

SENATE BILL 688

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4lr0338
CF 4lr0310

By: **Senators Raskin, Conway, Feldman, Ferguson, Kelley, King, Madaleno,
Manno, Montgomery, Peters, Pinsky, Pugh, and Rosapepe**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Fair Employment Preservation Act of 2014**

3 FOR the purpose of providing that an act or omission of a certain employee may be
4 construed to be an act or omission of a certain employer under certain
5 circumstances; providing for the application of this Act; and generally relating
6 to discrimination and retaliation in employment.

7 BY adding to

8 Article – State Government

9 Section 20–610

10 Annotated Code of Maryland

11 (2009 Replacement Volume and 2013 Supplement)

12 Preamble

13 WHEREAS, The State of Maryland seeks to provide increased protections to
14 employees who are the victims of discrimination in the workplace; and

15 WHEREAS, The laws of Maryland governing employment discrimination have
16 been based, in large part, on federal statutory provisions, and decisions of the U.S.
17 Supreme Court interpreting those federal laws may have implications for the
18 interpretation of Maryland’s fair employment laws; and

19 WHEREAS, The Supreme Court’s decision in *Ledbetter v. Goodyear Tire &*
20 *Rubber Co.*, 550 U.S. 618 (2007), significantly impaired federal statutory protections
21 against discrimination in employment by allowing employees who are the victims of
22 discrimination only a limited opportunity under the Civil Rights Act to seek relief for
23 their unequal pay; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The General Assembly of Maryland responded by passing the Lilly
2 Ledbetter Civil Rights Restoration Act of 2009 (Chapters 56 and 57 of the Acts of the
3 General Assembly of 2009); and

4 WHEREAS, The Lilly Ledbetter Civil Rights Restoration Act of 2009 allowed
5 employees who are the victims of discrimination greater relief by ensuring that each
6 discriminating paycheck constitutes a separate act of discrimination; and

7 WHEREAS, Federal protections against discriminatory actions were again
8 impaired by the Supreme Court in *Vance v. Ball State University*, 133 S.Ct. 2434
9 (2013); and

10 WHEREAS, The Supreme Court ruled in *Vance* that under the Civil Rights Act
11 an employer is liable for the discriminatory actions of a supervisor only if the
12 supervisor has the power to hire, fire, transfer, or affect the status of another
13 employee; and

14 WHEREAS, Justice Ginsburg dissented in *Vance*, asserting that an employee is
15 a supervisor liable for discriminatory actions if the supervisor has the power to direct
16 the work of other employees; and

17 WHEREAS, Adopting Justice Ginsberg's definition of supervisor is an accord
18 with the vision of the Lilly Ledbetter Fair Pay Act to ensure that employees who are
19 the victims of discrimination have expanded avenues to challenge workplace
20 discrimination; and

21 WHEREAS, The General Assembly believes that the legal standards and
22 burdens developed and applied by the courts with respect to claims brought under
23 Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., 42
24 U.S.C. 1983, Title 20, Subtitle 6 of the State Government Article, and Article 46 of the
25 Maryland Declaration of Rights prior to the *Vance* decision should be preserved; and

26 WHEREAS, It is the intent of the General Assembly that the standards set
27 forth in this Act shall be interpreted and applied for these claims in a manner
28 consistent with legal precedent developed by the Maryland and federal courts before
29 the issuance of the *Vance* decision; now, therefore,

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

32 **Article – State Government**

33 **20–610.**

34 **IN AN ACTION CONCERNING A VIOLATION OF THIS SUBTITLE FOR**
35 **UNLAWFUL EMPLOYMENT HARASSMENT, AN EMPLOYER IS LIABLE FOR THE ACT**
36 **OR OMISSION OF AN EMPLOYEE WHO:**

1 **(1) UNDERTAKES OR RECOMMENDS TANGIBLE EMPLOYMENT**
2 **ACTIONS AFFECTING ANOTHER EMPLOYEE OR AN APPLICANT FOR**
3 **EMPLOYMENT, INCLUDING HIRING, FIRING, PROMOTING, DEMOTING, AND**
4 **REASSIGNING ANOTHER EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT; OR**

5 **(2) DIRECTS, SUPERVISES, OR EVALUATES THE WORK ACTIVITIES**
6 **OF ANOTHER EMPLOYEE.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
8 construed to apply only prospectively and may not be applied or interpreted to have
9 any effect on or application to any cause of action arising before the effective date of
10 this Act.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2014.