

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 525 (Senator Ready, *et al.*)  
Education, Health, and Environmental Affairs

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

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This bill requires a public institution of higher education that has actual knowledge of an act of student-on-student discriminatory harassment in the public institution of higher education’s program or activity to take immediate action to eliminate the known act of discriminatory harassment and address its effects. A public institution of higher education that is deliberately indifferent to a known act of discriminatory harassment is in violation of the bill, and an action may be brought against the institution in any State court of competent jurisdiction. In addition, the State waives immunity under the Eleventh Amendment of the U.S. Constitution and consents to suit in a federal court for an action arising out of the bill. Except as otherwise specified, an action may not be brought later than one year after the day of the alleged violation. **The bill takes effect July 1, 2018.**

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**Fiscal Summary**

**State Effect:** Assuming compliance by the institutions, the bill does not materially affect State finances, as discussed below. However, the bill increases institutional liability. The bill is not expected to materially affect District Court operations or finances.

**Local Effect:** Assuming compliance by the institutions, the bill does not materially affect local finances, as discussed below.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** “Discriminatory harassment” means student-on-student speech that is unwelcome; discriminatory on the basis of race, color, national origin, disability, religion, age, sex, sexual orientation, or gender identity; and so severe, pervasive, and objectively offensive, and that so undermines and detracts from a student’s educational experience, that the student is effectively denied equal access to the public institution of higher education’s resources or opportunities. “Student-on-student speech” means verbal, written, or other communication that is made by a student and directed at another student; it does not include acts of physical contact between students.

A public institution of higher education may not be held civilly liable for failing to discipline a student for student-on-student speech that is not discriminatory harassment. However, this may not be construed to prohibit a public institution of higher education from disciplining students for student-on-student speech that is not protected under the First Amendment to the U.S. Constitution.

The Attorney General or an individual claiming to be aggrieved by a violation may bring an action in any State court of competent jurisdiction to obtain an injunction against a public institution of higher education for a violation. If the court finds a violation, the court must enjoin the violation and may award a prevailing plaintiff any relief the court considers appropriate, including specified damages. Also, if the individual claiming to be aggrieved brought the action, the court must award the aggrieved individual at least \$1,000.

The court may award a prevailing defendant reasonable attorney fees if the action was vexatious, frivolous, or brought to harass or embarrass the public institution of higher education.

**Current Law/Background:** There have been several reports about hate speech and racist incidents on college campuses in Maryland and nationwide in the news recently. In response, some institutions are examining their antihate speech policies, specifically how to protect students from hate speech without limiting free speech as protected by the First Amendment to the U.S. Constitution.

St. Mary’s College of Maryland advises it has a comprehensive antiharassment policy in place which can be found in its [handbook](#). Other public universities may also have antiharassment policies in their handbooks.

### *Tort Claims Act*

Although the State, including public four-year institutions, generally has “sovereign immunity,” that immunity is largely waived under the Maryland Tort Claims Act (MTCA).

An individual who wishes to sue a State entity must comply with certain procedural requirements, and recovery is capped at \$400,000. State law governing public four-year institutions specifically waives the institutions' immunity only to the extent the claim is covered by any applicable liability insurance purchased by the institution or the State Treasurer. An action under MTCA can be filed in the District Court or a circuit court.

**State Fiscal Effect:** Public institutions of higher education may need to make changes to their antiharassment policies. The Department of Legislative Services advises that the institutions can make any needed changes using existing resources.

However, if a student files a lawsuit and a public four-year institution of higher education or Baltimore City Community College is found to have violated the bill by being deliberately indifferent to a known act of discriminatory harassment, a court *must* award the aggrieved individual at least \$1,000 and may award compensatory damages, reasonable court costs, reasonable attorney fees and expert fees, or any other relief that the court considers appropriate. Violation of the bill is anticipated to occur rarely. Thus, while any violation may result in significant higher education expenditures, any expenditures are anticipated to occur rarely. To the extent they do occur, costs are capped at \$400,000 per case and may be less to the extent the claim is covered by the institution's liability insurance. Some claims may be filed in District Court, but any impact on the court's operations is assumed to be minimal and absorbable within existing resources.

**Local Fiscal Effect:** As explained above, the bill does not materially affect local community college finances, as violations are anticipated to happen rarely. However, if a student files a lawsuit and a local community college is found to have violated the bill by being deliberately indifferent to a known act of discriminatory harassment, a court *must* award the aggrieved at least \$1,000 and may award specified damages. Further, the bill could result in more petitions filed in circuit court. However, it is anticipated that any increases will be minimal and can be handled with existing resources.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland; Department of Legislative Services

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