

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1202
Economic Matters

(Delegate M. Fisher, *et al.*)

Finance

Labor and Employment - Use of Facial Recognition Services - Prohibition

This bill prohibits an employer from using a facial recognition service for the purpose of creating a facial template during an applicant’s interview for employment unless an applicant consents by signing a specified waiver. “Facial recognition service” is defined as technology that analyzes facial features and is used for recognition or persistent tracking of individuals in still or video images.

Fiscal Summary

State Effect: Any investigations by the Commissioner of Labor and Industry due to the prohibition can be handled within existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Maryland does not have a general statute or regulation governing the use of facial recognition services by businesses.

Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As such, discrimination in employment is prohibited on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

On any of these bases or because of an individual's refusal to submit to or make available the results of a genetic test, 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 or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee. An employer is also prohibited from (1) requesting or requiring genetic tests or genetic information as a condition of hiring or determining benefits or (2) failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee. Additionally, acts of harassment and retaliation against an employee by an employer are prohibited. An employer is not required to reasonably accommodate an employee's religion or disability if the accommodation would cause undue hardship on the conduct of the employer's business.

Background: The *Washington Post* reports an artificial intelligence hiring system uses a computer or cellphone camera to analyze job candidates' facial movements, word choice, and speaking voice before ranking them against other applicants based on an automatically generated score. The artificial intelligence hiring system is pervasive in some industries, like hospitality and finance.

Illinois requires employers to notify applicants before an interview when artificial intelligence will be used to screen them and requires the job applicants' consent. Employers are prohibited from using artificial intelligence to evaluate applicants who have not consented.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Maryland Department of Labor; *The Washington Post*; Department of Legislative Services

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