

SENATE BILL 849

D5, F1, P1

7lr3527
CF HB 696

By: **Senators Kagan, Benson, Currie, Feldman, Ferguson, Guzzone, Kelley, King, Lee, Madaleno, Manno, Nathan–Pulliam, Pinsky, Robinson, Smith, Young, and Zucker**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Nonpublic Elementary and Secondary Schools – Discrimination – Prohibition**

3 FOR the purpose of prohibiting a nonpublic elementary or secondary school that receives
4 State funds from refusing enrollment of, expelling, withholding privileges from, or
5 otherwise discriminating against any student or prospective student because of
6 certain factors; making certain provisions of law prohibiting discrimination in
7 employment applicable to nonpublic elementary and secondary schools that receive
8 State funds; authorizing a certain person to elect to have certain claims determined
9 in a certain civil action brought by the Commission on Civil Rights; authorizing the
10 Commission to elect to have certain claims determined in a certain civil action;
11 making certain remedies and procedures regarding discrimination applicable to
12 certain discriminatory acts by certain nonpublic schools; requiring the Commission
13 to file a certain civil action in a certain circuit court within a certain time period;
14 authorizing a certain person to bring a civil action alleging a certain discriminatory
15 act by a certain nonpublic school under certain circumstances; authorizing the
16 Commission to bring an action to obtain a temporary injunction under certain
17 circumstances; altering the definition of a certain term; defining a certain term;
18 providing for the construction of certain provisions of this Act; and generally relating
19 to discrimination in nonpublic schools.

20 BY adding to

21 Article – Education

22 Section 26–501 and 26–502 to be under the new subtitle “Subtitle 5. Discrimination
23 in Education”

24 Annotated Code of Maryland

25 (2014 Replacement Volume and 2016 Supplement)

26 BY repealing and reenacting, with amendments,

27 Article – State Government

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 20–101(d), 20–604, 20–1001, 20–1006, 20–1007, 20–1009, 20–1012, 20–1013,
and 20–1017
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

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

Article – Education

SUBTITLE 5. DISCRIMINATION IN EDUCATION.

26–501.

THIS SUBTITLE DOES NOT REQUIRE A SCHOOL TO ENROLL, RETAIN, OR
EXTEND PRIVILEGES TO A STUDENT OR PROSPECTIVE STUDENT WHO DOES NOT
MEET THE USUAL AND REGULAR QUALIFICATIONS, REQUIREMENTS, AND
STANDARDS OF THE SCHOOL, PROVIDED THAT THE DENIAL IS NOT BASED ON
DISCRIMINATION ON THE GROUNDS OF RACE, COLOR, RELIGION, SEX, AGE,
NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR
DISABILITY.

26–502.

A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL THAT RECEIVES STATE
FUNDS MAY NOT REFUSE ENROLLMENT OF, EXPEL, WITHHOLD PRIVILEGES FROM,
OR OTHERWISE DISCRIMINATE AGAINST ANY STUDENT OR PROSPECTIVE STUDENT
BECAUSE OF THE INDIVIDUAL’S RACE, COLOR, RELIGION, SEX, AGE, NATIONAL
ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR
DISABILITY.

Article – State Government

20–101.

(d) “Discriminatory act” means an act prohibited under:

(1) Subtitle 3 of this title (Discrimination in Places of Public
Accommodation);

(2) Subtitle 4 of this title (Discrimination by Persons Licensed or Regulated
by Department of Labor, Licensing, and Regulation);

(3) Subtitle 5 of this title (Discrimination in Leasing of Commercial
Property);

(4) Subtitle 6 of this title (Discrimination in Employment);

(5) Subtitle 7 of this title (Discrimination in Housing); [or]

(6) Subtitle 8 of this title (Aiding, Abetting, or Attempting Discriminatory Act; Obstructing Compliance); **OR**

(7) TITLE 26, SUBTITLE 5 OF THE EDUCATION ARTICLE (DISCRIMINATION IN EDUCATION).

20–604.

(A) [This] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, 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) IF A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL RECEIVES STATE FUNDS, THIS SUBTITLE APPLIES WITH RESPECT TO THE EMPLOYMENT OF INDIVIDUALS WHO ARE NOT MINISTERIAL EMPLOYEES.

20–1001.

(A) In this part[, “unlawful”] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “UNLAWFUL EDUCATION PRACTICE” MEANS AN ACT THAT IS PROHIBITED UNDER § 26–502 OF THE EDUCATION ARTICLE.

(C) “UNLAWFUL employment practice” means an act that is prohibited under § 20–606 of this title.

20–1006.

(a) On the making of a finding under § 20–1005(c)(2) of this subtitle that an agreement to remedy and eliminate the discrimination cannot be reached, the entire file, including the complaint and any findings, shall be certified to the general counsel of the Commission.

(b) The Executive Director of the Commission shall cause a written notice to be issued and served in the name of the Commission, together with a copy of the complaint, requiring the respondent to answer the charges of the complaint at a public hearing:

(1) before an administrative law judge at a time and place certified in the notice; or

(2) if the complaint alleges an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE**, in a civil action elected under § 20–1007 of this subtitle.

20–1007.

(a) (1) When a complaint alleging an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** is issued and served under § 20–1006 of this subtitle, a complainant or respondent may elect to have the claims asserted in the complaint determined in a civil action brought by the Commission on the complainant's behalf, if:

(i) the Commission has found probable cause to believe the respondent has engaged in or is engaging in an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE**; and

(ii) there is a failure to reach an agreement to remedy and eliminate the unlawful employment practice **OR THE UNLAWFUL EDUCATION PRACTICE**.

(2) An election under paragraph (1) of this subsection shall be made within 30 days after the complainant or respondent receives service under § 20–1006(b) of this subtitle.

(3) If an election is not made under paragraph (1) of this subsection, the Commission shall provide an opportunity for a hearing as provided under § 20–1008(a) of this subtitle.

(b) When a complaint alleging an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** is issued and served under § 20–1006 of this subtitle, the Commission may elect to have the claims asserted in the complaint determined in a civil action brought on the Commission's own behalf, if:

(1) the Commission has found probable cause to believe the respondent has engaged in or is engaging in an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE**; and

(2) there is a failure to reach an agreement to remedy and eliminate the unlawful employment practice **OR THE UNLAWFUL EDUCATION PRACTICE**.

(c) (1) If a complainant or respondent makes an election under subsection (a) of this section, that party shall give notice of the election to the Commission and to all other complainants and respondents.

(2) If the Commission makes an election under subsection (b) of this section, the Commission shall give notice of the election to all complainants and respondents.

20–1009.

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

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

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

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

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

(b) (1) If the respondent is found to have engaged in or to be engaging in an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** charged in the complaint, the remedy may include:

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

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

(iii) awarding compensatory damages; or

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

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

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

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

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

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

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

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

(iv) \$300,000, if the respondent employs not fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year.

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

(5) In addition to any other relief authorized by this subsection, a complainant may recover back pay for up to 2 years preceding the filing of the complaint, where 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.

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

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

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

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

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

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

(2) issue an order dismissing the complaint.

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

20–1012.

(a) Within 60 days after an election is made under § 20–1007 of this subtitle, the Commission shall file a civil action in the circuit court for the county where the alleged unlawful employment practice **OR UNLAWFUL EDUCATION PRACTICE** occurred.

(b) If the court finds that an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** occurred, the court may provide the remedies specified in § 20–1009(b) of this subtitle.

(c) If the Commission seeks compensatory damages under this section:

(1) any party may demand a trial by jury; and

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

20–1013.

(a) In addition to the right to make an election under § 20–1007 of this subtitle, a complainant may bring a civil action against the respondent alleging an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE**, if:

(1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** by the respondent;

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

(3) the civil action is filed within 2 years after the alleged unlawful employment practice **OR UNLAWFUL EDUCATION PRACTICE** occurred.

(b) A civil action under this section shall be filed in the circuit court for the county where the alleged unlawful employment practice **OR UNLAWFUL EDUCATION PRACTICE** occurred.

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

(d) If the court finds that an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** occurred, the court may provide the remedies specified in § 20–1009(b) of this subtitle.

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

(i) the respondent is not a governmental unit or political subdivision; and

(ii) the court finds that the respondent has engaged in or is engaging in an unlawful employment practice **OR AN UNLAWFUL EDUCATION PRACTICE** with actual malice.

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

(f) If a complainant seeks compensatory or punitive damages under this section:

(1) any party may demand a trial by jury; and

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

(g) When appropriate and to the extent authorized under law, in a dispute arising under this part, in which the complainant seeks compensatory or punitive damages, the parties are encouraged to use alternative means of dispute resolution, including settlement negotiations or mediation.

20–1017.

(a) At any time after a complaint has been filed, if the Commission believes that a civil action is necessary to preserve the status of the parties or to prevent irreparable

1 harm from the time the complaint is filed until the time of the final disposition of the
2 complaint, the Commission may bring an action to obtain a temporary injunction.

3 (b) The action shall be brought in the circuit court for the county where:

4 (1) the place of public accommodation that is the subject of the alleged
5 discriminatory act is located;

6 (2) the unlawful employment practice is alleged to have occurred or to be
7 occurring; [or]

8 (3) the dwelling that is the subject of the alleged discriminatory housing
9 practice is located; **OR**

10 **(4) THE UNLAWFUL EDUCATION PRACTICE IS ALLEGED TO HAVE**
11 **OCCURRED OR TO BE OCCURRING.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2017.