

SENATE BILL 1060

D5, F1, P1
SB 849/17 – JPR

8lr0599
CF 8lr0711

By: **Senators Kagan, Currie, Feldman, Ferguson, Kelley, Lee, Madaleno,
Nathan–Pulliam, and Pinsky**

Introduced and read first time: February 5, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Nonpublic Elementary and Secondary Schools – Discrimination – Prohibition**

3 FOR the purpose of prohibiting a nonpublic elementary or secondary school that receives
4 State funds from refusing enrollment of, expelling, withholding privileges from, or
5 otherwise discriminating against any student or prospective student because of
6 certain factors; making certain provisions of law prohibiting discrimination in
7 employment applicable to nonpublic elementary and secondary schools that receive
8 State funds; authorizing a certain person to elect to have certain claims determined
9 in a certain civil action brought by the Commission on Civil Rights; authorizing the
10 Commission to elect to have certain claims determined in a certain civil action;
11 making certain remedies and procedures regarding discrimination applicable to
12 certain discriminatory acts by certain nonpublic schools; requiring the Commission
13 to file a certain civil action in a certain circuit court within a certain time period;
14 authorizing a certain person to bring a civil action alleging a certain discriminatory
15 act by a certain nonpublic school under certain circumstances; authorizing the
16 Commission to bring an action to obtain a temporary injunction under certain
17 circumstances; requiring a certain nonpublic school that is found to have engaged in
18 or be engaging in a certain discriminatory act to repay to the General Fund all State
19 funds received during a certain time period; altering the definition of a certain term;
20 defining a certain term; providing for the application of certain provisions of this Act;
21 providing for the construction of certain provisions of this Act; and generally relating
22 to discrimination in nonpublic schools.

23 BY adding to

24 Article – Education

25 Section 26–501 through 26–503 to be under the new subtitle “Subtitle 5.
26 Discrimination in Education”

27 Annotated Code of Maryland

28 (2014 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – State Government
3 Section 20–101(d), 20–604, 20–1001, 20–1006, 20–1007, 20–1009, 20–1012, 20–1013,
4 and 20–1017
5 Annotated Code of Maryland
6 (2014 Replacement Volume and 2017 Supplement)

7 BY adding to
8 Article – State Government
9 Section 20–1018
10 Annotated Code of Maryland
11 (2014 Replacement Volume and 2017 Supplement)

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

14 **Article – Education**

15 **SUBTITLE 5. DISCRIMINATION IN EDUCATION.**

16 **26–501.**

17 **THIS SUBTITLE DOES NOT APPLY TO:**

18 **(1) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF SEX, A**
19 **SCHOOL THAT LIMITS, AND CONTINUALLY SINCE THE TIME OF ITS ESTABLISHMENT**
20 **HAS LIMITED, ADMISSION TO STUDENTS OF ONLY ONE SEX; AND**

21 **(2) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF RELIGION,**
22 **A SCHOOL THAT IS AFFILIATED WITH A RELIGIOUS INSTITUTION.**

23 **26–502.**

24 **THIS SUBTITLE DOES NOT REQUIRE A SCHOOL TO ENROLL, RETAIN, OR**
25 **EXTEND PRIVILEGES TO A STUDENT OR PROSPECTIVE STUDENT WHO DOES NOT**
26 **MEET THE USUAL AND REGULAR QUALIFICATIONS, REQUIREMENTS, AND**
27 **STANDARDS OF THE SCHOOL, PROVIDED THAT THE DENIAL IS NOT BASED ON**
28 **DISCRIMINATION ON THE GROUNDS OF RACE, COLOR, RELIGION, SEX, AGE,**
29 **NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR**
30 **DISABILITY.**

31 **26–503.**

32 **A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL THAT RECEIVES STATE**
33 **FUNDS MAY NOT REFUSE ENROLLMENT OF, EXPEL, WITHHOLD PRIVILEGES FROM,**

1 **OR OTHERWISE DISCRIMINATE AGAINST ANY STUDENT OR PROSPECTIVE STUDENT**
2 **BECAUSE OF THE INDIVIDUAL’S RACE, COLOR, RELIGION, SEX, AGE, NATIONAL**
3 **ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR**
4 **DISABILITY.**

5 **Article – State Government**

6 20–101.

7 (d) “Discriminatory act” means an act prohibited under:

8 (1) Subtitle 3 of this title (Discrimination in Places of Public
9 Accommodation);

10 (2) Subtitle 4 of this title (Discrimination by Persons Licensed or Regulated
11 by Department of Labor, Licensing, and Regulation);

12 (3) Subtitle 5 of this title (Discrimination in Leasing of Commercial
13 Property);

14 (4) Subtitle 6 of this title (Discrimination in Employment);

15 (5) Subtitle 7 of this title (Discrimination in Housing); [or]

16 (6) Subtitle 8 of this title (Aiding, Abetting, or Attempting Discriminatory
17 Act; Obstructing Compliance); **OR**

18 **(7) TITLE 26, SUBTITLE 5 OF THE EDUCATION ARTICLE**
19 **(DISCRIMINATION IN EDUCATION).**

20 20–604.

21 **(A) [This] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS**
22 **subtitle does not apply to:**

23 (1) an employer with respect to the employment of aliens outside of the
24 State; or

25 (2) a religious corporation, association, educational institution, or society
26 with respect to the employment of individuals of a particular religion, sexual orientation,
27 or gender identity to perform work connected with the activities of the religious entity.

28 **(B) IF A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL RECEIVES**
29 **STATE FUNDS, THIS SUBTITLE APPLIES WITH RESPECT TO THE EMPLOYMENT OF**
30 **INDIVIDUALS WHO ARE NOT MINISTERIAL EMPLOYEES.**

1 20–1001.

2 (A) In this part[, “unlawful] **THE FOLLOWING WORDS HAVE THE MEANINGS**
3 **INDICATED.**

4 (B) **“UNLAWFUL EDUCATION PRACTICE” MEANS AN ACT THAT IS**
5 **PROHIBITED UNDER § 26–503 OF THE EDUCATION ARTICLE.**

6 (C) **“UNLAWFUL employment practice”** means an act that is prohibited under §
7 20–606 of this title.

8 20–1006.

9 (a) On the making of a finding under § 20–1005(c)(2) of this subtitle that an
10 agreement to remedy and eliminate the discrimination cannot be reached, the entire file,
11 including the complaint and any findings, shall be certified to the general counsel of the
12 Commission.

13 (b) The Executive Director of the Commission shall cause a written notice to be
14 issued and served in the name of the Commission, together with a copy of the complaint,
15 requiring the respondent to answer the charges of the complaint at a public hearing:

16 (1) before an administrative law judge at a time and place certified in the
17 notice; or

18 (2) if the complaint alleges an unlawful employment practice **OR AN**
19 **UNLAWFUL EDUCATION PRACTICE**, in a civil action elected under § 20–1007 of this
20 subtitle.

21 20–1007.

22 (a) (1) When a complaint alleging an unlawful employment practice **OR AN**
23 **UNLAWFUL EDUCATION PRACTICE** is issued and served under § 20–1006 of this subtitle,
24 a complainant or respondent may elect to have the claims asserted in the complaint
25 determined in a civil action brought by the Commission on the complainant’s behalf, if:

26 (i) the Commission has found probable cause to believe the
27 respondent has engaged in or is engaging in an unlawful employment practice **OR AN**
28 **UNLAWFUL EDUCATION PRACTICE**; and

29 (ii) there is a failure to reach an agreement to remedy and eliminate
30 the unlawful employment practice **OR THE UNLAWFUL EDUCATION PRACTICE.**

31 (2) An election under paragraph (1) of this subsection shall be made within
32 30 days after the complainant or respondent receives service under § 20–1006(b) of this
33 subtitle.

1 (3) If an election is not made under paragraph (1) of this subsection, the
2 Commission shall provide an opportunity for a hearing as provided under § 20–1008(a) of
3 this subtitle.

4 (b) When a complaint alleging an unlawful employment practice **OR AN**
5 **UNLAWFUL EDUCATION PRACTICE** is issued and served under § 20–1006 of this subtitle,
6 the Commission may elect to have the claims asserted in the complaint determined in a
7 civil action brought on the Commission’s own behalf, if:

8 (1) the Commission has found probable cause to believe the respondent has
9 engaged in or is engaging in an unlawful employment practice **OR AN UNLAWFUL**
10 **EDUCATION PRACTICE**; and

11 (2) there is a failure to reach an agreement to remedy and eliminate the
12 unlawful employment practice **OR THE UNLAWFUL EDUCATION PRACTICE**.

13 (c) (1) If a complainant or respondent makes an election under subsection (a)
14 of this section, that party shall give notice of the election to the Commission and to all other
15 complainants and respondents.

16 (2) If the Commission makes an election under subsection (b) of this
17 section, the Commission shall give notice of the election to all complainants and
18 respondents.

19 20–1009.

20 (a) If, after reviewing all of the evidence, the administrative law judge finds that
21 the respondent has engaged in a discriminatory act, the administrative law judge shall:

22 (1) issue a decision and order stating the judge’s findings of fact and
23 conclusions of law; and

24 (2) issue and cause to be served on the respondent an order requiring the
25 respondent to:

26 (i) cease and desist from engaging in the discriminatory acts; and

27 (ii) take affirmative action to effectuate the purposes of the
28 applicable subtitle of this title.

29 (b) (1) If the respondent is found to have engaged in or to be engaging in an
30 unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** charged in the
31 complaint, the remedy may include:

32 (i) enjoining the respondent from engaging in the discriminatory

1 act;

2 (ii) ordering appropriate affirmative relief, including the
3 reinstatement or hiring of employees, with or without back pay;

4 (iii) awarding compensatory damages; or

5 (iv) ordering any other equitable relief that the administrative law
6 judge considers appropriate.

7 (2) Compensatory damages awarded under this subsection are in addition
8 to:

9 (i) back pay or interest on back pay that the complainant may
10 recover under any other provision of law; and

11 (ii) any other equitable relief that a complainant may recover under
12 any other provision of law.

13 (3) The sum of the amount of compensatory damages awarded to each
14 complainant under this subsection for future pecuniary losses, emotional pain, suffering,
15 inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses, may not
16 exceed:

17 (i) \$50,000, if the respondent employs not fewer than 15 and not
18 more than 100 employees in each of 20 or more calendar weeks in the current or preceding
19 calendar year;

20 (ii) \$100,000, if the respondent employs not fewer than 101 and not
21 more than 200 employees in each of 20 or more calendar weeks in the current or preceding
22 calendar year;

23 (iii) \$200,000, if the respondent employs not fewer than 201 and not
24 more than 500 employees in each of 20 or more calendar weeks in the current or preceding
25 calendar year; and

26 (iv) \$300,000, if the respondent employs not fewer than 501
27 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

28 (4) If back pay is awarded under paragraph (1) of this subsection, the
29 award shall be reduced by any interim earnings or amounts earnable with reasonable
30 diligence by the person discriminated against.

31 (5) In addition to any other relief authorized by this subsection, a
32 complainant may recover back pay for up to 2 years preceding the filing of the complaint,
33 where the unlawful employment practice that has occurred during the complaint filing
34 period is similar or related to an unlawful employment practice with regard to

1 discrimination in compensation that occurred outside the time for filing a complaint.

2 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, if the
3 respondent is found to have engaged in or to be engaging in a discriminatory act other than
4 an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE**, in addition
5 to an award of civil penalties as provided in § 20–1016 of this subtitle, nonmonetary relief
6 may be granted to the complainant.

7 (ii) An order may not be issued that substantially affects the cost,
8 level, or type of any transportation services.

9 (2) (i) In cases involving transportation services that are supported
10 fully or partially with funds from the Maryland Department of Transportation, an order
11 may not be issued that would require costs, level, or type of transportation services different
12 from or exceeding those required to meet U.S. Department of Transportation regulations
13 adopted under 29 U.S.C. § 794.

14 (ii) An order issued in violation of subparagraph (i) of this paragraph
15 is not enforceable under § 20–1011 of this subtitle.

16 (d) If, after reviewing all of the evidence, the administrative law judge finds that
17 the respondent has not engaged in an alleged discriminatory act, the administrative law
18 judge shall:

19 (1) state findings of fact and conclusions of law; and

20 (2) issue an order dismissing the complaint.

21 (e) Unless a timely appeal is filed with the Commission in accordance with the
22 Commission's regulations, a decision and order issued by the administrative law judge
23 under this section shall become the final order of the Commission.

24 20–1012.

25 (a) Within 60 days after an election is made under § 20–1007 of this subtitle, the
26 Commission shall file a civil action in the circuit court for the county where the alleged
27 unlawful employment practice **OR UNLAWFUL EDUCATION PRACTICE** occurred.

28 (b) If the court finds that an unlawful employment practice **OR AN UNLAWFUL**
29 **EDUCATION PRACTICE** occurred, the court may provide the remedies specified in §
30 20–1009(b) of this subtitle.

31 (c) If the Commission seeks compensatory damages under this section:

32 (1) any party may demand a trial by jury; and

33 (2) the court may not inform the jury of the limitations on compensatory

1 damages imposed under § 20–1009(b)(3) of this subtitle.

2 20–1013.

3 (a) In addition to the right to make an election under § 20–1007 of this subtitle, a
4 complainant may bring a civil action against the respondent alleging an unlawful
5 employment practice **OR AN UNLAWFUL EDUCATION PRACTICE**, if:

6 (1) the complainant initially filed a timely administrative charge or a
7 complaint under federal, State, or local law alleging an unlawful employment practice **OR**
8 **AN UNLAWFUL EDUCATION PRACTICE** by the respondent;

9 (2) at least 180 days have elapsed since the filing of the administrative
10 charge or complaint; and

11 (3) the civil action is filed within 2 years after the alleged unlawful
12 employment practice **OR UNLAWFUL EDUCATION PRACTICE** occurred.

13 (b) A civil action under this section shall be filed in the circuit court for the county
14 where the alleged unlawful employment practice **OR UNLAWFUL EDUCATION PRACTICE**
15 occurred.

16 (c) The filing of a civil action under this section automatically terminates any
17 proceeding before the Commission based on the underlying administrative complaint and
18 any amendment to the complaint.

19 (d) If the court finds that an unlawful employment practice **OR AN UNLAWFUL**
20 **EDUCATION PRACTICE** occurred, the court may provide the remedies specified in §
21 20–1009(b) of this subtitle.

22 (e) (1) In addition to the relief authorized under subsection (d) of this section,
23 the court may award punitive damages, if:

24 (i) the respondent is not a governmental unit or political
25 subdivision; and

26 (ii) the court finds that the respondent has engaged in or is engaging
27 in an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** with
28 actual malice.

29 (2) If the court awards punitive damages, the sum of the amount of
30 compensatory damages awarded to each complainant under subsection (d) of this section
31 and the amount of punitive damages awarded under this subsection may not exceed the
32 applicable limitation established under § 20–1009(b)(3) of this subtitle.

33 (f) If a complainant seeks compensatory or punitive damages under this section:

1 (1) any party may demand a trial by jury; and

2 (2) the court may not inform the jury of the limitations on compensatory
3 and punitive damages imposed under § 20–1009(b)(3) of this subtitle.

4 (g) When appropriate and to the extent authorized under law, in a dispute arising
5 under this part, in which the complainant seeks compensatory or punitive damages, the
6 parties are encouraged to use alternative means of dispute resolution, including settlement
7 negotiations or mediation.

8 20–1017.

9 (a) At any time after a complaint has been filed, if the Commission believes that
10 a civil action is necessary to preserve the status of the parties or to prevent irreparable
11 harm from the time the complaint is filed until the time of the final disposition of the
12 complaint, the Commission may bring an action to obtain a temporary injunction.

13 (b) The action shall be brought in the circuit court for the county where:

14 (1) the place of public accommodation that is the subject of the alleged
15 discriminatory act is located;

16 (2) the unlawful employment practice is alleged to have occurred or to be
17 occurring; [or]

18 (3) the dwelling that is the subject of the alleged discriminatory housing
19 practice is located; **OR**

20 **(4) THE UNLAWFUL EDUCATION PRACTICE IS ALLEGED TO HAVE**
21 **OCCURRED OR TO BE OCCURRING.**

22 **20–1018.**

23 **(A) THIS SECTION APPLIES ONLY TO A RESPONDENT THAT IS A NONPUBLIC**
24 **ELEMENTARY OR SECONDARY SCHOOL THAT HAS RECEIVED STATE FUNDS.**

25 **(B) IN ADDITION TO ANY OTHER RELIEF AUTHORIZED UNDER THIS PART, IF**
26 **THE RESPONDENT IS FOUND BY AN ADMINISTRATIVE LAW JUDGE OR A COURT TO**
27 **HAVE ENGAGED IN OR TO BE ENGAGING IN AN UNLAWFUL EMPLOYMENT PRACTICE**
28 **OR AN UNLAWFUL EDUCATION PRACTICE, THE RESPONDENT SHALL REPAY TO THE**
29 **GENERAL FUND OF THE STATE ALL STATE FUNDS RECEIVED DURING THE TIME THE**
30 **UNLAWFUL PRACTICE OCCURRED.**

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2018.

