

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 183
Judiciary

(Delegate Barron, *et al.*)

Human Relations - Employment Discrimination - Waiver of Immunity From Suit
in Federal Court and Venue

This bill waives the State's right to immunity from suits brought in federal court that allege employment discrimination. The bill also authorizes specified actions that allege violations of State employment discrimination and housing discrimination laws to be filed in federal court.

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, due to the express waiver of the State's sovereign immunity and the potential for monetary awards in employment discrimination actions filed in federal court. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful, to the extent that additional small businesses are subject to suit in federal court.

Analysis

Bill Summary/Current Law:

Employment Discrimination

Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As such, discrimination in employment is prohibited on the basis of race, color, religion,

ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

Statutory provisions authorize a person who alleges that an employer has violated State law regarding employment discrimination to file a private civil action against the respondent if specified conditions are met, including that the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice by the respondent. Statutory provisions also authorize the Maryland Commission on Civil Rights (MCCR) to file a civil action on the complainant's behalf. In both of these instances, the action must be filed in the circuit court for the county where the alleged unlawful practice occurred. The bill also authorizes these actions to be filed in a federal court of competent jurisdiction.

Pursuant to §20-903 of the State Government Article, the State may not raise sovereign immunity as a defense against an award in an employment discrimination case “under this title” (employment discrimination as prohibited under State law). Under the bill, the State may not raise sovereign immunity as a defense against an *action* or award in an employment discrimination case under State law filed in a State or federal court of competent jurisdiction.

Housing Discrimination

Pursuant to State law, housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, or disability is prohibited.

Statutory provisions authorize MCCR to file a civil action on the complainant's behalf (or in other specified circumstances that involve the public interest) that alleges a violation of State law regarding housing discrimination under specified conditions. In these instances, the action must be filed in the circuit court. The bill also authorizes these actions to be filed in a federal court of competent jurisdiction and makes conforming changes regarding the enforcement of subpoenas and temporary or preliminary relief.

Background: As noted in the bill's preamble, the U.S. Supreme Court has construed the Eleventh Amendment of the U.S. Constitution to establish that an uncontesting state is immune from suits brought in federal courts by the state's own citizens or the citizens of another state. The Fourth Circuit Court of Appeals recently examined the issue of sovereign immunity in the context of an employment discrimination case.

In *Pense v. Maryland Dept. of Public Safety and Correctional Services*, No. 18-1554 (4th Cir. 2019), the court held that the State was immune from the plaintiff's claims under

the State’s employment discrimination laws because the relevant statute did not specifically waive the State’s Eleventh Amendment immunity as it pertains to suits in federal court. The court further held that although a state’s general waiver of sovereign immunity may subject it to suit in state court, it is not enough to waive the immunity guaranteed by the Eleventh Amendment; a state may waive such immunity only “where stated by the most express language or by such overwhelming implication from the text as [will] leave no room for any other reasonable construction.”

MCCR advises that in fiscal 2019, it received 74 employment discrimination complaints against the State, although none of these complaints were prepared for litigation at either the Office of Administrative Hearings or the circuit courts.

State Expenditures: General fund expenditures increase, potentially significantly, to the extent that awards against the State from employment discrimination cases filed in federal court are ordered. According to the State Treasurer’s Office, the applicable State agency is generally responsible for paying any award based on an employment discrimination complaint.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 250 (Senator Lam, *et al.*) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Maryland State Treasurer’s Office; Department of Legislative Services

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