

# SENATE BILL 948

D5, F1, P1

6lr2282

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By: **Senators Zucker and Madaleno**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Nonpublic Elementary and Secondary Schools – Discrimination – Prohibition**

3 FOR the purpose of prohibiting a nonpublic elementary or secondary school that receives  
4 State funds from refusing to enroll, expelling, withholding privileges from, or  
5 otherwise discriminating against any student or prospective student because of  
6 certain factors; making certain provisions of law prohibiting discrimination in  
7 employment applicable to nonpublic elementary and secondary schools that receive  
8 State funds; authorizing a certain person to elect to have certain claims determined  
9 in a certain civil action brought by the Commission on Civil Rights; authorizing the  
10 Commission to elect to have certain claims determined in a certain civil action;  
11 making certain remedies and procedures regarding discrimination applicable to  
12 certain discriminatory acts by certain nonpublic schools; requiring the Commission  
13 to file a certain civil action in a certain circuit court within a certain time period;  
14 authorizing a certain person to bring a civil action alleging a certain discriminatory  
15 act by a certain nonpublic school under certain circumstances; authorizing the  
16 Commission to bring an action to obtain a temporary injunction under certain  
17 circumstances; altering the definition of a certain term; defining a certain term;  
18 providing for the construction of certain provisions of this Act; and generally relating  
19 to discrimination in nonpublic schools.

20 BY adding to

21 Article – Education

22 Section 26–501 and 26–502 to be under the new subtitle “Subtitle 5. Discrimination  
23 in Education”

24 Annotated Code of Maryland

25 (2014 Replacement Volume and 2015 Supplement)

26 BY repealing and reenacting, with amendments,

27 Article – State Government

28 Section 20–101(d), 20–604, 20–1001, 20–1006, 20–1007, 20–1009, 20–1012, 20–1013,  
29 and 20–1017

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2014 Replacement Volume and 2015 Supplement)

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

5 **Article – Education**

6 **SUBTITLE 5. DISCRIMINATION IN EDUCATION.**

7 **26–501.**

8 **THIS SUBTITLE DOES NOT REQUIRE A SCHOOL TO ENROLL, RETAIN, OR**  
9 **EXTEND PRIVILEGES TO A STUDENT OR PROSPECTIVE STUDENT WHO DOES NOT**  
10 **MEET THE USUAL AND REGULAR QUALIFICATIONS, REQUIREMENTS, AND**  
11 **STANDARDS OF THE SCHOOL, PROVIDED THAT THE DENIAL IS NOT BASED ON**  
12 **DISCRIMINATION ON THE GROUNDS OF RACE, COLOR, RELIGION, SEX, AGE,**  
13 **NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR**  
14 **DISABILITY.**

15 **26–502.**

16 **A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL THAT RECEIVES STATE**  
17 **FUNDS MAY NOT REFUSE TO ENROLL, EXPEL, WITHHOLD PRIVILEGES FROM, OR**  
18 **OTHERWISE DISCRIMINATE AGAINST ANY STUDENT OR PROSPECTIVE STUDENT**  
19 **BECAUSE OF THE INDIVIDUAL’S RACE, COLOR, RELIGION, SEX, AGE, NATIONAL**  
20 **ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR**  
21 **DISABILITY.**

22 **Article – State Government**

23 **20–101.**

24 (d) “Discriminatory act” means an act prohibited under:

25 (1) Subtitle 3 of this title (Discrimination in Places of Public  
26 Accommodation);

27 (2) Subtitle 4 of this title (Discrimination by Persons Licensed or Regulated  
28 by Department of Labor, Licensing, and Regulation);

29 (3) Subtitle 5 of this title (Discrimination in Leasing of Commercial  
30 Property);

31 (4) Subtitle 6 of this title (Discrimination in Employment);

1 (5) Subtitle 7 of this title (Discrimination in Housing); [or]

2 (6) Subtitle 8 of this title (Aiding, Abetting, or Attempting Discriminatory  
3 Act; Obstructing Compliance); **OR**

4 **(7) TITLE 26, SUBTITLE 5 OF THE EDUCATION ARTICLE**  
5 **(DISCRIMINATION IN EDUCATION).**

6 20–604.

7 **(A) [This] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS**  
8 subtitle does not apply to:

9 (1) an employer with respect to the employment of aliens outside of the  
10 State; or

11 (2) a religious corporation, association, educational institution, or society  
12 with respect to the employment of individuals of a particular religion, sexual orientation,  
13 or gender identity to perform work connected with the activities of the religious entity.

14 **(B) IF A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL RECEIVES**  
15 **STATE FUNDS, THIS SUBTITLE APPLIES WITH RESPECT TO THE EMPLOYMENT OF**  
16 **INDIVIDUALS WHO ARE NOT MINISTERIAL EMPLOYEES.**

17 20–1001.

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

20 **(B) “UNLAWFUL EDUCATION PRACTICE” MEANS AN ACT THAT IS**  
21 **PROHIBITED UNDER § 26–502 OF THE EDUCATION ARTICLE.**

22 **(C) “UNLAWFUL employment practice” means an act that is prohibited under §**  
23 **20–606 of this title.**

24 20–1006.

25 (a) On the making of a finding under § 20–1005(c)(2) of this subtitle that an  
26 agreement to remedy and eliminate the discrimination cannot be reached, the entire file,  
27 including the complaint and any findings, shall be certified to the general counsel of the  
28 Commission.

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

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

3 (2) if the complaint alleges an unlawful employment practice **OR AN**  
4 **UNLAWFUL EDUCATION PRACTICE**, in a civil action elected under § 20–1007 of this  
5 subtitle.  
6 20–1007.

7 (a) (1) When a complaint alleging an unlawful employment practice **OR AN**  
8 **UNLAWFUL EDUCATION PRACTICE** is issued and served under § 20–1006 of this subtitle,  
9 a complainant or respondent may elect to have the claims asserted in the complaint  
10 determined in a civil action brought by the Commission on the complainant's behalf, if:

11 (i) the Commission has found probable cause to believe the  
12 respondent has engaged in or is engaging in an unlawful employment practice **OR AN**  
13 **UNLAWFUL EDUCATION PRACTICE**; and

14 (ii) there is a failure to reach an agreement to remedy and eliminate  
15 the unlawful employment practice **OR THE UNLAWFUL EDUCATION PRACTICE**.

16 (2) An election under paragraph (1) of this subsection shall be made within  
17 30 days after the complainant or respondent receives service under § 20–1006(b) of this  
18 subtitle.

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

22 (b) When a complaint alleging an unlawful employment practice **OR AN**  
23 **UNLAWFUL EDUCATION PRACTICE** is issued and served under § 20–1006 of this subtitle,  
24 the Commission may elect to have the claims asserted in the complaint determined in a  
25 civil action brought on the Commission's own behalf, if:

26 (1) the Commission has found probable cause to believe the respondent has  
27 engaged in or is engaging in an unlawful employment practice **OR AN UNLAWFUL**  
28 **EDUCATION PRACTICE**; and

29 (2) there is a failure to reach an agreement to remedy and eliminate the  
30 unlawful employment practice **OR THE UNLAWFUL EDUCATION PRACTICE**.

31 (c) (1) If a complainant or respondent makes an election under subsection (a)  
32 of this section, that party shall give notice of the election to the Commission and to all other  
33 complainants and respondents.

1           (2) If the Commission makes an election under subsection (b) of this  
2 section, the Commission shall give notice of the election to all complainants and  
3 respondents.

4 20-1009.

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

7           (1) issue a decision and order stating the judge's findings of fact and  
8 conclusions of law; and

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

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

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

14           (b) (1) If the respondent is found to have engaged in or to be engaging in an  
15 unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** charged in the  
16 complaint, the remedy may include:

17           (i) enjoining the respondent from engaging in the discriminatory  
18 act;

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

21           (iii) awarding compensatory damages; or

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

24           (2) Compensatory damages awarded under this subsection are in addition  
25 to:

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

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

30           (3) The sum of the amount of compensatory damages awarded to each  
31 complainant under this subsection for future pecuniary losses, emotional pain, suffering,

1 inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses, may not  
2 exceed:

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

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

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

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

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

17 (5) In addition to any other relief authorized by this subsection, a  
18 complainant may recover back pay for up to 2 years preceding the filing of the complaint,  
19 where the unlawful employment practice that has occurred during the complaint filing  
20 period is similar or related to an unlawful employment practice with regard to  
21 discrimination in compensation that occurred outside the time for filing a complaint.

22 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, if the  
23 respondent is found to have engaged in or to be engaging in a discriminatory act other than  
24 an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE**, in addition  
25 to an award of civil penalties as provided in § 20–1016 of this subtitle, nonmonetary relief  
26 may be granted to the complainant.

27 (ii) An order may not be issued that substantially affects the cost,  
28 level, or type of any transportation services.

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

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

1 (d) If, after reviewing all of the evidence, the administrative law judge finds that  
2 the respondent has not engaged in an alleged discriminatory act, the administrative law  
3 judge shall:

4 (1) state findings of fact and conclusions of law; and

5 (2) issue an order dismissing the complaint.

6 (e) Unless a timely appeal is filed with the Commission in accordance with the  
7 Commission's regulations, a decision and order issued by the administrative law judge  
8 under this section shall become the final order of the Commission.

9 20-1012.

10 (a) Within 60 days after an election is made under § 20-1007 of this subtitle, the  
11 Commission shall file a civil action in the circuit court for the county where the alleged  
12 unlawful employment practice **OR UNLAWFUL EDUCATION PRACTICE** occurred.

13 (b) If the court finds that an unlawful employment practice **OR AN UNLAWFUL**  
14 **EDUCATION PRACTICE** occurred, the court may provide the remedies specified in §  
15 20-1009(b) of this subtitle.

16 (c) If the Commission seeks compensatory damages under this section:

17 (1) any party may demand a trial by jury; and

18 (2) the court may not inform the jury of the limitations on compensatory  
19 damages imposed under § 20-1009(b)(3) of this subtitle.

20 20-1013.

21 (a) In addition to the right to make an election under § 20-1007 of this subtitle, a  
22 complainant may bring a civil action against the respondent alleging an unlawful  
23 employment practice **OR AN UNLAWFUL EDUCATION PRACTICE**, if:

24 (1) the complainant initially filed a timely administrative charge or a  
25 complaint under federal, State, or local law alleging an unlawful employment practice **OR**  
26 **AN UNLAWFUL EDUCATION PRACTICE** by the respondent;

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

29 (3) the civil action is filed within 2 years after the alleged unlawful  
30 employment practice **OR UNLAWFUL EDUCATION PRACTICE** occurred.

1 (b) A civil action under this section shall be filed in the circuit court for the county  
2 where the alleged unlawful employment practice **OR UNLAWFUL EDUCATION PRACTICE**  
3 occurred.

4 (c) The filing of a civil action under this section automatically terminates any  
5 proceeding before the Commission based on the underlying administrative complaint and  
6 any amendment to the complaint.

7 (d) If the court finds that an unlawful employment practice **OR AN UNLAWFUL**  
8 **EDUCATION PRACTICE** occurred, the court may provide the remedies specified in §  
9 20–1009(b) of this subtitle.

10 (e) (1) In addition to the relief authorized under subsection (d) of this section,  
11 the court may award punitive damages, if:

12 (i) the respondent is not a governmental unit or political  
13 subdivision; and

14 (ii) the court finds that the respondent has engaged in or is engaging  
15 in an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** with  
16 actual malice.

17 (2) If the court awards punitive damages, the sum of the amount of  
18 compensatory damages awarded to each complainant under subsection (d) of this section  
19 and the amount of punitive damages awarded under this subsection may not exceed the  
20 applicable limitation established under § 20–1009(b)(3) of this subtitle.

21 (f) If a complainant seeks compensatory or punitive damages under this section:

22 (1) any party may demand a trial by jury; and

23 (2) the court may not inform the jury of the limitations on compensatory  
24 and punitive damages imposed under § 20–1009(b)(3) of this subtitle.

25 (g) When appropriate and to the extent authorized under law, in a dispute arising  
26 under this part, in which the complainant seeks compensatory or punitive damages, the  
27 parties are encouraged to use alternative means of dispute resolution, including settlement  
28 negotiations or mediation.

29 20–1017.

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

34 (b) The action shall be brought in the circuit court for the county where:

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

3                   (2)    the unlawful employment practice is alleged to have occurred or to be  
4 occurring; [or]

5                   (3)    the dwelling that is the subject of the alleged discriminatory housing  
6 practice is located; **OR**

7                   **(4)    THE UNLAWFUL EDUCATION PRACTICE IS ALLEGED TO HAVE**  
8 **OCCURRED OR TO BE OCCURRING.**

9                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2016.