

CHAPTER 588

(House Bill 399)

AN ACT concerning

Maryland Human Relations Commission – Administrative and Civil Relief – Waiver of Sovereign Immunity

FOR the purpose of clarifying that certain earnings and amounts earnable operate to reduce certain awards of back pay in certain administrative proceedings; establishing that certain respondents may elect to have certain claims asserted in a certain complaint filed with the Maryland Human Relations Commission determined in certain civil actions brought by the Commission on the complainant's behalf; requiring that certain respondents give notice of certain elections to the Commission and certain other complainants and respondents; establishing that a certain civil action alleging a certain discriminatory act may be filed if the complainant filed a certain administrative charge or certain complaint in a timely manner and must be filed within a certain time after the occurrence of a certain act of discrimination; establishing that the filing of certain civil actions will automatically terminate certain proceedings before the Commission; establishing that certain earnings and amounts earnable operate to reduce certain awards of back pay in certain civil actions; prohibiting the use of sovereign immunity as a defense against certain awards in employment discrimination cases; providing for the payment of certain awards made against the State; correcting a certain cross-reference; and generally relating to the Maryland Human Relations Commission, administrative and civil relief for certain acts of discrimination, and the waiver of sovereign immunity.

BY repealing and reenacting, with amendments,
Article 49B – Human Relations Commission
Section 11(e)(6), 11A, 11B, 11D, and 17A
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY adding to
Article 49B – Human Relations Commission
Section 17B
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

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

Article 49B – Human Relations Commission

11.

(e) (6) [In case of an award of] **IF** back pay **IS AWARDED** under paragraph (3) of this subsection, interim [earning] **EARNINGS** or amounts [earned] **EARNABLE** with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

11A.

(a) (1) When a complaint is filed under § 11 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 finds the respondent has engaged in, or is engaging in a discriminatory act; and

(ii) There is a failure to reach an agreement for the remedy and elimination of the discriminatory act.

(2) The election authorized under paragraph (1) of this subsection shall be made not later than 30 days after the complainant or respondent receives service under § 11(a)(2) 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 § 11(a)(3) of this subtitle.

(b) When a complaint is filed under § 11 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 finds the respondent has engaged in, or is engaging in a discriminatory act; and

(2) There is a failure to reach an agreement for the remedy and elimination of the discriminatory act.

(c) (1) If a complainant **OR RESPONDENT** makes an election under subsection (a) of this section, that [individual] **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.

(3) Not later than 60 days after the election is made by any party, the Commission shall file a civil action in the court of the county where the alleged act of discrimination took place.

(d) If the court finds that a discriminatory act took place, the court may provide the remedies specified in § 11(e)(3) through (6) of this subtitle.

(e) 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 § 11(e)(5) of this subtitle.

11B.

(a) In addition to the right to make an election authorized under § 11A of this subtitle, a complainant may bring a civil action against the respondent alleging a discriminatory act if:

(1) The complainant initially filed ~~an~~ **A TIMELY** administrative charge or a complaint under federal, State, or local law alleging a discriminatory act by the respondent; ~~and~~

(2) At least 180 days have elapsed since the filing of the administrative charge or complaint; **AND**

(3) THE CIVIL ACTION IS FILED NO MORE THAN 2 YEARS AFTER THE OCCURRENCE OF THE ALLEGED ACT OF DISCRIMINATION.

(b) A civil action under this section may be filed in the circuit court of the county where the alleged act of discrimination took place.

(c) THE FILING OF A CIVIL ACTION UNDER THIS SECTION SHALL SERVE TO AUTOMATICALLY TERMINATE ANY PROCEEDING BEFORE THE COMMISSION BASED ON THE UNDERLYING ADMINISTRATIVE COMPLAINT AND ANY AMENDMENT TO THE COMPLAINT.

[(c)] **(D)** In addition to the relief authorized under [subsections (d) and (e)] **SUBSECTION (E)** of this section, the court may award punitive damages if:

(1) The respondent is not a government entity or political subdivision; and

(2) The court finds that the respondent has engaged in or is engaging in an unlawful employment practice with actual malice.

[(d)] (E) Compensatory damages awarded under this section are in addition to:

(1) Back pay or interest on back pay that the complainant is entitled to recover under any other provision of law; and

(2) Any other equitable relief the complainant is entitled to recover under any other provision of law.

[(e)] (F) The sum of the amount of compensatory damages awarded to each complainant under this section, for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under [this] **SUBSECTION (D) OF THIS** section may not exceed:

(1) \$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;

(2) \$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;

(3) \$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

(4) \$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.

[(f)](G) 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 imposed **ON COMPENSATORY AND PUNITIVE DAMAGES** under subsection [(e)] (F) of this section.

(H) IF BACK PAY IS AWARDED UNDER THIS SECTION, INTERIM EARNINGS OR AMOUNTS EARNABLE WITH REASONABLE DILIGENCE BY THE PERSON OR PERSONS DISCRIMINATED AGAINST SHALL OPERATE TO REDUCE THE BACK PAY OTHERWISE ALLOWABLE.

[(g)] (I) When appropriate and to the extent authorized under law, in a dispute arising under this subtitle, 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.

11D.

(a) In an action brought under this [section] **SUBHEADING**, the court, in its discretion, may award the prevailing party reasonable attorney's fees, expert witness fees, and costs.

(b) This subtitle, including the limitations on damages, may not be construed to limit the scope of, or the administrative procedures or relief available under, any other provision of federal, State, or local law.

(c) This subtitle may not be construed to limit §§ 40 through 43 of this article.

17A.

This State, its officers, and its units may not raise sovereign immunity as a defense against [a salary] AN award in an employment discrimination case under [§ 16 of] this article.

17B.

(A) IF THE STATE HAS SUFFICIENT MONEY AVAILABLE AT THE TIME AN AWARD IS MADE AGAINST THE STATE UNDER THIS ARTICLE, THE STATE SHALL PAY THE AWARD AS SOON AS PRACTICABLE WITHIN 20 DAYS AFTER THE AWARD IS FINAL.

(B) (1) IF SUFFICIENT MONEY IS NOT AVAILABLE AT THE TIME AN AWARD IS MADE AGAINST THE STATE UNDER THIS ARTICLE, THE AFFECTED STATE UNIT OR OFFICER SHALL REPORT THE OUTSTANDING AWARD TO THE STATE COMPTROLLER.

(2) THE COMPTROLLER SHALL:

(I) KEEP AN ACCOUNTING OF ALL OUTSTANDING AWARDS;

AND

(II) REPORT THAT ACCOUNTING ANNUALLY TO THE

GOVERNOR.

(C) (1) THE GOVERNOR SHALL INCLUDE IN THE STATE BUDGET SUFFICIENT MONEY TO PAY ALL AWARDS MADE AGAINST THE STATE UNDER THIS ARTICLE.

(2) ON APPROPRIATION OF MONEY BY THE GENERAL ASSEMBLY, THE COMPTROLLER SHALL AUTHORIZE PAYMENT OF ALL OUTSTANDING AWARDS UNDER THIS ARTICLE IN THE ORDER OF THE DATE ON WHICH EACH AWARD WAS MADE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, May 22, 2008.