

SENATE BILL 214

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By: **Senator Ellis**

Introduced and read first time: January 23, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Employment – Harassment and Intimidation – Reporting**
3 **(Workplace Psychological Safety Act)**

4 FOR the purpose of establishing requirements related to the reporting of incidents of
5 employee harassment and intimidation, including provisions regarding the reporting
6 of incidents by employers to the Commissioner of Labor and Industry and the
7 creation of a reporting form; authorizing the Commissioner to establish an electronic
8 tip program that allows persons to report incidents of alleged harassment or
9 intimidation of an employee; establishing that certain information shared in the
10 reporting of incidents of employee harassment or intimidation is confidential; and
11 generally relating to harassment and intimidation in employment.

12 BY repealing and reenacting, without amendments,
13 Article – Labor and Employment
14 Section 5–101(a) through (d) and (h)
15 Annotated Code of Maryland
16 (2016 Replacement Volume and 2022 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Labor and Employment
19 Section 5–801
20 Annotated Code of Maryland
21 (2016 Replacement Volume and 2022 Supplement)

22 BY adding to
23 Article – Labor and Employment
24 Section 5–1301 through 5–1305 to be under the new subtitle “Subtitle 13. Workplace
25 Psychological Safety”
26 Annotated Code of Maryland
27 (2016 Replacement Volume and 2022 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Labor and Employment

5–101.

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

(b) “Commissioner” means the Commissioner of Labor and Industry.

(c) (1) “Employee” means, except as provided in § 5–401 of this title, an individual whom an employer employs, for a wage or other compensation, in the business of the employer.

(2) “Employee” includes:

(i) an individual whom a governmental unit employs;

(ii) an individual who is licensed as a taxicab driver and leases or rents a taxicab from a person who operates or owns a taxicab business in Baltimore City;

(iii) an individual who is employed for part-time or temporary help by a governmental unit or person who engages in a business that directly employs individuals to provide part-time or temporary help to another governmental unit or person; and

(iv) an individual who performs work for a governmental unit or person to whom the individual is provided by another governmental unit or person who engages in a business that directly employs individuals to provide part-time or temporary help.

(d) (1) “Employer” means:

(i) except as provided in § 5–401 of this title, a person who is engaged in commerce, industry, trade, or other business in the State and employs at least one employee in that business; or

(ii) a public body.

(2) “Employer” includes:

(i) a person who operates or owns a taxicab business in Baltimore City and leases or rents a taxicab to a licensed taxicab driver, to provide services to the public;

(ii) a governmental unit or person who engages in a business that directly employs individuals to provide part-time or temporary help to another governmental unit or person; and

(iii) a governmental unit or person who contracts directly with another governmental unit or person who engages in a business that directly employs individuals to provide part-time or temporary help to another governmental unit or person.

(h) "Public body" means:

(1) a governmental unit;

(2) a public or quasi-public corporation of the State;

(3) a school district in the State or any unit of the district; or

(4) a special district in the State or any unit of the district.

5-801.

The penalties in this subtitle do not apply to:

(1) a public body; OR

(2) A VIOLATION OF SUBTITLE 13 OF THIS TITLE.

SUBTITLE 13. WORKPLACE PSYCHOLOGICAL SAFETY.

5-1301.

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

(B) "ELECTRONIC COMMUNICATION" MEANS A COMMUNICATION TRANSMITTED BY MEANS OF AN ELECTRONIC DEVICE, INCLUDING A TELEPHONE, CELLULAR PHONE, COMPUTER, OR PAGER.

(C) (1) "HARASSMENT OR INTIMIDATION" MEANS INTENTIONAL CONDUCT, INCLUDING ORAL, PHYSICAL, OR WRITTEN CONDUCT OR INTENTIONAL ELECTRONIC COMMUNICATION THAT CREATES A HOSTILE WORK ENVIRONMENT BY SUBSTANTIALLY INTERFERING WITH AN EMPLOYEE'S BENEFITS, OPPORTUNITIES, OR PERFORMANCE, OR WITH AN EMPLOYEE'S PSYCHOLOGICAL WELL-BEING AND IS:

(I) MOTIVATED BY AN ACTUAL OR PERCEIVED CHARACTERISTIC OF AN EMPLOYEE, INCLUDING RACE, NATIONAL ORIGIN, MARITAL

1 STATUS, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, RELIGION, ANCESTRY,
2 PHYSICAL ATTRIBUTES, SOCIOECONOMIC STATUS, OR PHYSICAL OR MENTAL
3 ABILITY OR DISABILITY; AND

4 (II) THREATENING OR SERIOUSLY INTIMIDATING.

5 (2) "HARASSMENT OR INTIMIDATION" INCLUDES:

6 (I) THE HIRING OF INCOMPETENT SUBORDINATES;

7 (II) THE ASSIGNMENT OF UNSUITABLE, INAPPROPRIATE, OR
8 OFFENSIVE TASKS;

9 (III) THE ASSIGNMENT OF AN EXCESSIVE WORKLOAD;

10 (IV) THE SABOTAGE OF AN EMPLOYEE'S WORK;

11 (V) THE PUBLIC DISCIPLINING OR REPRIMANDING OF AN
12 EMPLOYEE IN A MANNER THAT CAN BE SEEN OR HEARD BY AN EMPLOYEE'S
13 COLLEAGUES, CUSTOMERS, OR CLIENTS; AND

14 (VI) THE TAKING OF CREDIT FOR ANOTHER EMPLOYEE'S WORK.

15 (D) "TIP PROGRAM" MEANS THE ELECTRONIC TIP PROGRAM CREATED BY
16 THE COMMISSIONER UNDER § 5-1303(A) OF THIS SUBTITLE.

17 (E) "VICTIM OF HARASSMENT OR INTIMIDATION REPORTING FORM" MEANS
18 THE FORM CREATED BY THE COMMISSIONER UNDER § 5-1302(C) OF THIS SUBTITLE.

19 5-1302.

20 (A) IF AN EMPLOYER RECEIVES A REPORT OF AN INCIDENT OF HARASSMENT
21 OR INTIMIDATION, THE EMPLOYER SHALL REPORT THE INCIDENT TO THE
22 COMMISSIONER USING THE VICTIM OF HARASSMENT OR INTIMIDATION REPORTING
23 FORM.

24 (B) THE FOLLOWING PERSONS MAY REPORT AN INCIDENT OF HARASSMENT
25 OR INTIMIDATION TO THE COMMISSIONER OR THE EMPLOYER OF THE VICTIM USING
26 THE VICTIM OF HARASSMENT OR INTIMIDATION REPORTING FORM:

27 (1) THE EMPLOYEE AGAINST WHOM THE HARASSMENT OR
28 INTIMIDATION WAS COMMITTED;

1 (2) ANOTHER EMPLOYEE WHO WITNESSED THE HARASSMENT OR
2 INTIMIDATION; OR

3 (3) ANY OTHER PERSON WHO HAS KNOWLEDGE OF THE HARASSMENT
4 OR INTIMIDATION.

5 (c) (1) THE COMMISSIONER SHALL CREATE A STANDARD VICTIM OF
6 HARASSMENT OR INTIMIDATION REPORTING FORM.

7 (2) THE VICTIM OF HARASSMENT OR INTIMIDATION REPORTING
8 FORM SHALL ALLOW FOR THE INCLUSION OF:

9 (i) THE IDENTITY OF THE VICTIM AND, IF KNOWN, THE
10 ALLEGED PERPETRATOR;

11 (ii) AN INDICATION OF THE EMPLOYMENT POSITION OF THE
12 VICTIM AND, IF KNOWN, THE ALLEGED PERPETRATOR;

13 (iii) A DESCRIPTION OF THE HARASSMENT OR INTIMIDATION
14 ALLEGED TO HAVE BEEN COMMITTED, INCLUDING ANY RELEVANT STATEMENTS
15 MADE BY THE ALLEGED PERPETRATOR OR ONGOING PATTERNS OF HARASSMENT OR
16 INTIMIDATION;

17 (iv) AN INDICATION OF THE LOCATION WHERE THE
18 HARASSMENT OR INTIMIDATION IS ALLEGED TO HAVE BEEN COMMITTED;

19 (v) THE IDENTITY OF ANY NEGATIVE PSYCHOLOGICAL EFFECTS
20 NOTED BY THE PERSON SUBMITTING THE FORM DUE TO THE ALLEGED HARASSMENT
21 OR INTIMIDATION, INCLUDING POSSIBLY RELATED PHYSICAL EFFECTS;

22 (vi) THE IDENTITY OF ANY REQUEST FOR PSYCHOLOGICAL
23 SERVICES INITIATED BY THE VICTIM OF THE ALLEGED HARASSMENT OR
24 INTIMIDATION OR THE VICTIM'S FAMILY, IF KNOWN; AND

25 (vii) INSTRUCTIONS ON HOW TO FILL OUT AND SUBMIT THE
26 FORM.

27 (3) EACH EMPLOYER SHALL POST IN A PLACE ACCESSIBLE TO ALL
28 EMPLOYEES NOTICE OF THE AVAILABILITY AND PURPOSE OF THE VICTIM OF
29 HARASSMENT OR INTIMIDATION REPORTING FORM.

30 5-1303.

(A) THE COMMISSIONER MAY ESTABLISH AN ANONYMOUS ELECTRONIC TIP PROGRAM THAT ALLOWS EMPLOYEES AND OTHER PERSONS TO REPORT INCIDENTS OF ALLEGED HARASSMENT OR INTIMIDATION.

(B) IF THE COMMISSIONER ESTABLISHES A TIP PROGRAM, EACH EMPLOYER SHALL POST IN A PLACE ACCESSIBLE TO ALL EMPLOYEES INFORMATION REGARDING THE TIP PROGRAM, INCLUDING HOW AN EMPLOYEE MAY USE THE TIP PROGRAM.

(C) ON RECEIPT OF A REPORT OF ALLEGED HARASSMENT OR INTIMIDATION THROUGH THE TIP PROGRAM, THE RECIPIENT OF THE REPORT, OR THE RECIPIENT'S DESIGNEE, SHALL:

(1) COMPLETE A VICTIM OF HARASSMENT OR INTIMIDATION REPORTING FORM; AND

(2) INCLUDE A TRANSCRIPT OF ANY RELEVANT COMMUNICATION RECEIVED THROUGH THE ANONYMOUS ELECTRONIC TIP PROGRAM WITH THE VICTIM OF HARASSMENT OR INTIMIDATION REPORTING FORM.

(D) THE GOVERNOR MAY INCLUDE FUNDING IN THE STATE BUDGET TO PROVIDE GRANTS TO THE MARYLAND DEPARTMENT OF LABOR FOR THE ESTABLISHMENT OF THE TIP PROGRAM.

5-1304.

(A) THE INFORMATION CONTAINED IN A VICTIM OF HARASSMENT OR INTIMIDATION REPORTING FORM OR RECEIVED THROUGH THE TIP PROGRAM IS CONFIDENTIAL AND MAY NOT BE DISCLOSED EXCEPT BY ORDER OF A COURT.

(B) AN EMPLOYER MAY NOT TAKE RETALIATORY ACTION AGAINST AN EMPLOYEE FOR SUBMITTING A VICTIM OF HARASSMENT OR INTIMIDATION REPORTING FORM OR A TIP THROUGH THE TIP PROGRAM.

5-1305.

(A) (1) ON OR BEFORE DECEMBER 1 EACH YEAR, BEGINNING IN 2024, THE COMMISSIONER SHALL SUBMIT A REPORT TO THE SENATE FINANCE COMMITTEE AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THAT SUMMARIZES THE INFORMATION INCLUDED IN THE VICTIM OF HARASSMENT OR INTIMIDATION REPORTING FORMS SUBMITTED TO THE COMMISSIONER DURING THE IMMEDIATELY PRECEDING YEAR.

1 **(2) THE REPORT SUBMITTED UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION SHALL INCLUDE, TO THE EXTENT FEASIBLE:**

3 **(I) A DESCRIPTION OF THE TYPES OF HARASSMENT OR**
4 **INTIMIDATION REPORTED;**

5 **(II) THE POSITIONS HELD BY VICTIMS AND THE ALLEGED**
6 **PERPETRATORS;**

7 **(III) A DESCRIPTION OF CORRECTIVE ACTIONS TAKEN BY THE**
8 **EMPLOYER OR THE COMMISSIONER AFTER RECEIPT OF THE VICTIM OF**
9 **HARASSMENT OR INTIMIDATION REPORTING FORMS; AND**

10 **(IV) THE NUMBER OF UNSUBSTANTIATED ALLEGATIONS**
11 **REPORTED.**

12 **(B) THE COMMISSIONER SHALL ADOPT REGULATIONS TO IMPLEMENT THIS**
13 **SUBTITLE.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That the Commissioner of Labor
15 and Industry shall adopt the regulations required under § 5–1305 of the Labor and
16 Employment Article, as enacted by Section 1 of this Act, on or before January 1, 2024.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2023.