

HOUSE BILL 295

D5, F1, P1
HB 1565/18 – W&M

9lr2179
CF SB 848

By: **Delegates Wilkins, D. Barnes, Feldmark, Fennell, W. Fisher, and Palakovich Carr**

Introduced and read first time: January 28, 2019

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 5, 2019

CHAPTER _____

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; prohibiting a nonpublic elementary or secondary school that receives
7 State funds from taking a certain retaliatory action against a student or parent or
8 guardian of a student who files a complaint alleging certain discrimination; making
9 certain provisions of law prohibiting discrimination in employment applicable to
10 nonpublic elementary and secondary schools that receive State funds; authorizing a
11 certain person to elect to have certain claims determined in a certain civil action
12 brought by the Commission on Civil Rights; authorizing the Commission to elect to
13 have certain claims determined in a certain civil action; making certain remedies
14 and procedures regarding discrimination applicable to certain discriminatory acts by
15 certain nonpublic schools; requiring the Commission to file a certain civil action in a
16 certain circuit court within a certain time period; authorizing a certain person to
17 bring a civil action alleging a certain discriminatory act by a certain nonpublic school
18 under certain circumstances; authorizing the Commission to bring an action to
19 obtain a temporary injunction under certain circumstances; altering the definition
20 of a certain term; defining a certain term; providing for the application of certain
21 provisions of this Act; providing for the construction of certain provisions of this Act;
22 and generally relating to discrimination in nonpublic schools.

23 BY adding to

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.



1 Article – Education
2 Section 26–601 through 26–603 to be under the new subtitle “Subtitle 6.
3 Discrimination in Education”
4 Annotated Code of Maryland
5 (2018 Replacement Volume and 2018 Supplement)

6 BY repealing and reenacting, without amendments,
7 Article – State Government
8 Section 20–101(a)
9 Annotated Code of Maryland
10 (2014 Replacement Volume and 2018 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article – State Government
13 Section 20–101(d), 20–604, 20–1001, 20–1006, 20–1007, 20–1009, 20–1012, 20–1013,
14 and 20–1017
15 Annotated Code of Maryland
16 (2014 Replacement Volume and 2018 Supplement)

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

19 **Article – Education**

20 **SUBTITLE 6. DISCRIMINATION IN EDUCATION.**

21 **26–601.**

22 **THIS SUBTITLE DOES NOT APPLY TO:**

23 **(1) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF SEX, A**
24 **SCHOOL THAT LIMITS, AND CONTINUALLY SINCE THE TIME OF ITS ESTABLISHMENT**
25 **HAS LIMITED, ADMISSION TO STUDENTS OF ONLY ONE SEX; AND**

26 **(2) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF RELIGION,**
27 **A SCHOOL THAT IS AFFILIATED WITH A RELIGIOUS INSTITUTION.**

28 **26–602.**

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

1 **26-603.**

2 **A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL THAT RECEIVES STATE**
3 **FUNDS MAY NOT ~~REFUSE~~:**

4 **(1) REFUSE ENROLLMENT OF, EXPEL, WITHHOLD PRIVILEGES FROM,**
5 **OR OTHERWISE DISCRIMINATE AGAINST ANY STUDENT OR PROSPECTIVE STUDENT**
6 **BECAUSE OF THE INDIVIDUAL'S RACE, COLOR, RELIGION, SEX, AGE, NATIONAL**
7 **ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR**
8 **DISABILITY; OR**

9 **(2) DISCIPLINE, INVOKE A PENALTY AGAINST, OR TAKE ANY OTHER**
10 **RETALIATORY ACTION AGAINST A STUDENT OR PARENT OR GUARDIAN OF A**
11 **STUDENT WHO FILES A COMPLAINT ALLEGING THAT THE SCHOOL DISCRIMINATED**
12 **AGAINST THE STUDENT, REGARDLESS OF THE OUTCOME OF THE COMPLAINT.**

13 **Article – State Government**

14 20-101.

15 (a) In Subtitles 1 through 11 of this title the following words have the meanings
16 indicated.

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

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

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

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

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

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

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

28 **(7) TITLE 26, SUBTITLE 6 OF THE EDUCATION ARTICLE**
29 **(DISCRIMINATION IN EDUCATION).**

30 20-604.

1 **(A) [This] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THIS**
2 subtitle does not apply to:

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

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

8 **(B) IF A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL RECEIVES**
9 **STATE FUNDS, THIS SUBTITLE APPLIES WITH RESPECT TO THE EMPLOYMENT OF**
10 **INDIVIDUALS WHO ARE NOT MINISTERIAL EMPLOYEES.**

11 20–1001.

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

14 **(B) “UNLAWFUL EDUCATION PRACTICE” MEANS AN ACT THAT IS**
15 **PROHIBITED UNDER § 26–603 OF THE EDUCATION ARTICLE.**

16 **(C) “UNLAWFUL employment practice” means an act that is prohibited under §**
17 **20–606 of this title.**

18 20–1006.

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

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

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

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

31 20–1007.

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

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

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

10 (2) An election under paragraph (1) of this subsection shall be made within
11 30 days after the complainant or respondent receives service under § 20–1006(b) of this
12 subtitle.

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

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

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

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

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

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

31 20–1009.

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

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

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

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

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

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

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

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

15 (iii) awarding compensatory damages; or

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

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

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

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

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

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

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

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

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

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

9 (5) In addition to any other relief authorized by this subsection, a
10 complainant may recover back pay for up to 2 years preceding the filing of the complaint,
11 where the unlawful employment practice that has occurred during the complaint filing
12 period is similar or related to an unlawful employment practice with regard to
13 discrimination in compensation that occurred outside the time for filing a complaint.

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

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

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

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

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

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

32 (2) issue an order dismissing the complaint.

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

1 20–1012.

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

5 (b) If the court finds that an unlawful employment practice **OR AN UNLAWFUL**
6 **EDUCATION PRACTICE** occurred, the court may provide the remedies specified in §
7 20–1009(b) of this subtitle.

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

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

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

12 20–1013.

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

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

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

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

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

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

29 (d) If the court finds that an unlawful employment practice **OR AN UNLAWFUL**
30 **EDUCATION PRACTICE** occurred, the court may provide the remedies specified in §
31 20–1009(b) of this subtitle.

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

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

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

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

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

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

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

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

20 20–1017.

21 (a) At any time after a complaint has been filed, if the Commission believes that
22 a civil action is necessary to preserve the status of the parties or to prevent irreparable
23 harm from the time the complaint is filed until the time of the final disposition of the
24 complaint, the Commission may bring an action to obtain a temporary injunction.

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

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

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 ~~October~~ July 1, 2019.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.