SENATE BILL 1010

K3 8lr2882 CF HB 1596

By: Senators Zucker, Middleton, Astle, Benson, Conway, Feldman, Guzzone, King, Lee, and Peters

Introduced and read first time: February 5, 2018

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2018

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

5 FOR the purpose of providing that, except as provided by federal law, a provision in certain 6 employment contracts, policies, or agreements that waive certain rights or remedies 7 to a claim of sexual harassment, discrimination, or certain retaliation is null and 8 void as being against the public policy of the State; prohibiting an employer from 9 taking certain adverse actions against certain employees; providing that certain 10 employers are liable for certain attorney's fees; requiring certain employers to submit 11 a certain report survey to the Commission on Civil Rights on or before a certain date 12 each year; requiring employers to submit a certain survey electronically; requiring 13 the Commission to include a certain space in a certain survey for a certain purpose; requiring the Commission to publish and make accessible to the public on the 14 15 Commission's website certain reports; certain information in a certain manner; requiring the Commission to take certain actions related to certain surveys and 16 17 submit a certain executive summary to the Governor and certain committees of the 18 General Assembly on or before a certain date each year; defining certain terms; 19 providing for the application of this Act; and generally relating to sexual harassment 20 in the workplace.

21 BY adding to

22

Article – Labor and Employment

23 Section 3–715

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.



| 1 2 | Annotated Code of Maryland (2016 Replacement Volume and 2017 Supplement) | | | | | | | | | |
|----------------------------------|---|--|--|--|--|--|--|--|--|--|
| 3 4 5 6 7 | BY repealing and reenacting, without amendments, Article – State Government Section 20–101(a) and (b) Annotated Code of Maryland (2014 Replacement Volume and 2017 Supplement) | | | | | | | | | |
| 8 9 10 11 | BY adding to Article – State Government Section 20–208 Annotated Code of Maryland (2014 Replacement Volume and 2017 Supplement) | | | | | | | | | |
| 13 14 | SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows: | | | | | | | | | |
| 15 | Article – Labor and Employment | | | | | | | | | |
| 16 | 3–715. | | | | | | | | | |
| 17 18 19 20 21 22 | (A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A EXCEPT AS PROHIBITED BY FEDERAL LAW, A PROVISION IN AN EMPLOYMENT CONTRACT, POLICY, OR AGREEMENT THAT WAIVES ANY FUTURE SUBSTANTIVE OR PROCEDURAL RIGHT OR REMEDY TO A CLAIM THAT ACCRUES IN THE FUTURE OF SEXUAL HARASSMENT, DISCRIMINATION, OR RETALIATION FOR REPORTING OR ASSERTING A RIGHT OR REMEDY BASED ON SEXUAL HARASSMENT IS NULL AND VOID AS BEING AGAINST THE PUBLIC POLICY OF THE STATE. | | | | | | | | | |
| 24 25 | (2) PARAGRAPH (1) OF THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT. | | | | | | | | | |
| 26 27 28 29 | (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. | | | | | | | | | |
| 30 31 | (2) ADVERSE ACTION PROHIBITED UNDER THIS SUBSECTION INCLUDES: | | | | | | | | | |
| 32 | (I) FAILURE TO HIRE; | | | | | | | | | |
| 33 | (II) DISCHARGE; | | | | | | | | | |

- 1 (III) SUSPENSION; 2 (IV) DEMOTION; 3 (V) DISCRIMINATION IN THE TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT; OR 4 5 (VI) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A 6 CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR 7 TESTIFYING IN AN ACTION REGARDING A VIOLATION OF THIS SECTION. 8 9 **(C)** AN EMPLOYER WHO ENFORCES OR ATTEMPTS TO ENFORCE A 10 PROVISION THAT VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE LIABLE FOR THE EMPLOYEE'S REASONABLE ATTORNEY'S FEES AND COSTS. 11 12 Article - State Government 13 20-101.14 (a) In Subtitles 1 through 11 of this title the following words have the meanings 15 indicated. 16 "Commission" means the Commission on Civil Rights. 20-208. 17 IN THIS SECTION, "EMPLOYER" MEANS AN EMPLOYER WITH 50 OR MORE 18 (A) 19 EMPLOYEES. 20 ON OR BEFORE JANUARY JULY 1 EACH YEAR, AN EMPLOYER SHALL SUBMIT A REPORT SHORT SURVEY TO THE COMMISSION ON: 2122(1) (I)THE NUMBER OF SETTLEMENTS MADE BY OR ON BEHALF OF 23 THE EMPLOYER AFTER AN ALLEGATION OF SEXUAL HARASSMENT BY AN EMPLOYEE; 24 $\frac{(2)}{2}$ (II)THE NUMBER OF TIMES THE EMPLOYER HAS PAID A 25 SETTLEMENT TO RESOLVE A SEXUAL HARASSMENT ALLEGATION AGAINST THE SAME EMPLOYEE OVER THE PAST 20 10 YEARS OF EMPLOYMENT; AND 26
- 27 (3) (III) THE NUMBER OF SETTLEMENTS MADE AFTER AN 28 ALLEGATION OF SEXUAL HARASSMENT THAT INCLUDED A PROVISION REQUIRING 29 BOTH PARTIES TO KEEP THE TERMS OF THE SETTLEMENT CONFIDENTIAL.

| 1 | | <u>(2)</u> <u>(I)</u> | <u>AN</u> | EMPI | LOYER | SHALL | SUBMIT | THE | SURV | EY REQUIRED |
|---|--------------|-----------------------|-----------|------|-------|-------|--------|-----|------|-------------|
| 2 | <u>UNDER</u> | PARAGRAI | PH (1 |) OF | THIS | SUBSI | ECTION | TO | THE | COMMISSION |

- 3 ELECTRONICALLY.
- 4 (II) THE COMMISSION SHALL INCLUDE IN THE SURVEY A SPACE
- 5 FOR AN EMPLOYER TO REPORT WHETHER THE EMPLOYER TOOK PERSONNEL
- 6 ACTION AGAINST AN EMPLOYEE WHO WAS THE SUBJECT OF A SETTLEMENT
- 7 INCLUDED IN THE SURVEY UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.
- 8 (C) (1) THE COMMISSION SHALL PUBLISH AND MAKE ACCESSIBLE TO
- 9 THE PUBLIC: ON THE COMMISSION'S WEBSITE EACH EMPLOYER'S ANNUAL REPORT
- 10 REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.
- 11 (I) BY POSTING ON THE COMMISSION'S WEBSITE, THE
- 12 AGGREGATE NUMBER OF RESPONSES FROM EMPLOYERS FOR EACH ITEM LISTED
- 13 UNDER SUBSECTION (B) OF THIS SECTION; AND
- 14 (II) BY RETAINING FOR PUBLIC INSPECTION ON REQUEST, THE
- 15 RESPONSE FROM A SPECIFIC EMPLOYER REGARDING THE NUMBER OF
- 16 SETTLEMENTS INCLUDED IN THE SURVEY UNDER SUBSECTION (B)(1)(II) OF THIS
- 17 SECTION.
- 18 (2) ON OR BEFORE DECEMBER 15 EACH YEAR, THE COMMISSION
- 19 SHALL:
- 20 (I) REVIEW A RANDOM SELECTION OF SURVEYS SUBMITTED
- 21 UNDER SUBSECTION (B) OF THIS SECTION;
- 22 (II) CREATE AN EXECUTIVE SUMMARY OF THE RANDOMLY
- 23 SELECTED SURVEYS, REDACTING ANY IDENTIFYING INFORMATION FOR SPECIFIC
- 24 EMPLOYERS; AND
- 25 (III) SUBMIT THE EXECUTIVE SUMMARY TO THE GOVERNOR AND,
- 26 IN ACCORDANCE WITH § 2–1246 OF THIS ARTICLE, THE SENATE FINANCE
- 27 COMMITTEE AND THE HOUSE ECONOMIC MATTERS COMMITTEE.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to any
- 29 employment contract, policy, or agreement executed, implicitly or explicitly extended, or
- 30 renewed on or after the effective date of this Act.
- 31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 32 October 1, 2018.