

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 598

(Delegate Boafo, *et al.*)

Health and Government Operations

Judicial Proceedings

Discrimination - Military Status - Prohibition

This bill generally prohibits discrimination based on an individual’s “military status” in regard to housing and employment. The bill’s provisions may not be applied or interpreted to limit the authority granted to the Attorney General under Title 20, Subtitle 10, Part III of the State Government Article.

Fiscal Summary

State Effect: General fund expenditures likely increase, at least minimally, for the Maryland Commission on Civil Rights (MCCR), as discussed below. Otherwise, it is anticipated that the bill does not materially affect State finances.

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Military status” is defined as the status of being (as further listed/defined in federal code):

- a member of the uniformed services;
- a member of a reserve component of the Armed Forces of the United States; or
- a dependent.

In general, the bill incorporates “military status” into numerous provisions of statute that prohibit discrimination in regard to housing and employment on the grounds of specified bases (*e.g.*, race, sex, age, religion, sexual orientation, etc.).

Current Law:

Housing Discrimination

In general, State law prohibits housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, source of income, or disability.

Housing discrimination includes, among other things, taking the following actions based on a protected class: (1) refusing to sell or rent a dwelling after the making of a *bona fide* offer; (2) refusing to negotiate for the sale or rental of a dwelling; (3) making a dwelling otherwise unavailable; (4) discriminating in the terms, conditions, or privileges of the sale or rental of a dwelling; (5) discriminating in the provision of services or facilities in connection with the sale or rental of a dwelling; (6) making, printing, or publishing or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on a protected status; (7) representing to a person that a dwelling is not available for inspection, sale, or rental when it is available; and (8) for profit, inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular protected status.

Employment Discrimination

Statute includes prohibitions against various types of employment discrimination, generally on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, genetic information, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

For additional information on employment discrimination, please see the **Appendix – Employment Discrimination**.

Enforcement and Remedies – in General

MCCR is the independent State agency charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting. Generally, an individual alleging discrimination may initiate the process by filing a complaint with MCCR within timeframes specified in statute.

In general, following the receipt of a properly filed complaint, the case is assigned to an MCCR investigator to determine whether there is probable cause that discrimination has occurred. 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 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.

Enforcement by the Attorney General

Under Title 20, Subtitle 10, Part III of the State Government Article, the Attorney General has the power to investigate, prosecute, and remediate any conduct that constitutes a civil rights violation. A civil rights violation is an act of discrimination prohibited under the U.S. Constitution, the Maryland Constitution, or State or federal law. These provisions, however, may not be interpreted to impair the rights and powers of MCCR; in areas of overlapping jurisdiction, the Attorney General and MCCR must coordinate and make referrals to minimize and eliminate duplication of effort and promote collaboration.

State Fiscal Effect: General fund expenditures likely increase, at least minimally, for MCCR, as adding individuals with military status as a protected class in regard to housing and employment discrimination is expected to increase MCCR's caseload. The Department of Legislative Services (DLS) advises that MCCR may incur expenditures associated with hiring additional staff to investigate complaints of discrimination based on an individual's military status. Although an estimate of staffing needs and costs was not provided by MCCR, *for illustrative purposes only*, and based on information previously provided to DLS, for every additional investigator required, general fund expenditures likely increase by at least \$80,000 annually. Additional expenditures may also be incurred for costs associated with training and education, among other potential expenses.

The bill is not anticipated to materially affect the finances or operations of the Judiciary or OAH.

Small Business Effect: Small businesses are prohibited from engaging in specified discriminatory practices on the basis of an individual's military status 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.

Additional Information

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

Designated Cross File: SB 413 (Senator Gile, *et al.*) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Kent, and Worcester counties; Maryland Association of Counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Department of Health; Department of Human Services; Maryland Department of Labor; Office of Administrative Hearings; Health Benefit Exchange; Maryland Insurance Administration; Public Service Commission; Department of Budget and Management; Department of Legislative Services

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Appendix – Employment Discrimination

Discrimination in Employment – Generally

Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As such, State law generally prohibits discrimination in employment on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, genetic information, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

Subject to limited exceptions, on any of these bases or because of an individual's refusal to submit to or make available the results of a genetic test, 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 or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee. An employer is also prohibited from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee or an applicant for employment; however, State law does not require an employer to reasonably accommodate a disability if the accommodation would cause undue hardship on the conduct of the employer's business. Furthermore, an employer may not (1) engage in the harassment (including sexual harassment) of an employee or (2) discriminate or retaliate against an employee or applicant because the employee/applicant has opposed any practice prohibited by State law relevant to employment discrimination or made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing related to such laws. Additional prohibitions – including those specific to interns, employment agencies, and labor organizations – are also specified in statute.

In general, the above prohibitions are applicable to employers that have 15 or more employees (based on the number of employees working in each of 20 or more calendar weeks in the current or preceding calendar year). Provisions relating to harassment allegations apply to employers with one or more employees. Statute also specifically prohibits units, officers, or employees of the State, a county, or a municipal corporation from engaging in these discriminatory acts.

Employment Discrimination Complaints – Initial Process, Administrative Proceedings, and Civil Actions

Initial Process: The Maryland Commission on Civil Rights (MCCR) is the independent State agency charged with the enforcement of laws prohibiting discrimination in employment. An individual alleging employment discrimination may file an inquiry with MCCR, which initiates the intake process. Once a complaint has been properly filed, the case is assigned to an MCCR investigator to determine whether there is probable cause that discrimination has occurred. If at the conclusion of the investigatory stage, MCCR believes there is probable cause that discrimination occurred, MCCR issues a finding and attempts to resolve the matter through conciliation. If an agreement to remedy and eliminate the discrimination cannot be reached, the matter is certified for litigation and may proceed in a number of ways, including being heard before an administrative law judge.

A complaint alleging an unlawful employment practice other than harassment must be filed within 300 days after the alleged act (a complaint alleging harassment must be filed within two years). However, complaints filed with a federal human relations commission or a local human relations commission within specified timeframes are deemed to be in compliance with these requirements.

Administrative Proceedings: At an administrative hearing, MCCR's Office of the General Counsel presents the case on behalf of the complainant. Remedies available on a finding by an administrative law judge that the respondent (employer) is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief (including the reinstatement or hiring of employees, with or without back pay); (3) awarding compensatory damages; and (4) ordering any other equitable relief that the judge considers appropriate.

Compensatory damages that are awarded (for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses) are in addition to back pay, interest on back pay, and any other equitable relief that the complainant may recover under any other provision of law. The maximum amounts of compensatory damages that may be awarded are as follows:

- \$50,000 for respondents with 15 to 100 employees;
- \$100,000 for respondents with 101 to 200 employees;
- \$200,000 for respondents with 201 to 500 employees; and
- \$300,000 for respondents with 501 or more employees.

If back pay is awarded, the award must be reduced by any interim earnings or amounts earnable with reasonable diligence by the person discriminated against. In addition to any other authorized relief, a complainant may recover back pay for up to two years preceding the filing of the complaint if the unlawful employment practice that has occurred during the complaint filing period is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a complaint.

Civil Actions: A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own behalf under the same conditions. On a finding that discrimination occurred, the circuit court may provide the same remedies that an administrative law judge is authorized to provide (described above).

A complainant may also file a private civil action in circuit court against the respondent if (1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice by the respondent and (2) at least 180 days have elapsed since the filing of the administrative charge or complaint. In addition, the civil action must be filed within two years after the alleged employment practice occurred (or within three years for a harassment allegation), however, these time limitations are tolled while an administrative charge or complaint is pending. The filing of a civil action automatically terminates any proceeding before MCCR based on the underlying administrative complaint.

In addition to the remedies described above, a circuit court may also award punitive damages in a private civil action if the respondent is not a governmental unit or political subdivision, and the court finds that the respondent is engaging or has engaged in an unlawful employment practice with actual malice. If the court awards punitive damages, the sum of the amount of compensatory damages and punitive damages may not exceed the applicable limitations on compensatory damages (as shown above). If a complainant seeks compensatory or punitive damages in a circuit court action, any party may demand a jury trial, and the court may not inform the jury of the statutory limitations on compensatory and punitive damages.

Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party reasonable attorney's fees, expert witness fees, and costs.

Employment Discrimination Caseloads

MCCR reports that since 2017, retaliation has been the primary employment-related inquiry received, followed by inquiries related to disability, harassment, and race. According to the most recent MCCR Annual Report, nearly 70% of the 661 overall cases ultimately referred for investigation in fiscal 2023 were for employment discrimination.