

SENATE BILL 911

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1lr2705

By: **Senator Smith**

Introduced and read first time: February 9, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Unlawful Employment Practice – Statute of Limitations and Remedies**

3 FOR the purpose of repealing the limitations on the amount of compensatory damages and
4 punitive damages that may be awarded to a complainant in a certain unlawful
5 employment case; increasing the period of time for which a complainant may recover
6 certain back pay in a certain unlawful employment case; increasing the period of
7 time during which a complainant may file a civil action that alleges an unlawful
8 employment practice that does not allege harassment; making conforming changes;
9 and generally relating to unlawful employment practices.

10 BY repealing and reenacting, with amendments,
11 Article – State Government
12 Section 20–1009 and 20–1013
13 Annotated Code of Maryland
14 (2014 Replacement Volume and 2020 Supplement)

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

17 **Article – State Government**

18 20–1009.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

4 (b) (1) If the respondent is found to have engaged in or to be engaging in an
5 unlawful employment practice charged in the complaint, the remedy may include:

6 (i) enjoining the respondent from engaging in the discriminatory
7 act;

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

10 (iii) awarding compensatory damages; or

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

13 (2) Compensatory damages awarded under this subsection are in addition
14 to:

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

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

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

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

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

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

32 (iv) \$300,000, if the respondent employs not fewer than 501

1 employees in each of 20 or more calendar weeks in the current or preceding calendar year.]

2 [(4)] (3) If back pay is awarded under paragraph (1) of this subsection,
3 the award shall be reduced by any interim earnings or amounts earnable with reasonable
4 diligence by the person discriminated against.

5 [(5)] (4) In addition to any other relief authorized by this subsection, a
6 complainant may recover back pay for up to [2] 3 years preceding the filing of the
7 complaint, where the unlawful employment practice that has occurred during the
8 complaint filing period is similar or related to an unlawful employment practice with regard
9 to discrimination in compensation that occurred outside the time for filing a complaint.

10 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, if the
11 respondent is found to have engaged in or to be engaging in a discriminatory act other than
12 an unlawful employment practice, in addition to an award of civil penalties as provided in
13 § 20–1016 of this subtitle, nonmonetary relief may be granted to the complainant.

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

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

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

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

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

27 (2) issue an order dismissing the complaint.

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

31 20–1013.

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

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

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

6 (3) [(i) except as provided in item (ii) of this paragraph,] the civil action
7 is filed within [2] 3 years after the alleged unlawful employment practice occurred[; or

8 (ii) if the complaint is alleging harassment, the civil action is filed
9 within 3 years after the alleged harassment occurred].

10 (b) A civil action under this section shall be filed in the circuit court for the county
11 where the alleged unlawful employment practice occurred.

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

15 (d) If the court finds that an unlawful employment practice occurred, the court
16 may provide the remedies specified in § 20–1009(b) of this subtitle.

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

19 [(i)] (1) the respondent is not a governmental unit or political
20 subdivision; and

21 [(ii)] (2) the court finds that the respondent has engaged in or is
22 engaging in an unlawful employment practice with actual malice.

23 [(2)] If the court awards punitive damages, the sum of the amount of
24 compensatory damages awarded to each complainant under subsection (d) of this section
25 and the amount of punitive damages awarded under this subsection may not exceed the
26 applicable limitation established under § 20–1009(b)(3) of this subtitle.]

27 (f) If a complainant seeks compensatory or punitive damages under this section[;
28 (1)], any party may demand a trial by jury[; and

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

31 (g) When appropriate and to the extent authorized under law, in a dispute arising
32 under this part, in which the complainant seeks compensatory or punitive damages, the

1 parties are encouraged to use alternative means of dispute resolution, including settlement
2 negotiations or mediation.

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