

SENATE BILL 872

P5, D5

9lr2508
CF HB 679

By: **The President (By Request – Workplace Harassment Commission) and
Senator Klausmeier**

Introduced and read first time: February 7, 2019

Assigned to: Rules

A BILL ENTITLED

AN ACT concerning

Workplace Harassment – Prohibitions, Liability, and Enforcement

FOR the purpose of prohibiting certain individuals granted special access to the State legislative complex from unlawfully harassing or discriminating against certain individuals; requiring the Department of General Services, if requested by a certain individual, to revoke access granted to a person who violates a certain provision of this Act or a regulated lobbyist who violates a certain provision of law; altering the definition of “employee” for the purposes of certain laws governing discrimination in employment; altering the definition of “employer” for the purposes of certain laws governing discrimination in employment to include certain employers when an employee files a complaint alleging harassment; prohibiting an employer from engaging in harassment of an employee; providing that an employer is liable for certain acts or omissions and under certain circumstances in an action concerning a violation of certain provisions of law based on harassment; altering the time period within which a certain complaint alleging harassment is required to be filed; providing that a complaint filed with a local human relations commission within a certain time period is deemed to have complied with a certain provision of this Act; altering the time period within which a complainant may bring a certain civil action alleging harassment; defining certain terms; providing for the construction and application of this Act; and generally relating to workplace harassment.

BY repealing and reenacting, with amendments,

Article – General Provisions

Section 5–508

Annotated Code of Maryland

(2014 Volume and 2018 Supplement)

BY repealing and reenacting, with amendments,

Article – State Government

Section 20–601, 20–606(a), 20–1004, and 20–1013(a)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2014 Replacement Volume and 2018 Supplement)

BY adding to

Article – State Government
Section 20–611
Annotated Code of Maryland
(2014 Replacement Volume and 2018 Supplement)

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

Article – General Provisions

5–508.

(a) This section does not apply to a State official of the Legislative Branch or a State official of the Judicial Branch.

(b) A State official may not, based on any characteristic protected by law, unlawfully harass or discriminate against:

- (1) an official or employee;
- (2) an intern, a page, or a fellow in any branch of State government;
- (3) an individual regulated lobbyist; or
- (4) a credentialed member of the press.

(C) (1) IN THIS SUBSECTION, “STATE LEGISLATIVE COMPLEX” MEANS THE FOLLOWING STATE–OCCUPIED BUILDINGS:

- (I) THE STATE HOUSE;**
- (II) THE DEPARTMENT OF LEGISLATIVE SERVICES BUILDING;**
- (III) THE HOUSE OF DELEGATES OFFICE BUILDING; AND**
- (IV) THE SENATE OFFICE BUILDINGS.**

(2) IF AN INDIVIDUAL WHO IS EXEMPT FROM REGISTRATION UNDER § 5–702(B)(1) OF THIS TITLE IS GRANTED SPECIAL ACCESS TO THE STATE LEGISLATIVE COMPLEX, THE INDIVIDUAL MAY NOT, BASED ON ANY CHARACTERISTIC PROTECTED BY LAW, UNLAWFULLY HARASS OR DISCRIMINATE AGAINST:

- (I) AN OFFICIAL OR EMPLOYEE;
- (II) AN INTERN, A PAGE, OR A FELLOW IN ANY BRANCH OF STATE GOVERNMENT;
- (III) ANOTHER INDIVIDUAL REGULATED LOBBYIST; OR
- (IV) A CREDENTIALLED MEMBER OF THE PRESS.

(3) THE DEPARTMENT OF GENERAL SERVICES SHALL REVOKE THE SPECIAL ACCESS TO THE STATE LEGISLATIVE COMPLEX GRANTED TO A PERSON WHO VIOLATES THIS SUBSECTION OR A REGULATED LOBBYIST WHO VIOLATES § 5-714 OF THIS SUBTITLE IF THE REVOCATION IS REQUESTED BY:

- (I) THE SPEAKER OF THE HOUSE OR THE SPEAKER'S DESIGNEE;
- (II) THE PRESIDENT OF THE SENATE OR THE PRESIDENT'S DESIGNEE; OR
- (III) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LEGISLATIVE SERVICES OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

Article – State Government

20-601.

- (a) In this subtitle the following words have the meanings indicated.
- (b) (1) “Disability” means:
 - (i) 1. a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; or
 - 2. a mental impairment or deficiency;
 - (ii) a record of having a physical or mental impairment as otherwise defined under this subsection; or
 - (iii) being regarded as having a physical or mental impairment as otherwise defined under this subsection.
- (2) “Disability” includes:

coordination;

(i) 1. any degree of paralysis, amputation, or lack of physical coordination;

2. blindness or visual impairment;

3. deafness or hearing impairment;

4. muteness or speech impediment; and

5. physical reliance on a service animal, wheelchair, or other remedial appliance or device; and

(ii) retardation and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.

(c) (1) “Employee” means:

(I) an individual employed by an employer; **OR**

(II) AN INDIVIDUAL WORKING AS AN INDEPENDENT CONTRACTOR FOR AN EMPLOYER.

(2) Unless the individual is subject to the State or local civil service laws, “employee” does not include:

(i) an individual elected to public office;

(ii) [an individual chosen by an elected officer to be on the officer’s personal staff;

(iii)] an appointee on the policy making level; or

[(iv)] **(III)** an immediate adviser with respect to the exercise of the constitutional or legal powers of an elected office.

(d) (1) “Employer” means:

(i) a person that:

1. is engaged in an industry or business; and

2. **A.** has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; **OR**

B. IF AN EMPLOYEE HAS FILED A COMPLAINT ALLEGING HARASSMENT, HAS ONE OR MORE EMPLOYEES FOR EACH WORKING DAY IN EACH OF

20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR;
and

(ii) an agent of a person described in item (i) of this paragraph.

(2) “Employer” includes the State to the extent provided in this title.

(3) Except for a labor organization, “employer” does not include a bona fide private membership club that is exempt from taxation under § 501(c) of the Internal Revenue Code.

(e) (1) “Employment agency” means:

(i) a person that regularly undertakes with or without compensation to procure:

1. employees for an employer; or

2. opportunities for employees to work for an employer; and

(ii) an agent of a person described in item (i) of this paragraph.

(2) Except for the United States Employment Service and the system of State and local employment services receiving federal assistance, “employment agency” does not include a unit of the United States, the State, or a political subdivision of the State.

(f) “Genetic information” has the meaning stated in § 27–909(a)(3) of the Insurance Article.

(g) “Genetic test” has the meaning stated in § 27–909(a)(5) of the Insurance Article.

(H) “HARASSMENT” INCLUDES HARASSMENT BASED ON RACE, COLOR, RELIGION, ANCESTRY OR NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY, AND RETAINS ITS JUDICIALLY DETERMINED MEANING, EXCEPT TO THE EXTENT IT IS EXPRESSLY OR IMPLIEDLY CHANGED IN THIS SUBTITLE.

[(h)] (I) (1) “Labor organization” means:

(i) a labor organization engaged in an industry; and

(ii) an agent of an organization described in item (i) of this paragraph.

(2) “Labor organization” includes:

(i) an organization of any kind, an agency, or an employee representation committee, group, association, or plan:

1. in which employees participate; and
2. that exists, wholly or partly, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment; and

(ii) a conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization.

[(i)] (J) “Religion” includes all aspects of religious observances, practice, and belief.

20–606.

(a) An employer may not:

(1) fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of:

(i) the individual’s race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or

(ii) the individual’s refusal to submit to a genetic test or make available the results of a genetic test;

(2) limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual’s status as an employee because of:

(i) the individual’s race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or

(ii) the individual’s refusal to submit to a genetic test or make available the results of a genetic test;

(3) request or require genetic tests or genetic information as a condition of hiring or determining benefits; **[or]**

(4) fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee; **OR**

(5) ENGAGE IN HARASSMENT OF AN EMPLOYEE.

20-611.

IN AN ACTION ALLEGING A VIOLATION OF THIS SUBTITLE BASED ON HARASSMENT, AN EMPLOYER IS LIABLE:

(1) FOR THE ACTS OR OMISSIONS TOWARD AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT COMMITTED BY AN INDIVIDUAL WHO:

(I) UNDERTAKES OR RECOMMENDS TANGIBLE EMPLOYMENT ACTIONS AFFECTING THE EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT, INCLUDING HIRING, FIRING, PROMOTING, DEMOTING, AND REASSIGNING THE EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT; OR

(II) DIRECTS, SUPERVISES, OR EVALUATES THE WORK ACTIVITIES OF THE EMPLOYEE; OR

(2) IF THE NEGLIGENCE OF THE EMPLOYER LED TO THE HARASSMENT OR CONTINUATION OF HARASSMENT.

20-1004.

(a) Any person claiming to be aggrieved by an alleged discriminatory act may file a complaint with the Commission.

(b) The complaint shall:

(1) be in writing;

(2) state:

(i) the name and address of the person or State or local unit alleged to have committed the discriminatory act; and

(ii) the particulars of the alleged discriminatory act;

(3) contain any other information required by the Commission; and

(4) be signed by the complainant under oath.

(c) (1) (I) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** complaint shall be filed within 6 months after the date on which the alleged discriminatory act occurred.

[(2)] (II) A complaint filed with a federal or local human relations commission within 6 months after the date on which the alleged discriminatory act occurred shall be deemed to have complied with **SUBPARAGRAPH (I) OF** this [subsection] **PARAGRAPH.**

(2) (I) A COMPLAINT ALLEGING HARASSMENT AGAINST AN EMPLOYER SHALL BE FILED WITHIN 2 YEARS AFTER THE DATE ON WHICH THE ALLEGED HARASSMENT OCCURRED.

(II) A COMPLAINT FILED WITH A FEDERAL HUMAN RELATIONS COMMISSION WITHIN 6 MONTHS OR A LOCAL HUMAN RELATIONS COMMISSION WITHIN 2 YEARS AFTER THE DATE ON WHICH THE ALLEGED HARASSMENT OCCURRED SHALL BE DEEMED TO HAVE COMPLIED WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(d) The Commission, on its own motion, and by action of at least three commissioners, may issue a complaint in its name in the same manner as if the complaint had been filed by an individual, if:

(1) the Commission has received reliable information from an individual that a person has been or is engaged in a discriminatory act; and

(2) after a preliminary investigation by the Commission's staff authorized by the chair or vice-chair, the Commission is satisfied that the information warrants the filing of a complaint.

20-1013.

(a) In addition to the right to make an election under § 20-1007 of this subtitle, a complainant may bring a civil action against the respondent alleging an unlawful employment practice, if:

(1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice by the respondent;

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

(3) **(I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH,** the civil action is filed within 2 years after the alleged unlawful employment practice occurred;
OR

(II) IF THE COMPLAINT IS ALLEGING HARASSMENT, THE CIVIL ACTION IS FILED WITHIN 3 YEARS AFTER THE ALLEGED HARASSMENT OCCURRED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to preempt or prevail over any local ordinance, resolution, law, or rule that requires that an employer have more than one employee for purposes of a complaint alleging employment discrimination based on sexual harassment.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.