

SENATE BILL 513

D5, K3, A3

4lr3052
CF HB 525

By: **Senator A. Washington**

Introduced and read first time: January 24, 2024

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Employment Discrimination – Use of Cannabis Products**

3 FOR the purpose of prohibiting an employer from discriminating against an individual
4 because of the individual's use of cannabis products under certain circumstances;
5 establishing that certain provisions prohibiting employment discrimination do not
6 prohibit an employer from taking certain actions against an employee under certain
7 circumstances or authorize certain behaviors by an employee; requiring certain
8 employers to issue a drug policy under certain circumstances; and generally relating
9 to discrimination in employment and the use of cannabis products.

10 BY adding to
11 Article – Labor and Employment
12 Section 3–718
13 Annotated Code of Maryland
14 (2016 Replacement Volume and 2023 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – State Government
17 Section 20–601, 20–604, 20–605, and 20–606
18 Annotated Code of Maryland
19 (2021 Replacement Volume and 2023 Supplement)

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

22 **Article – Labor and Employment**

23 **3–718.**

24 **AN EMPLOYER WHO CONDUCTS DRUG TESTING SHALL PROVIDE THE**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **EMPLOYER’S UPDATED DRUG POLICY TO ALL EMPLOYEES BEFORE THE EFFECTIVE**
2 **DATE OF THE POLICY.**

3 **Article – State Government**

4 20–601.

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

6 (b) **“ADVERSE EMPLOYMENT ACTION” MEANS TO:**

7 **(1) REFUSE TO HIRE OR EMPLOY AN INDIVIDUAL;**

8 **(2) REQUIRE AN INDIVIDUAL TO RETIRE FROM EMPLOYMENT; OR**

9 **(3) DISCRIMINATE AGAINST AN INDIVIDUAL IN THE COMPENSATION**
10 **OR THE TERMS, CONDITIONS, OR PRIVILEGES OF THE EMPLOYMENT.**

11 **(C) (1) “Disability” means:**

12 (i) 1. a physical disability, infirmity, malformation, or
13 disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; or

14 2. a mental impairment or deficiency;

15 (ii) a record of having a physical or mental impairment as otherwise
16 defined under this subsection; or

17 (iii) being regarded as having a physical or mental impairment as
18 otherwise defined under this subsection.

19 **(2) “Disability” includes:**

20 (i) 1. any degree of paralysis, amputation, or lack of physical
21 coordination;

22 2. blindness or visual impairment;

23 3. deafness or hearing impairment;

24 4. muteness or speech impediment; and

25 5. physical reliance on a service animal, wheelchair, or other
26 remedial appliance or device; and

27 (ii) retardation and any other mental impairment or deficiency that

1 may have necessitated remedial or special education and related services.

2 **[(c)] (D)** (1) “Employee” means:

3 (i) an individual employed by an employer; or

4 (ii) an individual working as an independent contractor for an
5 employer.

6 (2) Unless the individual is subject to the State or local civil service laws,
7 “employee” does not include:

8 (i) an individual elected to public office;

9 (ii) an appointee on the policy making level; or

10 (iii) an immediate adviser with respect to the exercise of the
11 constitutional or legal powers of an elected office.

12 **[(d)] (E)** (1) “Employer” means:

13 (i) a person that:

14 1. is engaged in an industry or business; and

15 2. A. has 15 or more employees for each working day in
16 each of 20 or more calendar weeks in the current or preceding calendar year; or

17 B. if an employee has filed a complaint alleging harassment,
18 has one or more employees for each working day in each of 20 or more calendar weeks in
19 the current or preceding calendar year; and

20 (ii) an agent of a person described in item (i) of this paragraph.

21 (2) “Employer” includes the State to the extent provided in this title.

22 (3) Except for a labor organization, “employer” does not include a bona fide
23 private membership club that is exempt from taxation under § 501(c) of the Internal
24 Revenue Code.

25 **[(e)] (F)** (1) “Employment agency” means:

26 (i) a person that regularly undertakes with or without
27 compensation to procure:

28 1. employees for an employer; or

2. opportunities for employees to work for an employer; and

(ii) an agent of a person described in item (i) of this paragraph.

(2) Except for the United States Employment Service and the system of State and local employment services receiving federal assistance, “employment agency” does not include a unit of the United States, the State, or a political subdivision of the State.

[(f)] (G) “Genetic information” has the meaning stated in § 27–909(a)(3) of the Insurance Article.

[(g)] (H) “Genetic test” has the meaning stated in § 27–909(a)(5) of the Insurance Article.

[(h)] (I) “Harassment” includes:

(1) unwelcome and offensive conduct, which need not be severe or pervasive, 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

(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 unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile; and

(2) sexual harassment.

[(i)] (J) (1) “Labor organization” means:

(i) a labor organization engaged in an industry; and

(ii) an agent of an organization described in item (i) of this paragraph.

(2) “Labor organization” includes:

(i) an organization of any kind, an agency, or an employee representation committee, group, association, or plan:

1. in which employees participate; and

2. that exists, wholly or partly, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment; and

(ii) a conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization.

[(j)] (K) “Religion” includes all aspects of religious observances, practice, and belief.

[(k)] (L) “Sexual harassment” includes conduct, which need not be severe or pervasive, that consists of unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when:

(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 unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile.

20–604.

(A) This subtitle does not apply to:

(1) an employer with respect to the employment of aliens outside of the State; or

(2) a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion, sexual orientation, or gender identity to perform work connected with the activities of the religious entity.

(B) (1) NOTHING IN THIS SUBTITLE:

(I) AUTHORIZES AN EMPLOYEE TO BE IMPAIRED BY, TO USE, OR TO POSSESS CANNABIS PRODUCTS DURING WORK HOURS; OR

(II) REQUIRES AN EMPLOYER TO COMMIT AN ACT THAT WOULD:

1. CAUSE THE EMPLOYER TO VIOLATE FEDERAL LAW; OR

2. RESULT IN THE LOSS OF A FEDERAL CONTRACT OR

1 **FEDERAL FUNDING.**

2 **(2) THIS SUBTITLE DOES NOT PREEMPT FEDERAL LAW REQUIRING**
3 **APPLICANTS OR EMPLOYEES TO BE TESTED FOR CONTROLLED SUBSTANCES AS A**
4 **CONDITION OF:**

5 **(I) EMPLOYMENT;**

6 **(II) RECEIVING FEDERAL FUNDING OR FEDERAL**
7 **LICENSING-RELATED BENEFITS; OR**

8 **(III) ENTERING INTO A FEDERAL CONTRACT.**

9 20–605.

10 (a) Notwithstanding any other provision of this subtitle, this subtitle does not
11 prohibit:

12 (1) an employer from hiring and employing employees, an employment
13 agency from classifying or referring for employment any individual, a labor organization
14 from classifying its membership or classifying or referring for employment any individual,
15 or an employer, labor organization, or joint labor–management committee controlling
16 apprenticeship or other training or retraining programs from admitting or employing any
17 individual in a program, on the basis of the individual’s sex, age, religion, national origin,
18 or disability, if sex, age, religion, national origin, or disability is a bona fide occupational
19 qualification reasonably necessary to the normal operation of that business or enterprise;

20 (2) an employer from establishing and requiring an employee to adhere to
21 reasonable workplace appearance, grooming, and dress standards that are directly related
22 to the nature of the employment of the employee and that are not precluded by any
23 provision of State or federal law, as long as the employer allows any employee to appear,
24 groom, and dress consistent with the employee’s gender identity;

25 (3) a school, college, university, or other educational institution from hiring
26 and employing employees of a particular religion, if:

27 (i) the institution is wholly or substantially owned, supported,
28 controlled, or managed by a particular religion or by a particular religious corporation,
29 association, or society; or

30 (ii) the curriculum of the institution is directed toward the
31 propagation of a particular religion; [or]

32 (4) except as provided in subsection (b) of this section, an employer,
33 employment agency, or labor organization from observing the terms of a bona fide seniority
34 system or any bona fide employee benefit plan, such as a retirement, pension, or insurance

1 plan, that is not a subterfuge to evade the purposes of this subtitle; OR

2 **(5) AN EMPLOYER FROM:**

3 **(I) PROHIBITING AN EMPLOYEE FROM POSSESSING OR USING**
4 **INTOXICATING SUBSTANCES DURING WORK HOURS; OR**

5 **(II) TAKING ADVERSE EMPLOYMENT ACTION AGAINST AN**
6 **EMPLOYEE FOR POSSESSING, USING, OR TESTING POSITIVE FOR INTOXICATING**
7 **SUBSTANCES DURING WORK HOURS.**

8 (b) An employee benefit plan may not excuse the failure to hire any individual.
9 20–606.

10 (a) An employer may not:

11 (1) fail or refuse to hire, discharge, or otherwise discriminate against any
12 individual with respect to the individual's compensation, terms, conditions, or privileges of
13 employment because of:

14 (i) the individual's race, color, religion, sex, age, national origin,
15 marital status, sexual orientation, gender identity, genetic information, or disability
16 unrelated in nature and extent so as to reasonably preclude the performance of the
17 employment; or

18 (ii) the individual's refusal to submit to a genetic test or make
19 available the results of a genetic test;

20 **(2) UNLESS THE EMPLOYER HAS ESTABLISHED BY A**
21 **PREPONDERANCE OF THE EVIDENCE THAT AN UNLAWFUL USE OF CANNABIS HAS**
22 **IMPAIRED AN INDIVIDUAL'S ABILITY TO PERFORM THE INDIVIDUAL'S JOB**
23 **RESPONSIBILITIES, TAKE AN ADVERSE EMPLOYMENT ACTION AGAINST THE**
24 **INDIVIDUAL BECAUSE OF:**

25 **(I) THE INDIVIDUAL'S USE OF CANNABIS PRODUCTS THAT IS**
26 **LAWFUL UNDER THE LAWS IN THE STATE THAT OCCURS OFF THE EMPLOYER'S**
27 **PREMISES DURING NONWORK HOURS;**

28 **(II) THE INDIVIDUAL'S POSITIVE DRUG TEST FOR**
29 **CANNABINOIDS OR CANNABIS METABOLITES, UNLESS THE INDIVIDUAL USED,**
30 **POSSESSED, OR WAS UNDER THE INFLUENCE OF CANNABIS ON THE PREMISES OF**
31 **THE PLACE OF EMPLOYMENT; OR**

32 **(III) THE INDIVIDUAL'S PRIOR ARREST OR CONVICTION FOR A**

NONVIOLENT CANNABIS OFFENSE THAT DOES NOT INVOLVE DISTRIBUTION TO A MINOR;

[(2)] (3) limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of:

(i) the individual's race, color, religion, sex, age, national origin, 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; or

(ii) the individual's refusal to submit to a genetic test or make available the results of a genetic test;

[(3)] (4) request or require genetic tests or genetic information as a condition of hiring or determining benefits;

[(4)] (5) fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee or an applicant for employment; or

[(5)] (6) engage in harassment of an employee.

(B) AN EMPLOYER MAY DETERMINE THAT AN INDIVIDUAL'S ABILITY TO PERFORM THE INDIVIDUAL'S JOB RESPONSIBILITIES IS IMPAIRED UNDER PARAGRAPH (A)(2) OF THIS SECTION IF THE INDIVIDUAL MANIFESTS SPECIFIC ARTICULABLE SYMPTOMS WHILE WORKING THAT DECREASE OR LESSEN THE INDIVIDUAL'S PERFORMANCE OF THE DUTIES OR TASKS OF THE INDIVIDUAL'S JOB.

[(b)] (C) An employment agency may not:

(1) fail or refuse to refer for employment or otherwise discriminate against any individual because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or

(2) classify or refer for employment any individual on the basis of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

[(c)] (D) A labor organization may not:

(1) exclude or expel from its membership, or otherwise discriminate against, any individual because of the individual's race, color, religion, sex, age, national

1 origin, marital status, sexual orientation, gender identity, or disability unrelated in nature
2 and extent so as to reasonably preclude the performance of the employment;

3 (2) limit, segregate, or classify its membership, or classify or fail or refuse
4 to refer for employment any individual, in any way that would deprive or tend to deprive
5 the individual of employment opportunities, limit the individual's employment
6 opportunities, or otherwise adversely affect the individual's status as an employee or as an
7 applicant for employment because of the individual's race, color, religion, sex, age, national
8 origin, marital status, sexual orientation, gender identity, or disability unrelated in nature
9 and extent so as to reasonably preclude the performance of the employment; or

10 (3) cause or attempt to cause an employer to discriminate against an
11 individual in violation of this section.

12 **[(d)] (E)** An employer, labor organization, or joint labor-management committee
13 controlling apprenticeship or other training or retraining programs, including on-the-job
14 training programs, may not discriminate against any individual in admission to, or
15 employment in, any program established to provide apprenticeship or other training or
16 retraining because of the individual's race, color, religion, sex, age, national origin, marital
17 status, sexual orientation, gender identity, or disability unrelated in nature and extent so
18 as to reasonably preclude the performance of the employment.

19 **[(e)] (F)** (1) Except as provided in paragraph (2) of this subsection, an
20 employer, labor organization, or employment agency may not print or cause to be printed
21 or published any notice or advertisement relating to employment by the employer,
22 membership in or any classification or referral for employment by the labor organization,
23 or any classification or referral for employment by the employment agency that indicates
24 any preference, limitation, specification, or discrimination based on race, color, religion,
25 sex, age, national origin, marital status, sexual orientation, gender identity, or disability.

26 (2) A notice or advertisement may indicate a preference, limitation,
27 specification, or discrimination based on religion, sex, age, national origin, marital status,
28 or disability if religion, sex, age, national origin, marital status, or disability is a bona fide
29 occupational qualification for employment.

30 **[(f)] (G)** An employer may not discriminate or retaliate against any of its
31 employees or applicants for employment, an employment agency may not discriminate
32 against any individual, and a labor organization may not discriminate or retaliate against
33 any member or applicant for membership because the individual has:

34 (1) opposed any practice prohibited by this subtitle; or

35 (2) made a charge, testified, assisted, or participated in any manner in an
36 investigation, proceeding, or hearing under this subtitle.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 2024.