SENATE BILL 834

By: Senator Smith
Introduced and read first time: February 9, 2021
Assigned to: Judicial Proceedings
Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 23, 2021

CHAPTER ______

1 AN ACT concerning

2 Harassment and Sexual Harassment – Definitions – Employment Discrimination
   and Sexual Harassment Prevention Training

4 FOR the purpose of altering the definition of “harassment” for purposes of certain
provisions relating to discrimination in employment to include certain conduct,
whether or not the conduct would be considered sufficiently
or pervasive under precedent applied to harassment claims; defining “sexual
harassment” for purposes of certain provisions relating to discrimination in
employment to include certain conduct, whether or not the conduct would be
considered sufficiently
which need not be
severe or pervasive
under precedent
applied to sexual harassment claims; altering the definition of “sexual harassment”
for certain provisions relating to State government sexual harassment prevention
training; and generally relating to the definitions of harassment and sexual
harassment.

15 BY repealing and reenacting, without amendments,
   Article – State Government
   Section 20–601(a)
   Annotated Code of Maryland
   (2014 Replacement Volume and 2020 Supplement)

20 BY repealing and reenacting, with amendments,
   Article – State Government
   Section 20–601(h)
   Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
Strike-out indicates matter stricken from the bill by amendment or deleted from the law by
amendment.
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By adding to

Article – State Government

Section 20–601(k)
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

By repealing and reenacting, with amendments,

Article – State Personnel and Pensions
Section 2–203.1(a)
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – State Government

20–601.

(a) In this subtitle the following words have the meanings indicated.

(h) “Harassment” includes:

(1) ORAL, WRITTEN, OR PHYSICAL UNWELCOME AND OFFENSIVE CONDUCT, WHETHER OR NOT THE CONDUCT WOULD BE CONSIDERED SUFFICIENTLY SEVERE OR PERSUASIVE UNDER PRECEDENT APPLIED TO HARASSMENT CLAIMS WHICH NEED NOT BE SEVERE OR PERSUASIVE, WHEN:

(I) THE CONDUCT IS 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]; AND

(II) 1. SUBMISSION TO THE CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF EMPLOYMENT OF AN INDIVIDUAL;

2. SUBMISSION TO OR REJECTION OF THE CONDUCT IS USED AS A BASIS FOR EMPLOYMENT DECISIONS AFFECTING THE INDIVIDUAL; OR

3. BASED ON THE TOTALITY OF THE CIRCUMSTANCES, THE CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL’S WORK PERFORMANCE OR CREATING A WORKING
ENVIRONMENT THAT IS PERCEIVED BY THE VICTIM A REASONABLE PERSON WOULD PERCEIVE TO BE ABUSIVE OR HOSTILE; AND

(III) A REASONABLE VICTIM OF DISCRIMINATION WOULD CONSIDER THE CONDUCT TO BE MORE THAN A PETTY SLIGHT, TRIVIAL INCONVENIENCE, OR MINOR ANNOYANCE; AND

(2) SEXUAL HARASSMENT.

(K) “SEXUAL HARASSMENT” INCLUDES ORAL, WRITTEN, OR PHYSICAL CONDUCT, WHETHER OR NOT THE CONDUCT WOULD BE CONSIDERED SUFFICIENTLY SEVERE OR PERVERSIVE UNDER PRECEDENT APPLIED TO SEXUAL HARASSMENT CLAIMS WHICH NEED NOT BE SEVERE OR PERVERSIVE, THAT CONSISTS OF UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS, OR OTHER VERBAL, WRITTEN, OR PHYSICAL CONDUCT OF A SEXUAL NATURE WHEN:

(1) (I) SUBMISSION TO THE CONDUCT IS MADE EITHER EXPLICITLY OR IMPLIED A TERM OR CONDITION OF EMPLOYMENT OF AN INDIVIDUAL;

(II) (2) SUBMISSION TO OR REJECTION OF THE CONDUCT IS USED AS A BASIS FOR EMPLOYMENT DECISIONS AFFECTING THE INDIVIDUAL; OR

(III) (3) BASED ON THE TOTALITY OF THE CIRCUMSTANCES, THE CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH AN INDIVIDUAL’S WORK PERFORMANCE OR CREATES A WORKING ENVIRONMENT THAT IS PERCEIVED BY THE VICTIM A REASONABLE PERSON WOULD PERCEIVE TO BE ABUSIVE OR HOSTILE; AND

(2) A REASONABLE VICTIM OF DISCRIMINATION WOULD CONSIDER THE CONDUCT TO BE MORE THAN A PETTY SLIGHT, TRIVIAL INCONVENIENCE, OR MINOR ANNOYANCE.

Article – State Personnel and Pensions

2–203.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Commission” means the Commission on Civil Rights.

(3) “Sexual harassment” [includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical contact of a sexual nature when:

(i) submission to the conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
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(ii) submission to or rejection of the conduct by an individual is used as a basis for employment decisions affecting the individual; or

(iii) the conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating or offensive working environment that is perceived by the victim to be abusive or hostile] HAS THE MEANING STATED IN § 20–601 OF THE STATE GOVERNMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.