

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1397

(Delegate Simmons, *et al.*)

Economic Matters

Judicial Proceedings and Finance

Civil Rights - Discrimination Based on Protected Characteristics and
Reproductive Freedom

This emergency bill alters numerous statutory provisions that prohibit discrimination based on certain protected characteristics to include sexual orientation, gender identity, race, religious beliefs, marital status, and disability, thereby *generally* making *certain* protected characteristics consistent across multiple statutes. The bill also (1) replaces references of “gender” to “sex” in multiple statutes; (2) withdraws and repeals Chapter 244 of 2023; and (3) among other provisions, makes related changes within the Criminal Law Article in regard to certain characteristics, the discovery of which may not be used as legally adequate provocation for the mitigation of or a defense for specified crimes. **Provisions regarding Chapter 244 take effect upon the bill’s enactment; other provisions take effect October 1, 2024.**

Fiscal Summary

State Effect: General fund expenditures *may* increase minimally for the Maryland Department of Labor (MDL) to handle an increased volume of complaints, as discussed below. Otherwise, the bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Prohibited Discrimination – Generally

Statute includes numerous provisions that prohibit discrimination based upon certain bases (*e.g.*, race, sex, age, religion, sexual orientation, etc.), as specified in statutory provisions.

Although many types of discrimination are addressed in Title 20 of the State Government Article, the provisions are not exhaustive and other discriminatory practices are prohibited throughout statute. For example, under the Commercial Law Article, with respect to any aspect of a credit transaction, a creditor may not discriminate against any applicant on the basis of sex, marital status, race, color, religion, national origin, or age. (The bill adds sexual orientation, gender identity, and disability.)

Protected characteristics also vary across *and within* statute. For example, under § 19-408 of the Health-General Article, a home health agency may not withhold services from an individual on the basis of age, sex, color, creed, national origin, source of payment, or ability to pay. (The bill adds sexual orientation, gender identity, disability, and race.) In § 19-725 of the same Article (regarding health maintenance organizations), a person's enrollment or transfer from group to individual status cannot be canceled/denied on the basis of age, sex, race, or health status. (The bill adds sexual orientation, gender identity, religious beliefs, and disability.)

The Education Article, in general, prohibits the State Superintendent, a county board, or a county superintendent from discriminating against any public school employee in the State on the basis of race, religion, color, ancestry or national origin, sex, age, marital status, sexual orientation, or disability, as specified. (The bill adds gender identity to this provision.)

Similarly, under the State's Equal Pay for Equal Work law (within the Labor and Employment Article), an employer (regardless of size) may not discriminate between employees in any occupation by (1) providing less favorable employment opportunities based on sex or gender identity or (2) paying a wage to employees of one sex or gender identity at a rate less than the rate paid to employees of another sex or gender identity if both employees work in the same establishment and perform work of comparable character or work on the same operation, in the same business, or of the same type. (The bill adds race, religious beliefs, and sexual orientation to both provisions and disability to the first provision. It further specifies that in regard to the latter prohibited provision, *the pay difference [must also be] based on the race, religious beliefs, sex, gender identity, or sexual orientation of the employees.*)

Under the Criminal Law Article, the discovery, perception, or belief about a person's race, color, national origin, sex, gender identity, or sexual orientation (whether or not accurate) may not (1) constitute legally adequate provocation to mitigate a person's charge from murder to manslaughter or (2) constitute a defense to the crime of assault in any degree. (The bill adds religious beliefs and disability to both provisions.)

Among other findings, the Supreme Court of Maryland held in *John Doe v. Catholic Relief Services*, 484 Md. 640 (2023) that the prohibition against sex discrimination in the State's Equal Pay for Equal Work Act does not include protection against discrimination based on sexual orientation. The court noted the General Assembly's practice (as understood by the court) of *specifically* identifying categories it intends to protect in antidiscrimination statutes. The exclusion/omission in statute of a certain category, such as "sexual orientation," therefore is deemed indicative of the General Assembly's intent to exclude the category from the particular antidiscrimination statute. For further discussion of the court's holding in *Doe*, please see the discussion in *Cases and Decisions Update* prepared by the Department of Legislative Services (DLS).

Investigations, Enforcement, and Remedies – Generally

Procedures for alleging discrimination and available remedies are specified in statute and differ depending on the type of discrimination alleged.

In many instances, a person claiming to have been discriminated against may file a complaint with the Maryland Commission on Civil Rights (MCCR), which is the independent State agency charged with the enforcement of laws prohibiting discrimination in numerous areas, generally including employment, housing, public accommodations, and State contracting. Statutory provisions in the State Government Article specify the responsibilities of MCCR in investigating a claim of discrimination and attempting conciliation and the circumstances under which an individual must have an opportunity for an administrative hearing conducted by the Office of Administrative Hearings (OAH) or may, in some circumstances, elect to file a civil action in circuit court. Available remedies under these provisions vary depending on the type of discrimination alleged; such remedies may, under certain circumstances, include injunctive relief, the imposition of civil penalties, and actual and/or punitive damages, as specified.

Other forms of discrimination prohibited in statute may be addressed, at least initially, directly with the relevant State agency. For instance, a complaint alleging certain violations under the Commercial Law Article (*e.g.*, discrimination in lending, credit, and related financial transactions) may be filed with the Commissioner of Financial Regulation, who has jurisdiction to investigate the complaint and hold a hearing, as specified. On a finding that a creditor has engaged in discriminatory practices, the commissioner must order the

creditor to cease and desist from the act or practice; statute also establishes civil remedies, which may include actual and punitive damages, as specified.

When the Commissioner of Labor and Industry has determined that the State's Equal Pay for Equal Work Act has been violated, the commissioner must (1) try to resolve any issue informally by mediation or (2) ask the Attorney General to bring an action on behalf of the applicant or employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief. An employee may bring an action against the employer under specified circumstances.

Chapter 244 of the Acts of 2023

Chapter 244 proposes a constitutional amendment that, if approved by the voters at the next general election to be held in November 2024, (1) establishes an individual's fundamental right to reproductive freedom, including, but not limited to the ability to make and effectuate decisions to prevent, continue, or end one's own pregnancy and (2) prohibits the State from directly or indirectly denying, burdening, or abridging the right unless justified by a compelling State interest achieved by the least restrictive means.

State Expenditures: MDL advises that the bill's expansion of protections under the State's Equal Pay for Equal Work Act may lead to an indeterminate increase in complaints. Accordingly, general fund expenditures *may* increase to the extent that the bill increases complaints received for processing in a volume that cannot be accommodated using existing budgeted resources. Additionally, MDL may incur costs associated with additional training for investigators and to develop materials for educating employees and employers. This analysis assumes any potential additional expenditures are minimal.

OAH can handle any increase in delegated contested cases using existing resources.

Small Business Effect: Small businesses are prohibited from engaging in specified discriminatory practices on the basis of an individual's protected class and subject to various penalties depending on the circumstances of the case (*e.g.*, actual or punitive damages, civil penalties, etc.) if found to be in violation. However, some of the conduct prohibited by the bill is already prohibited under current State law in certain circumstances. For example, under the bill, small business employers with fewer than 15 employees are prohibited from employment discrimination in regard to pay disparities based on certain characteristics (*e.g.*, sexual orientation, race, etc.), per the bill's changes to the State's Equal Pay for Equal Work Act); employers with 15 or more employees, however, are already prohibited from employment discrimination based on these characteristics in State statute (under Title 20 of the State Government Article).

Additional Comments: Although the bill withdraws and repeals Chapter 244 of 2023, DLS notes that Chapter 245 of 2023 also included identical provisions and is unaffected by the bill. Thus, the substantive provisions formerly included in Chapter 244 (as referenced above) are still subject to referendum in the November 2024 general election via Chapter 245.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 590 (Senators Lam and Kelly) - Judicial Proceedings and Finance.

Information Source(s): Governor's Office of Small, Minority, and Women Business Affairs; State Board of Contract Appeals; Maryland Commission on Civil Rights; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State Department of Education; University System of Maryland; Department of Budget and Management; Department of General Services; Department of Housing and Community Development; Maryland Department of Labor; Maryland Department of Planning; Board of Public Works; Maryland Department of Transportation; Office of Administrative Hearings; State Department of Assessments and Taxation; Health Benefit Exchange; Maryland Insurance Administration; Public Service Commission; Baltimore City County Public Schools; Prince George's County Public Schools; Department of Legislative Services

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