

HOUSE BILL 399

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8lr1350

By: **Delegates Rosenberg, Benson, Frush, Hubbard, Kullen, Montgomery,
Nathan-Pulliam, Oaks, Pena-Melnyk, Pendergrass, and V. Turner**

Introduced and read first time: January 28, 2008

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 6, 2008

CHAPTER _____

1 AN ACT concerning

2 **Maryland Human Relations Commission – Administrative and Civil**
3 **Relief – Waiver of Sovereign Immunity**

4 FOR the purpose of clarifying that certain earnings and amounts earnable operate to
5 reduce certain awards of back pay in certain administrative proceedings;
6 establishing that certain respondents may elect to have certain claims asserted
7 in a certain complaint filed with the Maryland Human Relations Commission
8 determined in certain civil actions brought by the Commission on the
9 complainant's behalf; requiring that certain respondents give notice of certain
10 elections to the Commission and certain other complainants and respondents;
11 establishing that a certain civil action alleging a certain discriminatory act may
12 be filed if the complainant filed a certain administrative charge or certain
13 complaint in a timely manner and must be filed within a certain time after the
14 occurrence of a certain act of discrimination; establishing that the filing of
15 certain civil actions will automatically terminate certain proceedings before the
16 Commission; establishing that certain earnings and amounts earnable operate
17 to reduce certain awards of back pay in certain civil actions; prohibiting the use
18 of sovereign immunity as a defense against certain awards in employment
19 discrimination cases; providing for the payment of certain awards made against
20 the State; correcting a certain cross-reference; and generally relating to the
21 Maryland Human Relations Commission, administrative and civil relief for
22 certain acts of discrimination, and the waiver of sovereign immunity.

23 BY repealing and reenacting, with amendments,
24 Article 49B – Human Relations Commission

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 Section 11(e)(6), 11A, 11B, 11D, and 17A
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2007 Supplement)

4 BY adding to
5 Article 49B – Human Relations Commission
6 Section 17B
7 Annotated Code of Maryland
8 (2003 Replacement Volume and 2007 Supplement)

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

11 **Article 49B – Human Relations Commission**

12 11.

13 (e) (6) [In case of an award of] **IF** back pay **IS AWARDED** under
14 paragraph (3) of this subsection, interim [earning] **EARNINGS** or amounts [earned]
15 **EARNABLE** with reasonable diligence by the person or persons discriminated against
16 shall operate to reduce the back pay otherwise allowable.

17 11A.

18 (a) (1) When a complaint is filed under § 11 of this subtitle, a complainant
19 **OR RESPONDENT** may elect to have the claims asserted in the complaint determined
20 in a civil action brought by the Commission on the complainant's behalf, if:

21 (i) The Commission finds the respondent has engaged in, or is
22 engaging in a discriminatory act; and

23 (ii) There is a failure to reach an agreement for the remedy and
24 elimination of the discriminatory act.

25 (2) The election authorized under paragraph (1) of this subsection
26 shall be made not later than 30 days after the complainant or respondent receives
27 service under § 11(a)(2) of this subtitle.

28 (3) If an election is not made under paragraph (1) of this subsection,
29 the Commission shall provide an opportunity for a hearing as provided under §
30 11(a)(3) of this subtitle.

31 (b) When a complaint is filed under § 11 of this subtitle, the Commission
32 may elect to have the claims asserted in the complaint determined in a civil action
33 brought on the Commission's own behalf, if:

1 (1) The Commission finds the respondent has engaged in, or is
2 engaging in a discriminatory act; and

3 (2) There is a failure to reach an agreement for the remedy and
4 elimination of the discriminatory act.

5 (c) (1) If a complainant **OR RESPONDENT** makes an election under
6 subsection (a) of this section, that [individual] **PARTY** shall give notice of the election
7 to the Commission and to all other complainants and respondents.

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

11 (3) Not later than 60 days after the election is made by any party, the
12 Commission shall file a civil action in the court of the county where the alleged act of
13 discrimination took place.

14 (d) If the court finds that a discriminatory act took place, the court may
15 provide the remedies specified in § 11(e)(3) through (6) of this subtitle.

16 (e) 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
19 compensatory damages imposed under § 11(e)(5) of this subtitle.

20 11B.

21 (a) In addition to the right to make an election authorized under § 11A of
22 this subtitle, a complainant may bring a civil action against the respondent alleging a
23 discriminatory act if:

24 (1) The complainant initially filed ~~an~~ **A TIMELY** administrative charge
25 or a complaint under federal, State, or local law alleging a discriminatory act by the
26 respondent; ~~and~~

27 (2) At least 180 days have elapsed since the filing of the
28 administrative charge or complaint; **AND**

29 **(3) THE CIVIL ACTION IS FILED NO MORE THAN 2 YEARS AFTER**
30 **THE OCCURRENCE OF THE ALLEGED ACT OF DISCRIMINATION.**

31 (b) A civil action under this section may be filed in the circuit court of the
32 county where the alleged act of discrimination took place.

1 **(C) THE FILING OF A CIVIL ACTION UNDER THIS SECTION SHALL SERVE**
2 **TO AUTOMATICALLY TERMINATE ANY PROCEEDING BEFORE THE COMMISSION**
3 **BASED ON THE UNDERLYING ADMINISTRATIVE COMPLAINT AND ANY**
4 **AMENDMENT TO THE COMPLAINT.**

5 **[(c)] (D)** In addition to the relief authorized under [subsections (d) and (e)]
6 **SUBSECTION (E)** of this section, the court may award punitive damages if:

7 (1) The respondent is not a government entity or political subdivision;
8 and

9 (2) The court finds that the respondent has engaged in or is engaging
10 in an unlawful employment practice with actual malice.

11 **[(d)] (E)** Compensatory damages awarded under this section are in addition
12 to:

13 (1) Back pay or interest on back pay that the complainant is entitled
14 to recover under any other provision of law; and

15 (2) Any other equitable relief the complainant is entitled to recover
16 under any other provision of law.

17 **[(e)] (F)** The sum of the amount of compensatory damages awarded to each
18 complainant under this section, for future pecuniary losses, emotional pain, suffering,
19 inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary
20 losses, and the amount of punitive damages awarded under [this] **SUBSECTION (D)**
21 **OF THIS** section may not exceed:

22 (1) \$50,000 if the respondent employs not fewer than 15 and not more
23 than 100 employees in each of 20 or more calendar weeks in the current or preceding
24 calendar year;

25 (2) \$100,000, if the respondent employs not fewer than 101 and not
26 more than 200 employees in each of 20 or more calendar weeks in the current or
27 preceding calendar year;

28 (3) \$200,000, if the respondent employs not fewer than 201 and not
29 more than 500 employees in each of 20 or more calendar weeks in the current or
30 preceding calendar year; and

31 (4) \$300,000, if the respondent employs not fewer than 501 employees
32 in each of 20 or more calendar weeks in the current or preceding calendar year.

33 **[(f)](G)** If a complainant seeks compensatory or punitive damages under
34 this section:

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

2 (2) The court may not inform the jury of the limitations imposed ON
3 **COMPENSATORY AND PUNITIVE DAMAGES** under subsection [(e)] (F) of this section.

4 **(H) IF BACK PAY IS AWARDED UNDER THIS SECTION, INTERIM**
5 **EARNINGS OR AMOUNTS EARNABLE WITH REASONABLE DILIGENCE BY THE**
6 **PERSON OR PERSONS DISCRIMINATED AGAINST SHALL OPERATE TO REDUCE**
7 **THE BACK PAY OTHERWISE ALLOWABLE.**

8 [(g)] (I) When appropriate and to the extent authorized under law, in a
9 dispute arising under this subtitle, in which the complainant seeks compensatory or
10 punitive damages, the parties are encouraged to use alternative means of dispute
11 resolution, including settlement negotiations or mediation.

12 11D.

13 (a) In an action brought under this [section] **SUBHEADING**, the court, in its
14 discretion, may award the prevailing party reasonable attorney's fees, expert witness
15 fees, and costs.

16 (b) This subtitle, including the limitations on damages, may not be construed
17 to limit the scope of, or the administrative procedures or relief available under, any
18 other provision of federal, State, or local law.

19 (c) This subtitle may not be construed to limit §§ 40 through 43 of this
20 article.

21 17A.

22 This State, its officers, and its units may not raise sovereign immunity as a
23 defense against [a salary] AN award in an employment discrimination case under [§
24 16 of] this article.

25 **17B.**

26 **(A) IF THE STATE HAS SUFFICIENT MONEY AVAILABLE AT THE TIME AN**
27 **AWARD IS MADE AGAINST THE STATE UNDER THIS ARTICLE, THE STATE SHALL**
28 **PAY THE AWARD AS SOON AS PRACTICABLE WITHIN 20 DAYS AFTER THE AWARD**
29 **IS FINAL.**

30 **(B) (1) IF SUFFICIENT MONEY IS NOT AVAILABLE AT THE TIME AN**
31 **AWARD IS MADE AGAINST THE STATE UNDER THIS ARTICLE, THE AFFECTED**
32 **STATE UNIT OR OFFICER SHALL REPORT THE OUTSTANDING AWARD TO THE**
33 **STATE COMPTROLLER.**

1 **(2) THE COMPTROLLER SHALL:**

2 **(I) KEEP AN ACCOUNTING OF ALL OUTSTANDING AWARDS;**
3 **AND**

4 **(II) REPORT THAT ACCOUNTING ANNUALLY TO THE**
5 **GOVERNOR.**

6 **(C) (1) THE GOVERNOR SHALL INCLUDE IN THE STATE BUDGET**
7 **SUFFICIENT MONEY TO PAY ALL AWARDS MADE AGAINST THE STATE UNDER**
8 **THIS ARTICLE.**

9 **(2) ON APPROPRIATION OF MONEY BY THE GENERAL ASSEMBLY,**
10 **THE COMPTROLLER SHALL AUTHORIZE PAYMENT OF ALL OUTSTANDING**
11 **AWARDS UNDER THIS ARTICLE IN THE ORDER OF THE DATE ON WHICH EACH**
12 **AWARD WAS MADE.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.