECTION, A** complaint shall be filed within 6 months after the date on which the
13 alleged discriminatory act occurred.

14 **[(2)] (II)** A complaint filed with a federal or local human relations
15 commission within 6 months after the date on which the alleged discriminatory act occurred
16 shall be deemed to have complied with **SUBPARAGRAPH (I) OF** this [subsection]
17 **PARAGRAPH.**

18 **(2) (I) A COMPLAINT ALLEGING HARASSMENT AGAINST AN**
19 **EMPLOYER SHALL BE FILED WITHIN 2 YEARS AFTER THE DATE ON WHICH THE**
20 **ALLEGED HARASSMENT OCCURRED.**

21 **(II) A COMPLAINT FILED WITH A FEDERAL HUMAN RELATIONS**
22 **COMMISSION WITHIN 6 MONTHS OR A LOCAL HUMAN RELATIONS COMMISSION**
23 **WITHIN 2 YEARS AFTER THE DATE ON WHICH THE ALLEGED HARASSMENT**
24 **OCCURRED SHALL BE DEEMED TO HAVE COMPLIED WITH SUBPARAGRAPH (I) OF**
25 **THIS PARAGRAPH.**

26 (d) The Commission, on its own motion, and by action of at least three
27 commissioners, may issue a complaint in its name in the same manner as if the complaint
28 had been filed by an individual, if:

29 (1) the Commission has received reliable information from an individual
30 that a person has been or is engaged in a discriminatory act; and

31 (2) after a preliminary investigation by the Commission's staff authorized
32 by the chair or vice-chair, the Commission is satisfied that the information warrants the

1 filing of a complaint.

2 20–1013.

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

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

9 (2) at least 180 days have elapsed since the filing of the administrative
10 charge or complaint; and

11 (3) **(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH**, the
12 civil action is filed within 2 years after the alleged unlawful employment practice occurred;
13 **OR**

14 **(II) IF THE COMPLAINT IS ALLEGING HARASSMENT, THE CIVIL**
15 **ACTION IS FILED WITHIN 3 YEARS AFTER THE ALLEGED HARASSMENT OCCURRED.**

16 **Article – State Personnel and Pensions**

17 2–203.1.

18 (c) (1) Each State employee shall complete at least a cumulative 2 hours of
19 in–person or virtual, interactive training on sexual harassment prevention within:

20 (i) 6 months after the employee’s initial appointment; and

21 (ii) every 2–year period thereafter.

22 (2) The training required under paragraph (1) of this subsection shall
23 include:

24 (i) information on the federal and State laws concerning the
25 prohibition of sexual harassment;

26 (ii) best practices in prevention and correction of sexual harassment,
27 abusive conduct, and retaliation;

28 (iii) remedies and procedures available to victims of sexual
29 harassment in employment; and

30 (iv) additional training for supervisors regarding information on:

1 1. properly responding to complaints of sexual harassment
2 and preventing further abuse and retaliation; and

3 2. creating and maintaining a workplace culture in which
4 sexual harassment is not tolerated.

5 **(3) (I) THE TRAINING REQUIRED UNDER PARAGRAPH (1) OF THIS**
6 **SUBSECTION MAY CONSIST OF WEBINAR, COMPUTER-BASED, OR ONLINE TRAINING.**

7 **(II) IF THE TRAINING REQUIRED UNDER PARAGRAPH (1) OF**
8 **THIS SUBSECTION CONSISTS OF WEBINAR, COMPUTER-BASED, OR ONLINE**
9 **TRAINING, THE TRAINING ALSO SHALL INCLUDE AN EVALUATIVE COMPONENT THAT:**

10 1. **ENSURES EMPLOYEE ENGAGEMENT IN THE TRAINING;**
11 **AND**

12 2. **ASSESSES EMPLOYEE COMPREHENSION OF TRAINING**
13 **OBJECTIVES.**

14 (d) (1) (i) Each unit shall designate a representative to coordinate with the
15 Commission to implement the training State employees are required to complete under
16 subsection (c) of this section.

17 (ii) **FOR A UNIT OF THE UNIVERSITY SYSTEM OF MARYLAND,**
18 **THE REPRESENTATIVE DESIGNATED UNDER SUBPARAGRAPH (I) OF THIS**
19 **PARAGRAPH SHALL BE THE UNIT'S TITLE IX COORDINATOR.**

20 **(III) A unit may incorporate the training into existing employment**
21 **training for new employees and supervisors.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
23 preempt or prevail over any local ordinance, resolution, law, or rule that requires that an
24 employer have more than one employee for purposes of a complaint alleging employment
25 discrimination based on sexual harassment.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to
27 apply only prospectively and may not be applied or interpreted to have any effect on or
28 application to any cause of action arising before the effective date of this Act.

29 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2019.