

# SENATE BILL 237

D5, K3, P4

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CF 4lr1910

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By: **Senators King, Raskin, Ramirez, Colburn, Currie, Feldman, Ferguson, Forehand, Jones–Rodwell, Kasemeyer, Kelley, Madaleno, Manno, Miller, Montgomery, Peters, Pugh, Robey, Rosapepe, and Young**

Introduced and read first time: January 16, 2014

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

AN ACT concerning

### **Human Relations – Employment Discrimination – Protections for Interns**

FOR the purpose of establishing that an intern is considered to be in an employment relationship with an employer for the purposes of certain protections from certain discriminatory acts, access to a certain complaint resolution procedure, and certain administrative remedies; providing that this Act does not create an employment relationship between an employer and an intern for the purposes of certain remedies or certain other provisions of law; establishing that for the purpose of determining the availability of certain remedies, “unlawful employment practice” does not include a certain act; establishing the exclusive remedies for certain discriminatory acts; defining a certain term; and generally relating to protections for interns from certain discriminatory acts.

BY repealing and reenacting, without amendments,  
Article – State Government  
Section 20–601(a), (c), and (d) and 20–606  
Annotated Code of Maryland  
(2009 Replacement Volume and 2013 Supplement)

BY adding to  
Article – State Government  
Section 20–610 and 20–1003.1  
Annotated Code of Maryland  
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,  
Article – State Government  
Section 20–1001  
Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2009 Replacement Volume and 2013 Supplement)

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

**Article – State Government**

20–601.

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

(c) (1) “Employee” means an individual employed by an employer.

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

(i) an individual elected to public office;

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

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

(iv) an immediate adviser with respect to the exercise of the constitutional or legal powers of an elected office.

(d) (1) “Employer” means:

(i) a person that:

1. is engaged in an industry or business; and

2. has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; and

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

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

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

20–606.

(a) An employer may not:

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

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

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

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

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

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

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

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

(b) An employment agency may not:

(1) fail or refuse to refer for employment or otherwise discriminate against any individual because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or

(2) classify or refer for employment any individual on the basis of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

(c) A labor organization may not:

(1) exclude or expel from its membership, or otherwise discriminate against, any individual because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment;

(2) limit, segregate, or classify its membership, or classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive the individual of employment opportunities, limit the individual's employment opportunities, or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or

(3) cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) An employer, labor organization, or joint labor–management committee controlling apprenticeship or other training or retraining programs, including on–the–job training programs, may not discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

(e) (1) Except as provided in paragraph (2) of this subsection, an employer, labor organization, or employment agency may not print or cause to be printed or published any notice or advertisement relating to employment by the employer, membership in or any classification or referral for employment by the labor organization, or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification, or discrimination based on race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability.

(2) A notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, age, national origin, marital status, or disability if religion, sex, age, national origin, marital status, or disability is a bona fide occupational qualification for employment.

(f) An employer may not discriminate or retaliate against any of its employees or applicants for employment, an employment agency may not discriminate against any individual, and a labor organization may not discriminate or retaliate against any member or applicant for membership because the individual has:

(1) opposed any practice prohibited by this subtitle; or

(2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subtitle.

**(A) IN THIS SECTION, “INTERN” MEANS AN INDIVIDUAL WHO PERFORMS WORK FOR AN EMPLOYER FOR THE PURPOSE OF TRAINING IF:**

**(1) THE EMPLOYER IS NOT COMMITTED TO HIRE THE INDIVIDUAL PERFORMING THE WORK AT THE CONCLUSION OF THE TRAINING PERIOD;**

**(2) THE EMPLOYER AND THE INDIVIDUAL PERFORMING THE WORK AGREE IN WRITING THAT THE INDIVIDUAL PERFORMING THE WORK IS NOT ENTITLED TO WAGES FOR THE WORK PERFORMED; AND**

**(3) THE WORK PERFORMED:**

**(I) SUPPLEMENTS TRAINING GIVEN IN AN EDUCATIONAL ENVIRONMENT THAT MAY ENHANCE THE EMPLOYABILITY OF THE INDIVIDUAL PERFORMING THE WORK;**

**(II) PROVIDES EXPERIENCE FOR THE BENEFIT OF THE INDIVIDUAL PERFORMING THE WORK;**

**(III) DOES NOT DISPLACE REGULAR EMPLOYEES;**

**(IV) IS PERFORMED UNDER THE CLOSE SUPERVISION OF EXISTING STAFF; AND**

**(V) PROVIDES NO IMMEDIATE ADVANTAGE TO THE EMPLOYER PROVIDING THE TRAINING AND MAY OCCASIONALLY IMPEDE THE OPERATIONS OF THE EMPLOYER.**

**(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN INTERN IS CONSIDERED TO BE IN AN EMPLOYMENT RELATIONSHIP WITH AN EMPLOYER FOR THE PURPOSES OF:**

**(1) THE EMPLOYEE PROTECTIONS PROVIDED UNDER § 20-606 OF THIS SUBTITLE;**

**(2) ACCESS TO ANY INTERNAL PROCEDURE THE EMPLOYER HAS FOR RESOLVING A COMPLAINT BY AN EMPLOYEE OF SEXUAL HARASSMENT OR OTHER DISCRIMINATION; AND**

**(3) THE ADMINISTRATIVE REMEDIES PROVIDED UNDER §§ 20-1004, 20-1005, 20-1006(A) AND (B)(1), 20-1008, AND 20-1009(A), (C), (D), AND (E) OF THIS TITLE.**

**(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS SECTION DOES NOT CREATE AN EMPLOYMENT RELATIONSHIP BETWEEN AN EMPLOYER AND AN INTERN FOR THE PURPOSES OF § 20-1006(B)(2), § 20-1007, § 20-1009(B), § 20-1012, OR § 20-1013 OF THIS TITLE, OR ANY PROVISION OF THE LABOR AND EMPLOYMENT ARTICLE OR THE STATE PERSONNEL AND PENSIONS ARTICLE.**

20-1001.

**(A) [In] SUBJECT TO THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION, IN this part, “unlawful employment practice” means an act that is prohibited under § 20-606 of this title.**

**(B) FOR PURPOSES OF DETERMINING THE REMEDIES AVAILABLE UNDER THIS PART, “UNLAWFUL EMPLOYMENT PRACTICE” DOES NOT INCLUDE AN ACT THAT IS PROHIBITED UNDER § 20-610(B)(1) OF THIS TITLE.**

20-1003.1.

**THE EXCLUSIVE REMEDIES FOR AN ALLEGED VIOLATION OF § 20-610(B)(1) OF THIS TITLE ARE:**

**(1) ANY INTERNAL PROCEDURE AN EMPLOYER HAS FOR RESOLVING A COMPLAINT BY AN EMPLOYEE OF SEXUAL HARASSMENT OR OTHER DISCRIMINATION; AND**

**(2) THE ADMINISTRATIVE REMEDIES PROVIDED UNDER §§ 20-1004, 20-1005, 20-1006(A) AND (B)(1), 20-1008, AND 20-1009(A), (C), (D), AND (E) OF THIS SUBTITLE.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.