

HOUSE BILL 393

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By: **Delegates Rosenberg, Oaks, Reznik, and Weldon**

Introduced and read first time: February 2, 2009

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Discrimination in Employment – Expansion of Disability Rights**

3 FOR the purpose of altering the definition of disability applicable to certain provisions
4 of law prohibiting discrimination in employment; prohibiting an employer from
5 failing or refusing to make certain reasonable accommodations for certain
6 disabilities of certain employees; providing that an employer is not required to
7 reasonably accommodate an employee's disability if the accommodation would
8 cause certain undue hardship; prohibiting an employer or labor union from
9 retaliating against a certain individual because the individual has taken certain
10 action; and generally relating to discrimination in employment.

11 BY repealing and reenacting, with amendments,
12 Article – State Government
13 Section 20–601(b), 20–603, and 20–606
14 Annotated Code of Maryland
15 (2004 Replacement Volume and 2008 Supplement)
16 (As enacted by Chapter ___ (H.B. 51) of the Acts of the General Assembly of
17 2009)

18 BY repealing and reenacting, without amendments,
19 Article – State Government
20 Section 20–601(c), (d), (e), and (h)
21 Annotated Code of Maryland
22 (2004 Replacement Volume and 2008 Supplement)
23 (As enacted by Chapter ___ (H.B. 51) of the Acts of the General Assembly of
24 2009)

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

27 **Article – State Government**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 20-601.

2 (b) (1) "Disability" means:

3 (i) 1. a physical disability, infirmity, malformation, or
4 disfigurement that is caused by bodily injury, birth defect, or illness, including
5 epilepsy; or

6 [(ii)] 2. a mental impairment or deficiency;

7 (II) A RECORD OF HAVING A PHYSICAL OR MENTAL
8 IMPAIRMENT DESCRIBED IN ITEM (I) OF THIS PARAGRAPH; OR

9 (III) BEING REGARDED AS HAVING A PHYSICAL OR MENTAL
10 IMPAIRMENT DESCRIBED IN ITEM (I) OF THIS PARAGRAPH.

11 (2) "Disability" includes:

12 (i) 1. any degree of paralysis, amputation, or lack of
13 physical coordination;

14 2. blindness or visual impairment;

15 3. deafness or hearing impairment;

16 4. muteness or speech impediment; and

17 5. physical reliance on a service animal, wheelchair, or
18 other remedial appliance or device; and

19 (ii) retardation and any other mental impairment or deficiency
20 that may have necessitated remedial or special education and related services.

21 (c) (1) "Employee" means an individual employed by an employer.

22 (2) Unless the individual is subject to the State or local civil service
23 laws, "employee" does not include:

24 (i) an individual elected to public office;

25 (ii) an individual chosen by an elected officer to be on the
26 officer's personal staff;

27 (iii) an appointee on the policy making level; or

1 (iv) an immediate adviser with respect to the exercise of the
2 constitutional or legal powers of an elected office.

3 (d) (1) “Employer” means:

4 (i) a person that:

5 1. is engaged in an industry or business; and

6 2. has 15 or more employees for each working day in
7 each of 20 or more calendar weeks in the current or preceding calendar year; and

8 (ii) an agent of a person described in item (i) of this paragraph.

9 (2) “Employer” includes the State to the extent provided in this title.

10 (3) Except for a labor organization, “employer” does not include a bona
11 fide private membership club that is exempt from taxation under § 501(c) of the
12 Internal Revenue Code.

13 (e) (1) “Employment agency” means:

14 (i) a person that regularly undertakes with or without
15 compensation to procure:

16 1. employees for an employer; or

17 2. opportunities for employees to work for an employer;

18 and

19 (ii) an agent of a person described in item (i) of this paragraph.

20 (2) Except for the United States Employment Service and the system
21 of State and local employment services receiving federal assistance, “employment
22 agency” does not include a unit of the United States, the State, or a political
23 subdivision of the State.

24 (h) (1) “Labor organization” means:

25 (i) a labor organization engaged in an industry; and

26 (ii) an agent of an organization described in item (i) of this
27 paragraph.

28 (2) “Labor organization” includes:

29 (i) an organization of any kind, an agency, or an employee
30 representation committee, group, association, or plan:

- 1 1. in which employees participate; and
- 2 2. that exists, wholly or partly, for the purpose of dealing
3 with employers concerning grievances, labor disputes, wages, rates of pay, hours, or
4 other terms or conditions of employment; and
- 5 (ii) a conference, general committee, joint or system board, or
6 joint council that is subordinate to a national or international labor organization.
- 7 20-603.

8 This subtitle does not require:

- 9 (1) an employer, employment agency, labor organization, or joint
10 labor-management committee subject to this subtitle to grant preferential treatment
11 to any individual or group on the basis of the race, color, religion, sex, age, national
12 origin, sexual orientation, or disability of the individual or group because an
13 imbalance may exist with respect to the total number or percentage of individuals of
14 any race, color, religion, sex, age, national origin, or sexual orientation or individuals
15 with disabilities employed by the employer, referred or classified for employment by
16 the employment agency or labor organization, admitted to membership or classified by
17 the labor organization, or admitted to, or employed in, any apprenticeship or other
18 training program, compared to the total number or percentage of individuals of that
19 race, color, religion, sex, age, national origin, or sexual orientation or individuals with
20 disabilities in the State or any community, section, or other area, or in the available
21 work force in the State or any community, section, or other area; or
- 22 (2) an employer to reasonably accommodate an employee's religion **OR**
23 **DISABILITY** if the accommodation would cause undue hardship on the conduct of the
24 employer's business.
- 25 20-606.

26 (a) An employer may not:

- 27 (1) fail or refuse to hire, discharge, or otherwise discriminate against
28 any individual with respect to the individual's compensation, terms, conditions, or
29 privileges of employment because of:
- 30 (i) the individual's race, color, religion, sex, age, national origin,
31 marital status, sexual orientation, genetic information, or disability unrelated in
32 nature and extent so as to reasonably preclude the performance of the employment; or
- 33 (ii) the individual's refusal to submit to a genetic test or make
34 available the results of a genetic test;

1 (2) limit, segregate, or classify its employees or applicants for
2 employment in any way that would deprive or tend to deprive any individual of
3 employment opportunities or otherwise adversely affect the individual's status as an
4 employee because of:

5 (i) the individual's race, color, religion, sex, age, national origin,
6 marital status, sexual orientation, genetic information, or disability unrelated in
7 nature and extent so as to reasonably preclude the performance of the employment; or

8 (ii) the individual's refusal to submit to a genetic test or make
9 available the results of a genetic test; [or]

10 (3) request or require genetic tests or genetic information as a
11 condition of hiring or determining benefits; **OR**

12 **(4) FAIL OR REFUSE TO MAKE A REASONABLE ACCOMMODATION**
13 **FOR THE KNOWN DISABILITY OF AN OTHERWISE QUALIFIED EMPLOYEE.**

14 (b) An employment agency may not:

15 (1) fail or refuse to refer for employment or otherwise discriminate
16 against any individual because of the individual's race, color, religion, sex, age,
17 national origin, marital status, sexual orientation, or disability unrelated in nature
18 and extent so as to reasonably preclude the performance of the employment; or

19 (2) classify or refer for employment any individual on the basis of the
20 individual's race, color, religion, sex, age, national origin, marital status, sexual
21 orientation, or disability unrelated in nature and extent so as to reasonably preclude
22 the performance of the employment.

23 (c) A labor organization may not:

24 (1) exclude or expel from its membership, or otherwise discriminate
25 against, any individual because of the individual's race, color, religion, sex, age,
26 national origin, marital status, sexual orientation, or disability unrelated in nature
27 and extent so as to reasonably preclude the performance of the employment;

28 (2) limit, segregate, or classify its membership, or classify or fail or
29 refuse to refer for employment any individual, in any way that would deprive or tend
30 to deprive the individual of employment opportunities, limit the individual's
31 employment opportunities, or otherwise adversely affect the individual's status as an
32 employee or as an applicant for employment because of the individual's race, color,
33 religion, sex, age, national origin, marital status, sexual orientation, or disability
34 unrelated in nature and extent so as to reasonably preclude the performance of the
35 employment; or

1 (3) cause or attempt to cause an employer to discriminate against an
2 individual in violation of this section.

3 (d) An employer, labor organization, or joint labor–management committee
4 controlling apprenticeship or other training or retraining programs, including
5 on–the–job training programs, may not discriminate against any individual in
6 admission to, or employment in, any program established to provide apprenticeship or
7 other training or retraining because of the individual’s race, color, religion, sex, age,
8 national origin, marital status, sexual orientation, or disability unrelated in nature
9 and extent so as to reasonably preclude the performance of the employment.

10 (e) (1) Except as provided in paragraph (2) of this subsection, an
11 employer, labor organization, or employment agency may not print or cause to be
12 printed or published any notice or advertisement relating to employment by the
13 employer, membership in or any classification or referral for employment by the labor
14 organization, or any classification or referral for employment by the employment
15 agency that indicates any preference, limitation, specification, or discrimination based
16 on race, color, religion, sex, age, national origin, sexual orientation, or disability.

17 (2) A notice or advertisement may indicate a preference, limitation,
18 specification, or discrimination based on religion, sex, age, national origin, or disability
19 if religion, sex, age, national origin, or disability is a bona fide occupational
20 qualification for employment.

21 (f) An employer may not discriminate **OR RETALIATE** against any of its
22 employees or applicants for employment, an employment agency may not discriminate
23 against any individual, and a labor organization may not discriminate **OR RETALIATE**
24 against any member or applicant for membership because the individual has:

25 (1) opposed any practice prohibited by this subtitle; or

26 (2) made a charge, testified, assisted, or participated in any manner in
27 an investigation, proceeding, or hearing under this subtitle.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2009.