

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 914 (Senator McKay)
Judicial Proceedings

Human Relations - Protections Against Discrimination - Genetic Procedures

This bill generally prohibits discrimination based on an individual’s refusal to undergo a “genetic procedure” in education, places of public accommodation, commercial leasing, housing, employment, State personnel actions, and by specified individuals licensed or regulated by the Maryland Department of Labor.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect the Maryland Commission on Civil Rights (MCCR), the Judiciary, or the Office of Administrative Hearings (OAH), or otherwise directly affect State finances.

Local Effect: The bill is not anticipated to directly affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: In general, the bill incorporates an individual’s refusal to undergo a “genetic procedure” into numerous provisions of statute, some of which are discussed further below, that prohibit discrimination in various circumstances on the grounds of specified bases.

“Genetic procedure” means a therapy, treatment, or medical procedure that may (1) add, remove, alter, activate, change, or cause mutation in an individual’s DNA or other genetic materials (as defined in the bill) or (2) replace, supersede, or bypass a normal function of an individual’s DNA or other genetic materials.

Current Law:

Education Discrimination and Immunization Requirements

In general, a county board, public prekindergarten program, public primary or secondary school, nonpublic prekindergarten program that receives State funds, or nonpublic primary or secondary school that receives State funds, may not (1) discriminate against a current student, prospective student, or parent or guardian of a current or prospective student or (2) refuse enrollment of a prospective student, expel a current student, or withhold privileges from a current student, prospective student, or the parent or guardian of a current or prospective student on the basis of race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability. The specified entities may not discipline, invoke a penalty against, or take any other retaliatory action against a student or parent or guardian of a student who files a complaint alleging that the program or school discriminated against the student, regardless of the outcome of the complaint.

Under § 7-403 of the Education Article, the Maryland Department of Health, in cooperation with the State Board of Education and the Statewide Advisory Commission on Immunizations, must adopt rules and regulations regarding immunizations required of children entering schools. However, unless the Secretary of Health declares an emergency or an epidemic of disease, a child whose parent or guardian objects to immunization on the ground of a conflict with *bona fide* religious beliefs and practices may not be required to present a physician's certification of immunization in order to be admitted to school.

Place of Public Accommodation

An owner or operator of a place of public accommodation (or an agent or employee of the owner or operator) may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person's race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity, or disability.

Housing Discrimination

In general, State law prohibits housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, source of income, or disability.

Housing discrimination includes, among other things, taking the following actions based on a protected class: (1) refusing to sell or rent a dwelling after the making of a *bona fide* offer; (2) refusing to negotiate for the sale or rental of a dwelling; (3) making a dwelling

otherwise unavailable; (4) discriminating in the terms, conditions, or privileges of the sale or rental of a dwelling; (5) discriminating in the provision of services or facilities in connection with the sale or rental of a dwelling; (6) making, printing, or publishing or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on a protected status; (7) representing to a person that a dwelling is not available for inspection, sale, or rental when it is available; and (8) for profit, inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular protected status.

Employment Discrimination

Statute includes prohibitions against various types of employment discrimination, generally on the basis of race, color, religion, ancestry or national origin, sex, age, 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).

For additional information on employment discrimination, please see the **Appendix – Employment Discrimination**.

Enforcement and Remedies – in General

MCCR is the independent State agency generally charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting.

Procedures for alleging discrimination and available remedies are specified in statute and differ depending on the type of discrimination alleged.

For example, generally, a person claiming to have been injured by a discriminatory housing practice may file a complaint with MCCR. Statutory provisions specify the process and requirements for complaints of housing discrimination, including the responsibilities of MCCR in investigating a claim and attempting conciliation and the circumstances under which a complainant, respondent, or aggrieved person must have an opportunity for an administrative hearing conducted by OAH or may elect to file a civil action in circuit court. If an administrative law judge (ALJ) finds that the respondent has engaged in a discriminatory housing practice, the ALJ may order appropriate relief, including actual damages and injunctive or other relief, and may assess a civil penalty against the respondent. A court may award actual or punitive damages, grant injunctive relief, and allow reasonable attorney's fees and costs.

Small Business Effect: Small businesses are prohibited from engaging in specified discriminatory practices on the basis of an individual's refusal to undergo a genetic procedure and subject to various penalties depending on the circumstances of the case (*e.g.*, actual or punitive damages, civil penalties, etc.) if found to be in violation.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1422 (Delegates S. Johnson and A. Johnson) - Health and Government Operations.

Information Source(s): Maryland Commission on Civil Rights; Baltimore and Montgomery counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; Morgan State University; Maryland Independent College and University Association; Maryland Department of Labor; Office of Administrative Hearings; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2024
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Appendix – Employment Discrimination

Discrimination in Employment – Generally

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, State law generally prohibits discrimination in employment on the basis of race, color, religion, ancestry or national origin, sex, age, 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).

Subject to limited exceptions, 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 failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee or an applicant for employment; however, State law does not require an employer to reasonably accommodate a disability if the accommodation would cause undue hardship on the conduct of the employer's business. Furthermore, an employer may not (1) engage in the harassment (including sexual harassment) of an employee or (2) discriminate or retaliate against an employee or applicant because the employee/applicant has opposed any practice prohibited by State law relevant to employment discrimination or made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing related to such laws. Additional prohibitions – including those specific to interns, employment agencies, and labor organizations – are also specified in statute.

In general, the above prohibitions are applicable to employers that have 15 or more employees (based on the number of employees working in each of 20 or more calendar weeks in the current or preceding calendar year). Provisions relating to harassment allegations apply to employers with one or more employees. Statute also specifically prohibits units, officers, or employees of the State, a county, or a municipal corporation from engaging in these discriminatory acts.

Employment Discrimination Complaints – Initial Process, Administrative Proceedings, and Civil Actions

Initial Process: The Maryland Commission on Civil Rights (MCCR) is the independent State agency charged with the enforcement of laws prohibiting discrimination in employment. An individual alleging employment discrimination may file an inquiry with MCCR, which initiates the intake process. Once a complaint has been properly filed, the case is assigned to an MCCR investigator to determine whether there is probable cause that discrimination has occurred. If at the conclusion of the investigatory stage, MCCR believes there is probable cause that discrimination occurred, MCCR issues a finding and attempts to resolve the matter through conciliation. If an agreement to remedy and eliminate the discrimination cannot be reached, the matter is certified for litigation and may proceed in a number of ways, including being heard before an administrative law judge.

A complaint alleging an unlawful employment practice other than harassment must be filed within 300 days after the alleged act (a complaint alleging harassment must be filed within two years). However, complaints filed with a federal human relations commission or a local human relations commission within specified timeframes are deemed to be in compliance with these requirements.

Administrative Proceedings: At an administrative hearing, MCCR's Office of the General Counsel presents the case on behalf of the complainant. Remedies available on a finding by an administrative law judge that the respondent (employer) is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief (including the reinstatement or hiring of employees, with or without back pay); (3) awarding compensatory damages; and (4) ordering any other equitable relief that the judge considers appropriate.

Compensatory damages that are awarded (for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses) are in addition to back pay, interest on back pay, and any other equitable relief that the complainant may recover under any other provision of law. The maximum amounts of compensatory damages that may be awarded are as follows:

- \$50,000 for respondents with 15 to 100 employees;
- \$100,000 for respondents with 101 to 200 employees;
- \$200,000 for respondents with 201 to 500 employees; and
- \$300,000 for respondents with 501 or more employees.

If back pay is awarded, the award must be reduced by any interim earnings or amounts earnable with reasonable diligence by the person discriminated against. In addition to any other authorized relief, a complainant may recover back pay for up to two years preceding the filing of the complaint if the unlawful employment practice that has occurred during the complaint filing period is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a complaint.

Civil Actions: A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own behalf under the same conditions. On a finding that discrimination occurred, the circuit court may provide the same remedies that an administrative law judge is authorized to provide (described above).

A complainant may also file a private civil action in circuit court against the respondent 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 and (2) at least 180 days have elapsed since the filing of the administrative charge or complaint. In addition, the civil action must be filed within two years after the alleged employment practice occurred (or within three years for a harassment allegation), however, these time limitations are tolled while an administrative charge or complaint is pending. The filing of a civil action automatically terminates any proceeding before MCCR based on the underlying administrative complaint.

In addition to the remedies described above, a circuit court may also award punitive damages in a private civil action if the respondent is not a governmental unit or political subdivision, and the court finds that the respondent is engaging or has engaged in an unlawful employment practice with actual malice. If the court awards punitive damages, the sum of the amount of compensatory damages and punitive damages may not exceed the applicable limitations on compensatory damages (as shown above). If a complainant seeks compensatory or punitive damages in a circuit court action, any party may demand a jury trial, and the court may not inform the jury of the statutory limitations on compensatory and punitive damages.

Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party reasonable attorney's fees, expert witness fees, and costs.

Employment Discrimination Caseloads

MCCR reports that since 2017, retaliation has been the primary employment-related inquiry received, followed by inquiries related to disability, harassment, and race. According to the most recent MCCR Annual Report, nearly 70% of the 661 overall cases ultimately referred for investigation in fiscal 2023 were for employment discrimination.