K3 8lr2970 CF SB 1010

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

Introduced and read first time: February 9, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 Labor and Employment – Sexual Harassment – Contractual Waivers and Reporting Requirements

- 4 FOR the purpose of providing that a provision in certain employment contracts, policies, or agreements that waive certain rights or remedies to a claim of sexual harassment, 5 6 discrimination, or retaliation is null and void as being against the public policy of 7 the State; prohibiting an employer from taking certain adverse actions against 8 certain employees; providing that certain employers are liable for certain attorney's 9 fees; requiring certain employers to submit a certain report to the Commission on 10 Civil Rights on or before a certain date each year; requiring the Commission to publish and make accessible to the public on the Commission's website certain 11 reports; defining certain terms; providing for the application of this Act; and 12 generally relating to sexual harassment in the workplace. 13
- 14 BY adding to
- 15 Article Labor and Employment
- 16 Section 3–715
- 17 Annotated Code of Maryland
- 18 (2016 Replacement Volume and 2017 Supplement)
- 19 BY repealing and reenacting, without amendments,
- 20 Article State Government



| 1 2 3 | Section 20–101(a) and (b) Annotated Code of Maryland (2014 Replacement Volume and 2017 Supplement) |
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| 4 5 6 7 8 | BY adding to Article – State Government Section 20–208 Annotated Code of Maryland (2014 Replacement Volume and 2017 Supplement) |
| 9 | SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows: |
| 1 | Article – Labor and Employment |
| 2 | 3–715. |
| 13 14 15 16 | (A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PROVISION IN AN EMPLOYMENT CONTRACT, POLICY, OR AGREEMENT THAT WAIVES ANY FUTURE SUBSTANTIVE OR PROCEDURAL RIGHT OR REMEDY TO A CLAIM OF SEXUAL HARASSMENT, DISCRIMINATION, OR RETALIATION IS NULL AND VOID AS BEING AGAINST THE PUBLIC POLICY OF THE STATE. |
| 18 | (2) PARAGRAPH (1) OF THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT. |
| 20 21 22 23 | (B) (1) AN EMPLOYER MAY NOT TAKE ADVERSE ACTION AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE FAILS OR REFUSES TO ENTER INTO AN AGREEMENT THAT CONTAINS A WAIVER THAT IS VOID UNDER SUBSECTION (A) OF THIS SECTION. |
| 24 25 | (2) ADVERSE ACTION PROHIBITED UNDER THIS SUBSECTION INCLUDES: |
| 26 | (I) FAILURE TO HIRE; |
| 27 | (II) DISCHARGE; |
| 28 | (III) SUSPENSION; |
| 29 | (IV) DEMOTION; |
| 30 31 | (V) DISCRIMINATION IN THE TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT; OR |

- 1 (VI) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A 2 CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE
- 3 A REASONABLE EMPLOYEE FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR
- 4 TESTIFYING IN AN ACTION REGARDING A VIOLATION OF THIS SECTION.
- 5 (C) AN EMPLOYER WHO ENFORCES OR ATTEMPTS TO ENFORCE A
 6 PROVISION THAT VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE LIABLE FOR
 7 THE EMPLOYEE'S REASONABLE ATTORNEY'S FEES AND COSTS.

8 Article – State Government

- 9 20-101.
- 10 (a) In Subtitles 1 through 11 of this title the following words have the meanings 11 indicated.
- 12 (b) "Commission" means the Commission on Civil Rights.
- 13 **20–208.**
- 14 (A) IN THIS SECTION, "EMPLOYER" MEANS AN EMPLOYER WITH **50** OR MORE 15 EMPLOYEES.
- 16 (B) ON OR BEFORE JANUARY 1 EACH YEAR, AN EMPLOYER SHALL SUBMIT A 17 REPORT TO THE COMMISSION ON:
- 18 (1) THE NUMBER OF SETTLEMENTS MADE BY OR ON BEHALF OF THE 19 EMPLOYER AFTER AN ALLEGATION OF SEXUAL HARASSMENT BY AN EMPLOYEE;
- 20 (2) THE NUMBER OF TIMES THE EMPLOYER HAS PAID A SETTLEMENT TO RESOLVE A SEXUAL HARASSMENT ALLEGATION AGAINST THE SAME EMPLOYEE
- 22 OVER THE PAST 20 YEARS OF EMPLOYMENT; AND
- 23 (3) THE NUMBER OF SETTLEMENTS MADE AFTER AN ALLEGATION OF
 24 SEXUAL HARASSMENT THAT INCLUDED A PROVISION REQUIRING BOTH PARTIES TO
 25 KEEP THE TERMS OF THE SETTLEMENT CONFIDENTIAL.
- 26 (C) THE COMMISSION SHALL PUBLISH AND MAKE ACCESSIBLE TO THE 27 PUBLIC ON THE COMMISSION'S WEBSITE EACH EMPLOYER'S ANNUAL REPORT 28 REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to any employment contract, policy, or agreement executed, implicitly or explicitly extended, or

- 1 renewed on or after the effective date of this Act.
- 2 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 3 October 1, 2018.