SENATE BILL 191

By: Senator Patterson
Requested: October 13, 2020
Introduced and read first time: January 13, 2021
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Labor and Employment – Hiring – Higher Education Requirements
(Give Me a Chance Act)

FOR the purpose of prohibiting an employer from developing or implementing an application or hiring process that uses a higher education degree as a certain limitation except in certain circumstances; prohibiting an employer from using an applicant’s lack of a higher education degree to deny an applicant the opportunity to apply for a position except under certain circumstances; prohibiting an employer from inquiring during the interview process about an applicant’s lack of a higher education degree except under certain circumstances; prohibiting an employer from inquiring about an applicant’s level of education after an offer for employment has been made; prohibiting an employer from rescinding an initial offer of employment based on a certain response; authorizing a certain applicant or an employee to bring a certain action against an employer under certain circumstances; requiring the Commissioner to take certain enforcement action against an employer under certain circumstances; providing for the construction of this Act; and generally relating to hiring by employers.

BY repealing and reenacting, without amendments,
Article – Labor and Employment
Section 3–101(a) and (b)
Annotated Code of Maryland
(2016 Replacement Volume and 2020 Supplement)

BY adding to
Article – Labor and Employment
Section 3–718
Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Labor and Employment


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

(b) “Commissioner” means the Commissioner of Labor and Industry.

3–718.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYER MAY NOT:

(I) DEVELOP OR IMPLEMENT AN APPLICATION OR A HIRING PROCESS THAT USES A COLLEGE OR OTHER HIGHER EDUCATION DEGREE AS A LIMITATION FOR WHO CAN APPLY FOR A SPECIFIED POSITION;

(II) USE AN APPLICANT’S LACK OF A COLLEGE OR OTHER HIGHER EDUCATION DEGREE TO DENY AN APPLICANT THE OPPORTUNITY TO APPLY FOR A POSITION;

(III) PROHIBIT AN EMPLOYEE FROM APPLYING FOR OR PURSUING INTERNAL ADVANCEMENT WITHIN THE EMPLOYER’S ORGANIZATION ON THE BASIS OF AN EMPLOYEE LACKING A COLLEGE OR OTHER HIGHER EDUCATION DEGREE; OR

(IV) DURING THE INTERVIEW PROCESS, INQUIRE ABOUT AN APPLICANT’S LACK OF A COLLEGE OR OTHER HIGHER EDUCATION DEGREE.

(2) AN EMPLOYER IS NOT PROHIBITED FROM TAKING THE ACTIONS UNDER PARAGRAPH (1) OF THIS SUBSECTION IF A MINIMUM EDUCATIONAL QUALIFICATION IS NECESSARY TO PERFORM THE DUTIES OF THE POSITION THAT IS THE SUBJECT OF THE APPLICATION OR INTERVIEW PROCESS.

(B) (1) AFTER AN EMPLOYER MAKES AN INITIAL OFFER OF EMPLOYMENT, THE EMPLOYER MAY INQUIRE AS TO THE APPLICANT’S ACHIEVEMENT OF A COLLEGE OR HIGHER EDUCATION DEGREE.

(2) AN EMPLOYER MAY NOT RESCIND AN INITIAL OFFER OF
EMPLOYMENT BASED ON AN APPLICANT’S RESPONSE TO AN INQUIRY MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(C) IF AN EMPLOYER VIOLATES THE PROVISIONS OF THIS SECTION, AN AFFECTED APPLICANT FOR EMPLOYMENT OR AN EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER:

(1) FOR INJUNCTIVE RELIEF; AND

(2) TO RECOVER, WHICHEVER IS GREATER:

(I) ACTUAL DAMAGES; OR

(II) SPECIAL DAMAGES, NOT TO EXCEED $10,000.

(D) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN APPLICANT FOR EMPLOYMENT FROM VOLUNTARILY SHARING INFORMATION REGARDING THE APPLICANT’S ACHIEVEMENT OF A COLLEGE OR OTHER HIGHER EDUCATION DEGREE.

(E) (1) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS VIOLATED THE PROVISIONS OF THIS SECTION, THE COMMISSIONER:

(I) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND

(II) MAY, IN THE COMMISSIONER’S DISCRETION, ASSESS A PENALTY OF UP TO $1,000 FOR EACH APPLICANT FOR EMPLOYMENT FOR WHOM THE EMPLOYER WAS NOT IN COMPLIANCE.

(2) IN DETERMINING THE AMOUNT OF THE PENALTY, THE COMMISSIONER SHALL CONSIDER:

(I) THE GRAVITY OF THE VIOLATION;

(II) THE SIZE OF THE EMPLOYER’S BUSINESS;

(III) THE EMPLOYER’S GOOD FAITH; AND

(IV) THE EMPLOYER’S HISTORY OF VIOLATIONS UNDER THIS SECTION.

(3) IF THE COMMISSIONER ASSESSES A PENALTY UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION, THE PENALTY SHALL BE SUBJECT TO THE NOTICE AND
HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.