



NFIB-Maryland – 60 West St., Suite 101 – Annapolis, MD 21401 – www.NFIB.com/Maryland

TO: Senate Finance Committee

FROM: NFIB – Maryland

DATE: March 11, 2026

RE: **OPPOSE SENATE BILL 857** – Labor and Employment – Civic and Related Activities - Protection

Founded in 1943, NFIB is the voice of small business, advocating on behalf of America’s small and independent business owners, both in Washington, D.C., and in all 50 state capitals. With more than 250,000 members nationwide, and nearly 4,000 here in Maryland, we work to protect and promote the ability of our members to grow and operate their business.

On behalf of Maryland’s small businesses, NFIB opposes Senate Bill 857 – legislation that creates new worker protections for certain civic or political expressions outside of work. At the same time, it creates new legal liabilities for small businesses and real challenges for workplace governance, risk management, staffing, and dispute resolution.

Maryland employees already enjoy substantial protections under federal and state law, including safeguards against discrimination, retaliation, and violations of constitutional rights where applicable. SB857 goes far beyond those established frameworks by creating a sweeping new private cause of action, broad definitions of protected conduct, and a presumption of retaliation that will make it extraordinarily difficult for employers to manage their workplaces responsibly.

Senate Bill 857 authorizes civil lawsuits that include reinstatement, back pay, compensatory damages, punitive damages, and attorney’s fees. This creates significant litigation exposure— even for well-intentioned employers acting in good faith. The inclusion of punitive damages and fee-shifting provisions will incentivize litigation and increase settlement pressure, particularly for small businesses that lack the financial resources to defend prolonged legal challenges. Even meritless claims can impose substantial costs.

The bill’s definitions of “civic activity,” “political activity,” and “lawful expression” are extraordinarily broad. The legislation appears to protect nearly any lawful expressive conduct

undertaken off duty. This broadness creates serious uncertainty for employers attempting to balance employee rights with legitimate business interests. For example, employers may face legal risk for disciplining employees whose public statements damage client relationships, undermine their fellow employees, or conflict with company values. The bill provides insufficient clarity on how courts will weigh employer reputational harm, workplace disruption, or conflicts of interest against protected activity.

This legislation also establishes a rebuttable presumption of retaliation if an employer takes adverse action within *120 days* of protected activity. Not only is this timeframe arbitrary, but it effectively shifts the burden of proof onto the employer and creates a heightened risk whenever routine personnel decisions occur near in time to an employee's civic engagement. Employers regularly make legitimate disciplinary decisions based on performance, misconduct, or restructuring needs. Under this bill, they may be required to defend those decisions in court simply because the employee engaged in protected activity months earlier. This presumption will discourage timely management action and increase hesitation among supervisors to address performance issues promptly.

Senate Bill 857 imposes substantial compliance burdens. Employers will need to revise employee handbooks, update social media and conduct policies, retrain managers, and implement new documentation protocols to mitigate litigation risk. Larger employers will be required to post new notices and potentially adjust hiring practices to ensure no prohibited inquiries occur. For small and medium-sized businesses operating with limited HR infrastructure, these requirements represent a meaningful administrative and financial strain.

Importantly, the bill does not clearly delineate when employer interests—such as maintaining a safe, respectful, and non-disruptive workplace—override protected expression. Employers have a responsibility to ensure that workplaces remain free from harassment, intimidation, and operational disruption. Ambiguity in the bill may lead to inconsistent application and unpredictable judicial interpretation, further increasing business uncertainty.

Employers must retain reasonable discretion to manage their workforce, enforce standards of conduct, and protect their organizational mission without constant threat of litigation.

For these reasons, we respectfully request an **unfavorable committee report on SB857**.