

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 907 (Delegate Healey, *et al.*)  
Health and Government Operations

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Employment Discrimination - Criminal Convictions

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This bill specifies that an employer may not refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's terms or conditions of employment because of information indicating that an individual has been convicted of a criminal offense that is not directly related to employment. The prohibition does not include information related to sexual offenses or sexual abuse of a minor, either as defined in State law or any similar offense committed in a jurisdiction other than Maryland. Under the bill, "employer" means a person engaged in a business, an industry, a profession, a trade, or any other enterprise in the State; "employer" includes an agent, representative, or designee of the employer.

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Fiscal Summary

**State Effect:** Based on the very limited remedies available for employees or job applicants who experience violations of the bill, Legislative Services assumes that the number of complaints received and subsequently investigated by the Maryland Commission on Human Relations (MCHR) and referred to the Office of Administrative Hearings will be minimal and absorbable within existing resources.

**Local Effect:** None. The bill applies exclusively to private-sector activities.

**Small Business Effect:** Potential meaningful operational impact on the hiring practices of small businesses in the State.

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## Analysis

**Current Law/Background:** Employers may not discharge, refuse to hire, or deprive individuals of employment opportunities based on race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability.

State law establishes various penalties, including monetary penalties, for actions that constitute discrimination in employment. However, most of these remedies, including all monetary remedies for aggrieved employees or job applicants are based on a violation that is considered an “unlawful employment practice.” It is not specified in the bill that a violation of the bill’s provisions rises to the level of an unlawful employment practice. Therefore, the remedies available to an aggrieved employee or applicant for a violation of the bill are limited.

An employee or applicant may file a complaint with MCHR alleging a violation of the bill as discrimination in employment. MCHR must investigate the complaint and if MCHR determines that a complaint has merit, it may attempt to eliminate the discrimination by conference, conciliation, or persuasion. If a complaint alleging discrimination in employment cannot be resolved by conference, conciliation, or persuasion, then MCHR may require the employer to answer to the complaint at a hearing before an administrative law judge. If an administrative law judge determines that a discriminatory act occurred, the judge may order the employer to cease and desist and no longer act in such a manner. The judge may also order nonmonetary relief to the employee or job applicant.

As described above, the bill establishes a definition of an “employer” that must comply with the bill’s provisions. The existing definition of employer pertaining to discrimination in employment in the State Government Article specifies that an employer means a person – or the agent of a person – that is engaged in an industry or business and has 15 or more employees for each working day in 20 or more calendar weeks in the current or preceding calendar. Further, “employer” includes the State to the extent provided in the various provisions of law. Nevertheless, the bill does not specifically include the State or units of government in the definition of employer. Thus, Legislative Services advises that the bill’s provisions apply only to private-sector activities.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City, Morgan State University, Maryland Commission on Human Relations, Department of Budget and Management, Maryland Department of Transportation, Department of Legislative Services;

**Fiscal Note History:** First Reader - March 7, 2011  
mc/mcr

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Analysis by: Michael T. Vorgetts

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510