

SENATE BILL 525

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8lr0568

By: **Senators Ready, Bates, Hough, Salling, and Serafini**

Introduced and read first time: January 29, 2018

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Public Institutions of Higher Education – Discriminatory Harassment**

3 FOR the purpose of requiring certain public institutions of higher education to take certain
4 actions under certain circumstances; providing that a public institution of higher
5 education that is deliberately indifferent to a known act of discriminatory
6 harassment is a certain violation; providing that certain public institutions of higher
7 education may not be held civilly liable for failing to discipline certain students for
8 certain speech; providing for the construction of a certain provision of law;
9 authorizing certain individuals to bring a certain action for injunctive relief under
10 certain circumstances; requiring a court to enjoin certain conduct and authorizing
11 the award of certain damages under certain circumstances; authorizing a court to
12 award attorney’s fees under certain circumstances; providing that the State waives
13 certain immunity and consents to suit in federal court for certain actions; providing
14 that certain public institutions of higher education are not immune from suit or
15 liability under certain circumstances; establishing a limitation on the period of time
16 during which certain actions may be brought for certain violations; defining certain
17 terms; and generally relating to discriminatory harassment at public institutions of
18 higher education.

19 BY adding to

20 Article – Education

21 Section 15–123

22 Annotated Code of Maryland

23 (2014 Replacement Volume and 2017 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

25 That the Laws of Maryland read as follows:

26 **Article – Education**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 15-123.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "DISCRIMINATORY HARASSMENT" MEANS
5 STUDENT-ON-STUDENT SPEECH THAT IS:

6 (I) UNWELCOME;

7 (II) DISCRIMINATORY ON THE BASIS OF RACE, COLOR,
8 NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEX, SEXUAL ORIENTATION, OR
9 GENDER IDENTITY; AND

10 (III) SO SEVERE, PERVASIVE, AND OBJECTIVELY OFFENSIVE,
11 AND THAT SO UNDERMINES AND DETRACTS FROM A STUDENT'S EDUCATIONAL
12 EXPERIENCE, THAT THE STUDENT IS EFFECTIVELY DENIED EQUAL ACCESS TO THE
13 PUBLIC INSTITUTION OF HIGHER EDUCATION'S RESOURCES OR OPPORTUNITIES.

14 (3) (I) "STUDENT-ON-STUDENT SPEECH" MEANS VERBAL,
15 WRITTEN, OR OTHER COMMUNICATION THAT IS:

16 1. MADE BY A STUDENT; AND

17 2. DIRECTED AT ANOTHER STUDENT.

18 (II) "STUDENT-ON-STUDENT SPEECH" DOES NOT INCLUDE
19 ACTS OF PHYSICAL CONTACT BETWEEN A STUDENT AND ANOTHER STUDENT.

20 (B) (1) IF A PUBLIC INSTITUTION OF HIGHER EDUCATION HAS ACTUAL
21 KNOWLEDGE OF AN ACT OF DISCRIMINATORY HARASSMENT IN THE PUBLIC
22 INSTITUTION OF HIGHER EDUCATION'S PROGRAM OR ACTIVITY, THE PUBLIC
23 INSTITUTION OF HIGHER EDUCATION SHALL:

24 (I) TAKE IMMEDIATE ACTION TO ELIMINATE THE KNOWN ACT
25 OF DISCRIMINATORY HARASSMENT; AND

26 (II) ADDRESS THE EFFECTS OF THE KNOWN ACT OF
27 DISCRIMINATORY HARASSMENT.

28 (2) A PUBLIC INSTITUTION OF HIGHER EDUCATION THAT IS
29 DELIBERATELY INDIFFERENT TO A KNOWN ACT OF DISCRIMINATORY HARASSMENT
30 IS IN VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION.

1 **(C) A PUBLIC INSTITUTION OF HIGHER EDUCATION MAY NOT BE HELD**
2 **CIVILLY LIABLE FOR FAILING TO DISCIPLINE A STUDENT FOR**
3 **STUDENT-ON-STUDENT SPEECH THAT IS NOT DISCRIMINATORY HARASSMENT.**

4 **(D) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT A PUBLIC**
5 **INSTITUTION OF HIGHER EDUCATION FROM DISCIPLINING STUDENTS FOR**
6 **STUDENT-ON-STUDENT SPEECH THAT IS NOT PROTECTED UNDER THE FIRST**
7 **AMENDMENT TO THE U.S. CONSTITUTION.**

8 **(E) (1) THE FOLLOWING INDIVIDUALS MAY BRING AN ACTION IN ANY**
9 **STATE COURT OF COMPETENT JURISDICTION TO OBTAIN AN INJUNCTION AGAINST**
10 **A PUBLIC INSTITUTION OF HIGHER EDUCATION FOR A VIOLATION OF SUBSECTION**
11 **(B) OF THIS SECTION:**

12 **(I) THE ATTORNEY GENERAL; OR**

13 **(II) AN INDIVIDUAL CLAIMING TO BE AGGRIEVED BY A**
14 **VIOLATION OF SUBSECTION (B) OF THIS SECTION.**

15 **(2) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, IF THE COURT**
16 **FINDS A VIOLATION OF SUBSECTION (B) OF THIS SECTION, THE COURT:**

17 **(I) SHALL ENJOIN THE VIOLATION;**

18 **(II) IF THE INDIVIDUAL CLAIMING TO BE AGGRIEVED BROUGHT**
19 **THE ACTION, SHALL AWARD THE AGGRIEVED INDIVIDUAL AT LEAST \$1,000; AND**

20 **(III) MAY AWARD A PREVAILING PLAINTIFF:**

21 **1. COMPENSATORY DAMAGES;**

22 **2. REASONABLE COURT COSTS;**

23 **3. REASONABLE ATTORNEY FEES AND EXPERT FEES; OR**

24 **4. ANY OTHER RELIEF THAT THE COURT CONSIDERS**
25 **APPROPRIATE.**

26 **(3) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, THE COURT**
27 **MAY AWARD A PREVAILING DEFENDANT REASONABLE ATTORNEY FEES IF THE**
28 **ACTION WAS VEXATIOUS, FRIVOLOUS, OR BROUGHT TO HARASS OR EMBARRASS THE**
29 **PUBLIC INSTITUTION OF HIGHER EDUCATION.**

30 **(F) (1) THE STATE WAIVES IMMUNITY UNDER THE ELEVENTH**

1 AMENDMENT OF THE U.S. CONSTITUTION AND CONSENTS TO SUIT IN A FEDERAL
2 COURT FOR ACTIONS ARISING OUT OF THIS SECTION.

3 (2) A PUBLIC INSTITUTION OF HIGHER EDUCATION THAT VIOLATES
4 THIS SECTION IS NOT IMMUNE FROM SUIT OR LIABILITY FOR THE VIOLATION.

5 (G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2)(II) OF THIS
6 SUBSECTION, AN ACTION UNDER THIS SECTION MAY NOT BE BROUGHT LATER THAN
7 1 YEAR AFTER THE DAY ON WHICH THE CAUSE OF ACTION ACCRUES.

8 (2) FOR AN ACTION ALLEGING A VIOLATION OF SUBSECTION (B)(2) OF
9 THIS SECTION:

10 (I) THE CAUSE OF ACTION ACCRUES ON THE DAY ON WHICH
11 THE PUBLIC INSTITUTION OF HIGHER EDUCATION RECEIVES KNOWLEDGE OF THE
12 ACT OF DISCRIMINATORY HARASSMENT; AND

13 (II) THE LIMITATION UNDER PARAGRAPH (1) OF THIS
14 SUBSECTION SHALL EXTEND TO 1 YEAR AFTER THE DAY ON WHICH THE MOST
15 RECENT KNOWN ACT OF DISCRIMINATORY HARASSMENT OCCURRED THAT
16 INVOLVED THE SAME PARTIES AS A PRIOR KNOWN ACT OF DISCRIMINATORY
17 HARASSMENT.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
19 1, 2018.