

# SENATE BILL 911

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By: **Senator Smith**

Introduced and read first time: February 9, 2021

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 24, 2021

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Unlawful Employment Practice – Statute of Limitations and Remedies**

3 FOR the purpose of ~~repealing~~ increasing the limitations on the amount of compensatory  
4 damages and punitive damages that may be awarded to a complainant in a certain  
5 unlawful employment case; increasing the period of time for which a complainant  
6 may recover certain back pay in a certain unlawful employment case; increasing the  
7 period of time during which a complainant may file a civil action that alleges an  
8 unlawful employment practice that does not allege harassment; ~~making conforming~~  
9 ~~changes~~; and generally relating to unlawful employment practices.

10 BY repealing and reenacting, with amendments,  
11 Article – State Government  
12 Section 20–1009 and 20–1013  
13 Annotated Code of Maryland  
14 (2014 Replacement Volume and 2020 Supplement)

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

17 **Article – State Government**

18 20–1009.

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

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

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

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

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

8 (b) (1) If the respondent is found to have engaged in or to be engaging in an  
9 unlawful employment practice charged in the complaint, the remedy may include:

10 (i) enjoining the respondent from engaging in the discriminatory  
11 act;

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

14 (iii) awarding compensatory damages; or

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

17 (2) Compensatory damages awarded under this subsection are in addition  
18 to:

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

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

23 ~~f~~(3) **(1)** The sum of the amount of compensatory damages awarded to  
24 each complainant under this subsection for future pecuniary losses, emotional pain,  
25 suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses,  
26 may not exceed:

27 ~~(i)~~ **1.** ~~\$50,000~~ **\$65,000**, if the respondent employs not fewer  
28 than 15 and not more than 100 employees in each of 20 or more calendar weeks in the  
29 current or preceding calendar year;

30 ~~(ii)~~ **2.** ~~\$100,000~~ **\$130,000**, if the respondent employs not fewer  
31 than 101 and not more than 200 employees in each of 20 or more calendar weeks in the  
32 current or preceding calendar year;

1                    ~~(iii)~~ **3.**    ~~\$200,000~~ **\$260,000**, if the respondent employs not fewer  
 2 than 201 and not more than 500 employees in each of 20 or more calendar weeks in the  
 3 current or preceding calendar year; and

4                    ~~(iv)~~ **4.**    ~~\$300,000~~ **\$385,000**, if the respondent employs not fewer  
 5 than 501 employees in each of 20 or more calendar weeks in the current or preceding  
 6 calendar year.‡

7                    **(II) 1.    THE LIMITATION ON COMPENSATORY DAMAGES**  
 8 **PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCREASE BY 5%**  
 9 **ON OCTOBER 1 EACH YEAR BEGINNING OCTOBER 1, 2021.**

10                    **2.    THE INCREASED AMOUNT SHALL APPLY TO CAUSES**  
 11 **OF ACTION ARISING BETWEEN OCTOBER 1 OF THAT YEAR AND SEPTEMBER 30 OF**  
 12 **THE FOLLOWING YEAR, INCLUSIVE.**

13                    ~~‡(4)‡~~ ~~(3)~~    If back pay is awarded under paragraph (1) of this subsection,  
 14 the award shall be reduced by any interim earnings or amounts earnable with reasonable  
 15 diligence by the person discriminated against.

16                    ~~‡(5)‡~~ ~~(4)~~    In addition to any other relief authorized by this subsection, a  
 17 complainant may recover back pay for up to [2] **3** years preceding the filing of the  
 18 complaint, where the unlawful employment practice that has occurred during the  
 19 complaint filing period is similar or related to an unlawful employment practice with regard  
 20 to discrimination in compensation that occurred outside the time for filing a complaint.

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

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

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

32                    (ii)    An order issued in violation of subparagraph (i) of this paragraph  
 33 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 20-1013.

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

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

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

18 (3) [(i) except as provided in item (ii) of this paragraph,] the civil action  
19 is filed within [2] 3 years after the alleged unlawful employment practice occurred[; or

20 (ii) if the complaint is alleging harassment, the civil action is filed  
21 within 3 years after the alleged harassment occurred].

22 (b) A civil action under this section shall be filed in the circuit court for the county  
23 where the alleged unlawful employment practice occurred.

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

27 (d) If the court finds that an unlawful employment practice occurred, the court  
28 may provide the remedies specified in § 20-1009(b) of this subtitle.

29 (e) ~~[(1)]~~ In addition to the relief authorized under subsection (d) of this section,  
30 the court may award punitive damages, if:

31 ~~[(i)]~~ ~~(1)~~ the respondent is not a governmental unit or political  
32 subdivision; and

1                    ~~[(ii)] (2)~~ the court finds that the respondent has engaged in or is  
2 engaging in an unlawful employment practice with actual malice.

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

7                    (f) If a complainant seeks compensatory or punitive damages under this section~~]~~:

8                    (1)~~]~~ any party may demand a trial by jury~~]~~; and

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.