

CHAPTER 300

(House Bill 393)

AN ACT concerning

Discrimination in Employment – Expansion of Disability Rights

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

BY repealing and reenacting, with amendments,

Article – State Government

Section 20–601(b), 20–603, and 20–606

Annotated Code of Maryland

(2004 Replacement Volume and 2008 Supplement)

(As enacted by Chapter 120 (H.B. 51) of the Acts of the General Assembly of 2009)

BY repealing and reenacting, without amendments,

Article – State Government

Section 20–601(c), (d), (e), and (h)

Annotated Code of Maryland

(2004 Replacement Volume and 2008 Supplement)

(As enacted by Chapter 120 (H.B. 51) of the Acts of the General Assembly of 2009)

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

Article – State Government

20–601.

(b) (1) “Disability” means:

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

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

(II) A RECORD OF HAVING A PHYSICAL OR MENTAL IMPAIRMENT ~~DESCRIBED IN ITEM (I) OF THIS PARAGRAPH~~ AS OTHERWISE DEFINED UNDER THIS SUBSECTION; OR

(III) BEING REGARDED AS HAVING A PHYSICAL OR MENTAL IMPAIRMENT ~~DESCRIBED IN ITEM (I) OF THIS PARAGRAPH~~ AS OTHERWISE DEFINED UNDER THIS SUBSECTION.

(2) "Disability" includes:

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

2. blindness or visual impairment;

3. deafness or hearing impairment;

4. muteness or speech impediment; and

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

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

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

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

(i) an individual elected to public office;

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

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

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

(d) (1) "Employer" means:

(i) a person that:

1. is engaged in an industry or business; and
2. has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; and

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

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

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

(e) (1) “Employment agency” means:

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

1. employees for an employer; or
2. opportunities for employees to work for an employer;

and

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

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

(h) (1) “Labor organization” means:

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

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

(2) “Labor organization” includes:

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

1. in which employees participate; and

2. that exists, wholly or partly, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment; and

(ii) a conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization.

20-603.

This subtitle does not require:

(1) an employer, employment agency, labor organization, or joint labor-management committee subject to this subtitle to grant preferential treatment to any individual or group on the basis of the race, color, religion, sex, age, national origin, sexual orientation, or disability of the individual or group because an imbalance may exist with respect to the total number or percentage of individuals of any race, color, religion, sex, age, national origin, or sexual orientation or individuals with disabilities employed by the employer, referred or classified for employment by the employment agency or labor organization, admitted to membership or classified by the labor organization, or admitted to, or employed in, any apprenticeship or other training program, compared to the total number or percentage of individuals of that race, color, religion, sex, age, national origin, or sexual orientation or individuals with disabilities in the State or any community, section, or other area, or in the available work force in the State or any community, section, or other area; or

(2) an employer to reasonably accommodate an employee's religion **OR DISABILITY** if the accommodation would cause undue hardship on the conduct of the employer's business.

20-606.

(a) 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 of employment because of:

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

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

(2) limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of

employment opportunities or otherwise adversely affect the individual's status as an employee because of:

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

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

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

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

(b) An employment agency may not:

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

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

(c) A labor organization may not:

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 7, 2009.