

HOUSE BILL 1596

K3

(8lr2970)

ENROLLED BILL

— Economic Matters/Finance —

Introduced by **Delegates Valderrama, Anderson, Angel, Atterbeary, Barkley, B. Barnes, D. Barnes, Barron, Barve, Beidle, Branch, Brooks, Carr, Chang, Clippinger, Cullison, Davis, Dumais, Fennell, Flanagan, Fraser-Hidalgo, Frick, Frush, Gaines, Gibson, Gilchrist, Glass, Glenn, Gutierrez, Healey, Hettleman, Hill, Hixson, C. Howard, Jackson, Jones, Kaiser, Kelly, Korman, Kramer, Lafferty, J. Lewis, R. Lewis, Lierman, Lisanti, ~~Mautz~~, McIntosh, McMillan, A. Miller, Moon, Morales, Mosby, Pena-Melnyk, Pendergrass, Proctor, Queen, Reznik, Rosenberg, Sample-Hughes, Sanchez, Simonaire, Stein, Tarlau, Turner, Valentino-Smith, Waldstreicher, Walker, A. Washington, M. Washington, Wilkins, ~~and K. Young~~ K. Young, Jameson, Luedtke, and Wilson**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 ~~Labor and Employment—Sexual Harassment—Contractual Waivers and~~
3 ~~Reporting Requirements~~

4 Disclosing Sexual Harassment in the Workplace Act of 2018

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.

Italics indicate opposite chamber/conference committee amendments.



1 FOR the purpose of providing that, except as prohibited by federal law, a provision in
 2 certain employment contracts, policies, or agreements that waive certain rights or
 3 remedies to a claim of sexual harassment, ~~discrimination,~~ or certain retaliation is
 4 null and void as being against the public policy of the State; prohibiting an employer
 5 from taking certain adverse actions against certain employees; providing that
 6 certain employers are liable for certain attorney's fees; *requiring certain employers*
 7 *to submit a certain survey to the Commission on Civil Rights on or before certain*
 8 *dates; requiring employers to submit a certain survey electronically; requiring the*
 9 *Commission to include a certain space in a certain survey for a certain purpose;*
 10 *requiring the Commission to publish and make accessible to the public certain*
 11 *information in a certain manner; requiring the Commission to take certain actions*
 12 *related to certain surveys and submit a certain executive summary to the Governor*
 13 *and certain committees of the General Assembly on or before certain dates; providing*
 14 *for the termination of certain provisions of this Act; defining certain terms; requiring*
 15 *certain employers to submit a certain report to the Commission on Civil Rights on or*
 16 *before a certain date each year; requiring the Commission to publish and make*
 17 *accessible to the public on the Commission's website certain reports; defining certain*
 18 *terms;* providing for the application of this Act; and generally relating to sexual
 19 harassment in the workplace.

20 BY adding to
 21 Article – Labor and Employment
 22 Section 3-715
 23 Annotated Code of Maryland
 24 (2016 Replacement Volume and 2017 Supplement)

25 ~~BY repealing and reenacting, without amendments,~~
 26 ~~Article – State Government~~
 27 ~~Section 20-101(a) and (b)~~
 28 ~~Annotated Code of Maryland~~
 29 ~~(2014 Replacement Volume and 2017 Supplement)~~

30 ~~BY adding to~~
 31 ~~Article – State Government~~
 32 ~~Section 20-208~~
 33 ~~Annotated Code of Maryland~~
 34 ~~(2014 Replacement Volume and 2017 Supplement)~~

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

37 **Article – Labor and Employment**

38 **3-715.**

1 (A) ~~(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, EXCEPT AS~~
 2 PROHIBITED BY FEDERAL LAW, A PROVISION IN AN EMPLOYMENT CONTRACT,
 3 POLICY, OR AGREEMENT THAT WAIVES ANY FUTURE SUBSTANTIVE OR PROCEDURAL
 4 RIGHT OR REMEDY TO A CLAIM THAT ACCRUES IN THE FUTURE OF SEXUAL
 5 HARASSMENT, DISCRIMINATION, OR RETALIATION FOR REPORTING OR ASSERTING
 6 A RIGHT OR REMEDY BASED ON SEXUAL HARASSMENT IS NULL AND VOID AS BEING
 7 AGAINST THE PUBLIC POLICY OF THE STATE.

8 ~~(2) PARAGRAPH (1) OF THIS SECTION MAY NOT BE CONSTRUED TO~~
 9 ~~APPLY TO THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT.~~

10 (B) (1) AN EMPLOYER MAY NOT TAKE ADVERSE ACTION AGAINST AN
 11 EMPLOYEE BECAUSE THE EMPLOYEE FAILS OR REFUSES TO ENTER INTO AN
 12 AGREEMENT THAT CONTAINS A WAIVER THAT IS VOID UNDER SUBSECTION (A) OF
 13 THIS SECTION.

14 (2) ADVERSE ACTION PROHIBITED UNDER THIS SUBSECTION
 15 INCLUDES:

16 (I) ~~FAILURE TO HIRE;~~

17 ~~(II)~~ DISCHARGE;

18 ~~(III)~~ (II) SUSPENSION;

19 ~~(IV)~~ (III) DEMOTION;

20 ~~(V)~~ (IV) DISCRIMINATION IN THE TERMS, CONDITIONS, OR
 21 PRIVILEGES OF EMPLOYMENT; OR

22 ~~(VI)~~ (V) ANY OTHER RETALIATORY ACTION THAT RESULTS IN
 23 A CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE
 24 A REASONABLE EMPLOYEE FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR
 25 TESTIFYING IN AN ACTION REGARDING A VIOLATION OF THIS SECTION.

26 (C) AN EMPLOYER WHO ENFORCES OR ATTEMPTS TO ENFORCE A
 27 PROVISION THAT VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE LIABLE FOR
 28 THE EMPLOYEE'S REASONABLE ATTORNEY'S FEES AND COSTS.

29 ~~Article State Government~~

30 ~~20-101.~~

1 (a) ~~In Subtitles 1 through 11 of this title the following words have the meanings~~
2 ~~indicated.~~

3 (b) ~~“Commission” means the Commission on Civil Rights.~~

4 ~~20-208.~~

5 (A) ~~IN THIS SECTION, “EMPLOYER” MEANS AN EMPLOYER WITH 50 OR MORE~~
6 ~~EMPLOYEES.~~

7 (B) ~~ON OR BEFORE JANUARY 1 EACH YEAR, AN EMPLOYER SHALL SUBMIT A~~
8 ~~REPORT TO THE COMMISSION ON:~~

9 (1) ~~THE NUMBER OF SETTLEMENTS MADE BY OR ON BEHALF OF THE~~
10 ~~EMPLOYER AFTER AN ALLEGATION OF SEXUAL HARASSMENT BY AN EMPLOYEE;~~

11 (2) ~~THE NUMBER OF TIMES THE EMPLOYER HAS PAID A SETTLEMENT~~
12 ~~TO RESOLVE A SEXUAL HARASSMENT ALLEGATION AGAINST THE SAME EMPLOYEE~~
13 ~~OVER THE PAST 20 YEARS OF EMPLOYMENT; AND~~

14 (3) ~~THE NUMBER OF SETTLEMENTS MADE AFTER AN ALLEGATION OF~~
15 ~~SEXUAL HARASSMENT THAT INCLUDED A PROVISION REQUIRING BOTH PARTIES TO~~
16 ~~KEEP THE TERMS OF THE SETTLEMENT CONFIDENTIAL.~~

17 (C) ~~THE COMMISSION SHALL PUBLISH AND MAKE ACCESSIBLE TO THE~~
18 ~~PUBLIC ON THE COMMISSION’S WEBSITE EACH EMPLOYER’S ANNUAL REPORT~~
19 ~~REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.~~

20 SECTION 2. AND BE IT FURTHER ENACTED, That:

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) “Commission” means the Maryland Commission on Civil Rights.

23 (3) “Employer” means an employer with 50 or more employees.

24 (b) (1) On or before July 1, 2020, and on or before July 1, 2022, an employer
25 shall submit a short survey to the Commission on:

26 (i) the number of settlements made by or on behalf of the employer
27 after an allegation of sexual harassment by an employee;

28 (ii) the number of times the employer has paid a settlement to resolve
29 a sexual harassment allegation against the same employee over the past 10 years of
30 employment; and

1 (iii) the number of settlements made after an allegation of sexual
2 harassment that included a provision requiring both parties to keep the terms of the
3 settlement confidential.

4 (2) (i) An employer shall submit the survey required under paragraph
5 (1) of this subsection to the Commission electronically.

6 (ii) The Commission shall include in the survey a space for an
7 employer to report whether the employer took personnel action against an employee who was
8 the subject of a settlement included in the survey under paragraph (1)(i) of this subsection.

9 (c) (1) The Commission shall publish and make accessible to the public:

10 (i) by posting on the Commission's website, the aggregate number of
11 responses from employers for each item listed under subsection (b) of this section; and

12 (ii) by retaining for public inspection on request, the response from a
13 specific employer regarding the number of settlements included in the survey under
14 subsection (b)(1)(i) of this section.

15 (2) On or before December 15, 2020, and on or before December 15, 2022,
16 the Commission shall:

17 (i) review a random selection of surveys submitted under subsection
18 (b) of this section;

19 (ii) create an executive summary of the randomly selected surveys,
20 redacting any identifying information for specific employers; and

21 (iii) submit the executive summary to the Governor and, in accordance
22 with § 2-1246 of the State Government Article, the Senate Finance Committee and the House
23 Economic Matters Committee.

24 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall apply to any
25 employment contract, policy, or agreement executed, implicitly or explicitly extended, or
26 renewed on or after the effective date of this Act.

27 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2018. Section 2 of this Act shall remain effective for a period of 4 years and 9
29 months and, at the end of June 30, 2023, Section 2 of this Act, with no further action required
30 by the General Assembly, shall be abrogated and of no further force and effect.