

SENATE BILL 949

I3, E2

EMERGENCY BILL

4lr3168
CF HB 1047

By: **Senator Hettleman**

Introduced and read first time: February 2, 2024

Assigned to: Judicial Proceedings and Finance

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 23, 2024

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – Self-Administered Sexual Assault Evidence Collection**
3 **Kits**

4 FOR the purpose of providing that a party in a criminal trial involving an allegation of ~~a~~
5 ~~sexual crime~~ sexually assaultive behavior may not introduce ~~evidence~~ information
6 that physical evidence of ~~a sexual crime~~ sexually assaultive behavior was obtained
7 using certain materials; providing that selling, offering for sale, or distributing a
8 certain self-administered sexual assault evidence collection kit is an unfair,
9 deceptive, or abusive trade practice; establishing the Forensic Nurse Examiner
10 Training Grant Program; establishing the Forensic Nurse Examiner Training Grant
11 Program Fund as a special, nonlapsing fund; prohibiting the limitation or waiver of
12 certain rights and warranties on certain products used to collect evidence of a sexual
13 assault; providing, subject to a certain contingency, that selling, offering for sale, or
14 distributing a certain self-administered sexual assault evidence collection kit in
15 violation of regulations adopted by the Attorney General is an unfair, deceptive, or
16 abusive trade practice; requiring the Attorney General to adopt certain regulations;
17 and generally relating to self-administered sexual assault evidence collection kits.

18 BY repealing and reenacting, with amendments,
19 Article – Commercial Law
20 Section 13–301(14)(xl)
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2023 Supplement)

23 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Commercial Law
Section 13–301(14)(xli)
Annotated Code of Maryland
(2013 Replacement Volume and 2023 Supplement)

BY adding to

Article – Commercial Law
Section 13–301(14)(xlii); and 14–4601 through 14–4604 to be under the new subtitle
“Subtitle 46. Self-Administered Sexual Assault Evidence Collection Kits”
Annotated Code of Maryland
(2013 Replacement Volume and 2023 Supplement)

BY adding to

Article – Courts and Judicial Proceedings
Section 10–925
Annotated Code of Maryland
(2020 Replacement Volume and 2023 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Commercial Law
Section 14–4602
Annotated Code of Maryland
(2013 Replacement Volume and 2023 Supplement)
(As enacted by Section 1 of this Act)~~

BY adding to

Article – Criminal Procedure
Section 11–926(j)
Annotated Code of Maryland
(2018 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Procedure
Section 11–926(j)
Annotated Code of Maryland
(2018 Replacement Volume and 2023 Supplement)

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

Article – Commercial Law

13–301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

(xl) Title 14, Subtitle 13 of the Public Safety Article; [or]

(xli) Title 14, Subtitle 45 of this article; or

(XLII) TITLE 14, SUBTITLE 46 OF THIS ARTICLE; OR

**SUBTITLE 46. SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION
KITS.**

14-4601.

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.**

**(B) “PROGRAM” MEANS THE FORENSIC NURSE EXAMINER TRAINING
GRANT PROGRAM.**

**(C) “QUALIFIED HEALTH CARE PROVIDER” HAS THE MEANING STATED IN §
11-926 OF THE CRIMINAL PROCEDURE ARTICLE.**

**(D) “SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KIT”
MEANS MATERIALS ADVERTISED OR MARKETING AS A MEANS FOR A PERSON OTHER
THAN A QUALIFIED HEALTH CARE PROVIDER TO COLLECT PHYSICAL EVIDENCE OF
A SEXUAL CRIME.**

**(E) “SEXUAL CRIME” HAS THE MEANING STATED IN § 10-925 OF THE
COURTS ARTICLE.**

14-4602.

**(A) THIS SECTION DOES NOT APPLY TO A SELF-ADMINISTERED SEXUAL
ASSAULT EVIDENCE COLLECTION KIT THAT IS ISSUED BY THE MARYLAND
DEPARTMENT OF HEALTH.**

**(B) A PERSON MAY NOT SELL, OFFER FOR SALE, OR DISTRIBUTE A
SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KIT.**

(C) (1) A VIOLATION OF THIS SECTION IS:

**(I) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE
WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE; AND**

**(II) SUBJECT TO THE ENFORCEMENT AND PENALTY
PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE.**

(2) (I) IN ADDITION TO ANY PENALTY IMPOSED UNDER TITLE 13 OF THIS ARTICLE, A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH VIOLATION.

(II) THE CIVIL PENALTY UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS RECOVERABLE BY THE STATE IN A CIVIL ACTION OR AN ADMINISTRATIVE CEASE AND DESIST ACTION UNDER § 13-403(A) AND (B) OF THIS ARTICLE OR AFTER AN ADMINISTRATIVE HEARING HAS BEEN HELD UNDER § 13-403(D)(3) AND (4) OF THIS ARTICLE.

(D) ONLY THE ATTORNEY GENERAL MAY ENFORCE THIS SECTION.

(E) ALL FINES, PENALTIES, AND DAMAGES COLLECTED FOR VIOLATIONS OF THIS SECTION SHALL BE DEPOSITED INTO THE FORENSIC NURSE EXAMINER TRAINING GRANT PROGRAM FUND ESTABLISHED UNDER § 14-4604 OF THIS SUBTITLE.

14-4603.

(A) THERE IS A FORENSIC NURSE EXAMINER TRAINING GRANT PROGRAM.

(B) THE PURPOSE OF THE PROGRAM IS TO ASSIST NONPROFIT ENTITIES THAT PROVIDE RESOURCES FOR VICTIMS OF SEXUAL ASSAULT IN THE STATE TO FUND TRAINING FOR NURSES IN THE STATE TO DEVELOP SKILLS IN CONDUCTING FORENSIC EXAMINATIONS OF VICTIMS OF SEXUAL ASSAULT.

(C) THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL ESTABLISH:

(1) AN APPLICATION PROCESS FOR NONPROFIT ENTITIES AND HIGHER EDUCATION INSTITUTIONS AND COLLEGES IN THE STATE TO APPLY FOR GRANT FUNDING FROM THE PROGRAM; AND

(2) ELIGIBILITY CRITERIA FOR SELECTING RECIPIENTS FOR GRANT FUNDING FROM THE PROGRAM.

14-4604.

(A) IN THIS SECTION, "FUND" MEANS THE FORENSIC NURSE EXAMINER TRAINING GRANT PROGRAM FUND.

(B) THERE IS A FORENSIC NURSE EXAMINER TRAINING GRANT PROGRAM FUND.

(C) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING FOR GRANTS AWARDED UNDER THE PROGRAM.

(D) THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL ADMINISTER THE FUND.

(E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(F) THE FUND CONSISTS OF:

(1) REVENUE DISTRIBUTED TO THE FUND UNDER § 14-4602 OF THIS SUBTITLE; AND

(2) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(G) THE FUND MAY BE USED ONLY TO FUND GRANTS TO NONPROFIT ENTITIES THROUGH THE PROGRAM.

(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO THE GENERAL FUND OF THE STATE.

(I) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

Article – Courts and Judicial Proceedings

10-925.

~~(A) IN THIS SECTION, "SEXUAL CRIME" MEANS:~~

~~(1) AN OFFENSE UNDER TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE;~~

~~(2) THE SEXUAL ABUSE OF A MINOR UNDER § 3-604 OF THE CRIMINAL LAW ARTICLE; OR~~

~~(3) THE SEXUAL ABUSE OF A VULNERABLE ADULT UNDER § 3-802 OF THE CRIMINAL LAW ARTICLE.~~

(A) IN THIS SECTION, "SEXUALLY ASSAULTIVE BEHAVIOR" HAS THE MEANING STATED IN § 10-923 OF THIS SUBTITLE.

(B) ~~EVIDENCE~~ INFORMATION THAT PHYSICAL EVIDENCE OF ~~A SEXUAL CRIME~~ SEXUALLY ASSAULTIVE BEHAVIOR WAS OBTAINED USING MATERIALS THAT WERE SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN A MANNER THAT WOULD CONSTITUTE A VIOLATION OF § 14-4602 OF THE COMMERCIAL LAW ARTICLE IS NOT ADMISSIBLE IN A CRIMINAL OR CIVIL PROCEEDING INVOLVING AN ALLEGATION OF ~~A SEXUAL CRIME~~ SEXUALLY ASSAULTIVE BEHAVIOR.

(C) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE A COURT TO ADMIT PHYSICAL EVIDENCE.

Article – Criminal Procedure

11-926.

(J) (1) ANY AGREEMENT, CONDITION OF ACCESS OR USE, OR POLICY THAT LIMITS OR WAIVES ANY SUBSTANTIVE OR PROCEDURAL RIGHT OR REMEDY TO A CLAIM AGAINST ANY PERSON WHO PROVIDES A VICTIM OR ANOTHER PERSON WITH ANY SERVICE, PRODUCT, INFORMATION, OR OTHER MEANS TO COLLECT EVIDENCE OF A SEXUAL ASSAULT IS NULL AND VOID AS BEING AGAINST THE PUBLIC POLICY OF THE STATE.

(2) ANY DISCLAIMER OF ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT REGARDING ANY SERVICE, PRODUCT, INFORMATION, OR OTHER MEANS TO COLLECT EVIDENCE OF A SEXUAL ASSAULT IS NULL AND VOID AS BEING AGAINST THE PUBLIC POLICY OF THE STATE.

~~[(j)] (K)~~ The Attorney General shall adopt regulations for uniform statewide implementation of this section.

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~Article – Commercial Law~~

~~14-4602.~~

~~(a) This section does not apply to a self-administered sexual assault evidence collection kit that is issued by the Maryland Department of Health.~~

~~(b) A person may not sell, offer for sale, or distribute a self-administered sexual assault evidence collection kit IN VIOLATION OF REGULATIONS ADOPTED BY THE ATTORNEY GENERAL UNDER THIS SECTION.~~

~~(c) (1) A violation of this section is:~~

~~(i) An unfair, abusive, or deceptive trade practice within the meaning of Title 13 of this article; and~~

~~(ii) Subject to the enforcement and penalty provisions contained in Title 13 of this article.~~

~~(2) (i) In addition to any penalty imposed under Title 13 of this article, a person who violates this section is subject to a civil penalty not exceeding \$1,000 for each violation.~~

~~(ii) The civil penalty under subparagraph (i) of this paragraph is recoverable by the State in a civil action or an administrative cease and desist action under § 13-403(a) and (b) of this article or after an administrative hearing has been held under § 13-403(d)(3) and (4) of this article.~~

~~(d) Only the Attorney General may enforce this section.~~

~~(e) All fines, penalties, and damages collected for violations of this section shall be deposited into the Forensic Nurse Examiner Training Grant Program Fund established under § 14-4604 of this subtitle.~~

~~(F) (1) THE ATTORNEY GENERAL SHALL ADOPT REGULATIONS RELATING TO SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KITS.~~

~~(2) THE REGULATIONS SHALL INCLUDE REQUIREMENTS FOR:~~

~~(I) ITEMS THAT ARE INCLUDED IN SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KITS;~~

~~(II) TRANSPORTATION AND STORAGE OF SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KITS;~~

~~(III) TESTING OF SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KITS; AND~~

~~(IV) PACKAGING, MARKETING, AND REQUIRED DISCLOSURES FOR SELF-ADMINISTERED SEXUAL ASSAULT EVIDENCE COLLECTION KITS.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That:~~

~~(a) The Attorney General shall adopt regulations relating to self-administered sexual assault evidence collection kits.~~

~~(b) The regulations shall include requirements for:~~

~~(1) items that are included in self-administered sexual assault evidence collection kits;~~

~~(2) transportation and storage of self-administered sexual assault evidence collection kits;~~

~~(3) testing of self-administered sexual assault evidence collection kits; and~~

~~(4) packaging, marketing, and required disclosures for self-administered sexual assault evidence collection kits.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That:~~

~~(a) Section 2 of this Act is contingent on the Attorney General adopting regulations as required by Section 3 of this Act. Section 2 of this Act shall take effect on the publication of regulations adopted by the Attorney General under Section 3 of this Act.~~

~~(b) The Attorney General shall notify the Department of Legislative Services when the regulations required by Section 3 of this Act have been adopted.~~

~~(c) If the Department of Legislative Services receives notice that the Attorney General has adopted the regulations required by Section 3 of this Act, Section 2 of this Act shall take effect on the date the notice is received by the Department of Legislative Services in accordance with subsection (b) of this section.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024 is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and, except as provided in Section 4 of this Act, shall take effect from the date it is enacted.~~