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ARTICLE 24. POLITICAL SUBDIVISIONS — MISCELLANEOUS PROVISIONS.

Title 4. Meetings.

Subtitle 2. St. Mary's County Open Meetings Act.

Sec.
4-210. Executive sessions.

TITLE 4. MEETINGS.

Subtitle 2. St. Mary's County Open Meetings Act.

§ 4-210. Executive sessions.

(a) *Situations in which permitted.* — Meetings of public agencies and meetings of the staff of public agencies may be conducted in executive session in the following situations only:

(1) When a public agency or members of the staff consider or discuss the assignment, promotion, resignation, salary, demotion, dismissal, reprimand, or appointment of a member of a public agency or employee, the session may be closed, unless the person requests in writing for an open session. The request is a matter of public record;

(2) When a school board or its staff considers the disciplining of individual students unless the parent, guardian or student requests an open session of the board of education;

(3) When a school board or its staff discusses specific students, families, or personnel, and the disclosure of the discussions could prove detrimental or harmful to those individuals;

(4) When federal regulations prohibit an open meeting;

(5) When State law specifically prohibits an open meeting;

(6) When an open meeting would conflict with a condition for anonymity of the donor contained in a gift or bequest to a public agency;

(7) When secrecy is necessary to prevent the premature disclosure of the format or content of examinations or the disclosure of results of examinations as they relate to individual students;

(8) When a public agency discusses strategy in collective bargaining or litigation, or engages in collective bargaining;

(9) When public agencies discuss the distribution of police forces to cope with public safety emergencies;

(10) When public agencies discuss cost estimates for capital projects to be subsequently placed through the bidding process; and

(11) When public agencies have a preliminary discussion concerning the purchase or disposition of real property.

(b) *Prior announcements; restricted to authorized business.* — An executive session may not be held without the prior announcement in an open meeting of the nature of the business of the executive session and only business specifically authorized by this section shall be taken up at the executive session.

(c) *Minutes.* — The justification for holding an executive or closed meeting shall be indicated by a citation in the minutes. Such citation shall include the time of the commencement of the meeting, names of those in attendance, the reason for the session, and the time of the conclusion of the meeting, but need not be limited to that, at the discretion of the body holding the meeting.

(d) *Final adoption of ordinance, resolution, rule, etc.* — An ordinance, resolution, rule, regulation or decision may not be finally adopted at an executive session.

(e) *Real property purchases.* — Any decision by a public agency to purchase or dispose of real property must be made in public session. Notice of intent to purchase or dispose of real property must be given at least 15 days before a voting session on the action. (1976, ch. 715, § 1; 1977, ch. 617; ch. 863, § 1; 1978, chs. 155, 415; 1984, ch. 284, § 5; ch. 285, § 7; 1989, ch. 62; 1995, ch. 77; 2000, ch. 61, § 1.)

Effect of amendments. — Chapter 61, Acts 2000, approved Apr. 25, 2000, and effective from date of enactment, substituted "When public agencies discuss cost" for "Cost" at the beginning of (a) (10); and substituted "When public agencies have a preliminary" for "Preliminary" at the beginning of (a) (11).

**ARTICLE 27.
CRIMES AND
PUNISHMENTS.**

**I
CRIMES AND PUNISHMENTS
Arson and Burning**

Sec.
5. [Repealed].

Burglary and Related Offenses

28. [Repealed].

Carrying Deadly Weapons on Public School Property

36A. [Repealed].

Handguns

36B. [Repealed].
36H. [Repealed].

Contraceptives — Sale by Vending Machines

41A. [Repealed].

Disturbing the Public Peace and Disorderly Conduct

121. [Repealed].

Hazing

268H. [Repealed].

Health — Controlled Dangerous Substances

286D. [Repealed].
304. [Repealed].

Religious and Ethnic Crimes

470A. [Repealed].

**II
VENUE, PROCEDURE AND
SENTENCE**

Arrests

594B. [Repealed].

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641B. [Repealed].

**III
PLACES OF REFORMATION AND
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727. [Repealed].

**VI
CRIME VICTIMS AND WITNESSES**

Trial Procedures

775. [Repealed].

Sexual Offenses

792. [Repealed].

**I
CRIMES AND PUNISHMENTS**

ARSON AND BURNING

§ 5. Definitions.

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning definitions of arson and burning, see §§ 6-101 to 6-103 of the Criminal Law Article.

Editor's note. — Chapter 26, Acts 2002, also repealed the subheading "Arson and Burning."

BURGLARY AND RELATED OFFENSES

§ 28. Definitions.

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning burglary and related offenses, generally, see Title 6, Subtitle 2 of the Criminal Law Article.

Editor's note. — Chapter 26, Acts 2002, also repealed the subheading "Burglary and Related Offenses."

**CARRYING DEADLY WEAPONS ON PUBLIC SCHOOL
PROPERTY**

**§ 36A. Carrying or possessing deadly weapon
upon school property.**

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning carrying deadly weapons on public school property, see § 4-102 of the Criminal Law Article.

Editor's note. — Chapter 26, Acts 2002, also repealed the subheading "Carrying Deadly Weapons on Public School Property."

HANDGUNS

**§ 36B. Wearing, carrying or transporting
handgun; unlawful use in commission
of crime.**

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning wearing, carrying or transporting handguns and their unlawful use in the commission of a crime, see §§ 4-202 through 4-205 of the Criminal Law Article.

**§ 366H. State preemption of weapons and am-
munition regulations.**

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning restrictions on possession of firearms at demonstrations in public places, see § 4-208 of the Criminal Law Article.

For present provisions concerning state preemption of weapons and ammunition regulations, see § 4-209 of the Criminal Law Article.

CONTRACEPTIVES — SALE BY VENDING MACHINES

§ 41A. Sale in schools.

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning the sale of contraceptives by vending machines, generally, see §§ 10-104 and 10-105 of the Criminal Law Article.

Editor's note. — Chapter 26, Acts 2002, also repealed the subheading “Contraceptives — Sale by Vending Machines.”

DISTURBING THE PUBLIC PEACE AND DISORDERLY CONDUCT

§ 121. Obstructing free passage; making unseemly noises; obscene language, etc.

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning obstructing free passage, making unseemly noises, and obscene language, see § 10-201 of the Criminal Law Article.

Editor's note. — Chapter 26, Acts 2002, also repealed the subheading “Disturbing the Public Peace and Disorderly Conduct.”

HAZING

§ 268H. Hazing students prohibited.

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning hazing, see § 3-607 of the Criminal Law Article.

Editor's note. — Chapter 26, Acts 2002, also repealed the subheading “Hazing.”

HEALTH — CONTROLLED DANGEROUS SUBSTANCES

§§ 286D. Manufacture, distribution, etc., of controlled dangerous substances near schools or on school vehicles.

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning controlled dangerous substances, generally, see § 5-101 et seq. of the Criminal Law Article.

Editor's note. — Chapter 26, Acts 2002, also repealed the subheading “Health — Controlled Dangerous Substances.”

Section 5, ch. 26, Acts 2002, provides that “Section(s) 281(i) of Article 27 — Crimes and Punishments of the Annotated Code of Maryland be repealed and reenacted, with amendments, and transferred to the Session Laws, to read as follows:

1. The Department of Health and Mental Hygiene shall initially permit persons to register under Title 5, Subtitle 3 of the Criminal Law Article if the persons own or operate any establishment engaged in the manufacture, distribution or dispensing of any controlled dangerous substances prior to July 1, 1970, and who are registered or licensed by the State.”

§ 304. Use of anabolic steroids or human growth hormones — warning posted in athletic facility.

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning controlled dangerous substances, generally, see § 5-101 et seq. of the Criminal Law Article.

Editor's note. — Section 6, ch. 26, Acts 2002, transferred § 302(a) through (c) of this article to the Session Laws.

RELIGIOUS AND ETHNIC CRIMES

§ 470A. Crimes against religious property, institutions, or persons or property because of race, religious beliefs, etc.

Repealed by Acts 2002, ch. 26, § 1, effective October 1, 2002.

Cross references. — For present provisions concerning religious and ethnic crimes, generally, see Title 10, Subtitle 3 of the Criminal Law Article.

Editor's note. — Chapter 26, Acts 2002, also repealed the subheading “Religious and Ethnic Crimes.”

II

VENUE, PROCEDURE AND SENTENCE

ARRESTS

§§ 594B. Arrests without warrants generally.

Repealed by Acts 2001, ch. 10, § 1, effective October 1, 2001.

Cross references. — For present provisions concerning the arrest process generally and law enforcement procedures, see, generally, Title 2, of the Criminal Procedure Article.

For present provisions concerning warrantless arrests, see Title 2, Subtitle 2 of the Criminal Procedure Article.

Editor's note. — Chapter 10, Acts 2001, also repealed the subheading “Arrests.”

SENTENCE AND PUNISHMENT

§§ 641B. Fees paid by person supervised by the Division of Parole and Probation.

Repealed by Acts 2001, ch. 10, § 1, effective October 1, 2001.

Cross references. — For present provisions concerning probation before judgment, see § 6-220 of the Criminal Procedure Article.

For present provisions concerning suspension of sentence or probation after judgment, see § 6-221 of the Criminal Procedure Article.

For present provisions concerning limits on probation after judgment and extension for restitution, see § 6-222 of the Criminal Procedure Article.

For present provisions concerning conditions of probation after judgment, see § 6-225 of the Criminal Procedure Article.

III

PLACES OF REFORMATION AND PUNISHMENT

LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

§§ 727. Definitions; hearing boards.

Repealed by Acts 2003, ch. 5, § 1, effective October 1, 2003.

Cross references. — For present provisions concerning Law Enforcement Officers' Bill of Rights, see §§ 3-101 to 3-113 of the Public Safety Article.

VI

CRIME VICTIMS AND WITNESSES

TRIAL PROCEDURES

§§ 775. Out of court statements of child abuse victims.

Repealed by Acts 2001, ch. 10, § 1, effective October 1, 2001.

Cross references. — For present provisions concerning victim's right to attend proceedings, see § 11-102 of the Criminal Procedure Article.

For present provisions concerning application for leave to appeal denial of victim's rights, see § 11-103 of the Criminal Procedure Article.

For present provisions concerning trial procedures regarding victim or witness, see Title 11, Subtitle 3 of the Criminal Procedure Article.

Editor's note. — Chapter 10, Acts 2001, also repealed the subheading "Trial Procedures."

SEXUAL OFFENSES

§§ 792. Registration of sexual offenders.

Repealed by Acts 2001, ch. 10, § 1, effective October 1, 2001.

Cross references. — For present provisions concerning help for victims of sexual assault offenses, see Title 11, Subtitle 9, Part III of the Criminal Procedure Article.

For present provisions concerning the registration of certain offenders, see Title 11, Subtitle 7 of the Criminal Procedure Article.

Editor's note. — Chapter 10, Acts 2001, also repealed the subheading "Sexual Offenses."

ARTICLE 31B. PATUXENT INSTITUTION.

§§ 1 to 17. Patuxent Institution.

Repealed by Acts 1999, ch. 54, § 1, effective October 1, 1999.

Editor's note. — Section 1, ch. 54, Acts 1999, also repealed the Article 31B heading "Patuxent Institution."

ARTICLE 38A. FIRES AND INVESTIGATIONS.

Fireworks

Sec. 20. [Repealed].

Explosives

27B. [Repealed].

FIREWORKS

§ 20. Sparklers or sparkling devices — Fence; watchman; location of buildings; conformity to subtitle required of all plants.

Repealed by Acts 2003, ch. 5, § 1, effective October 1, 2003.

Cross references. — For present provisions concerning fireworks, see §§ 10-101 to 10-210 of the Public Safety Article.

Editor's note. — Section 1, ch. 5, Acts 2003, also repealed the subtitle heading "Fireworks."

EXPLOSIVES

§§ 27B. Possession without license — Explosives for use in firearms.

Repealed by Acts 2003, ch. 5, § 1, effective October 1, 2003.

Cross references. — For present provisions concerning explosives, see §§ 11-101 to 11-118 of the Public Safety Article.

Editor's note. — Section 1, ch. 5, Acts 2003, also repealed the subtitle heading "Explosives."

ARTICLE 41. GOVERNOR — EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS.

Title 4.

Law Enforcement, Public Safety, and Correctional Services.

Subtitle 9. Special Policemen.

Sec.
4-904. [Repealed].

TITLE 4.

LAW ENFORCEMENT, PUBLIC SAFETY, AND CORRECTIONAL SERVICES.

Subtitle 9. Special Policemen.

§§ 4-904. Who may make application.

Repealed by Acts 2003, ch. 5, § 1, effective October 1, 2003.

Cross references. — For present provisions concerning special police officers, see § 3-301 et seq. of the Public Safety Article.

Editor's note. — Section 1, ch. 5, Acts 2003, also repealed the subtitle heading "Subtitle 9. Special Policemen."

ARTICLE 49B. HUMAN RELATIONS COMMISSION.

Discrimination in Employment

Sec.
16. Unlawful employment practices.

DISCRIMINATION IN EMPLOYMENT

§ 16. Unlawful employment practices.

(a) *Failure to hire or discharge; reduced status.* — It shall be an unlawful employment practice for an employer:

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unre-

lated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test;

(2) To limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test; or

(3) To request or require genetic tests or genetic information as a condition for hiring or determining benefits.

(b) *Failure to refer for employment.* — It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or to classify or refer for employment any individual on the basis of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

(c) *Exclusion for labor union.* — It shall be an unlawful employment practice for a labor organization: (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; (2) to limit, segregate or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) *Apprenticeship or other training.* — It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training

or retraining, including on-the-job training programs to discriminate against any individual because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability unrelated in nature or extent so as to reasonably preclude the performance of the employment in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) *Published preference for job applicants.* — It is an unlawful employment practice for an employer, labor organization, or employment agency to print or cause to be printed or published any notice or advertisement relating to employment by the employer or membership in or any classification or referral for employment by the labor organization, or relating to any classification or referral for employment by the agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, age, national origin, sexual orientation, or on the basis of a disability. However, a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, age, national origin or disability when religion, sex, age, national origin or disability is a bona fide occupational qualification for employment.

(f) *Opposition to unlawful employment practices.* — It is an unlawful employment practice for an employer to discriminate against any of its employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because the individual has opposed any practice made an unlawful employment practice by this subtitle or because the individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subtitle.

(g) *Sex, age, religion, national origin or disability as a bona fide occupational qualification; employee's dress and grooming; seniority.* — Notwithstanding any other provision of this subtitle, (1) it is not an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of the individual's religion, national origin or disability in those instances where sex, age, religion, national origin or disability is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; (2) it is not an unlawful employment practice for an employer to establish standards concerning an employee's dress and grooming if the standards are directly related to the

nature of the employment of the employee; (3) it is not an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion; and (4) it is not unlawful for an employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this subtitle; however, no employee benefit plan shall excuse the failure to hire any individual.

(h) *Preferential treatment.* — Nothing contained in this subtitle shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subtitle to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, age, national origin, sexual orientation, or disability of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, age, national origin, sexual orientation, or persons with disabilities employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, age, national origin, sexual orientation, or persons with disabilities in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(i) *Liability.* — An employer shall be immune from liability under this article or under the common law, arising out of the employer's reasonable acts to verify the sexual orientation of any employee or applicant taken by the employer in response to a charge filed against the employer on the basis of sexual orientation. (1965, ch. 717; 1967, ch. 427; 1970, ch. 413; 1972, ch. 435; 1973, chs. 17, 493; 1974, ch. 601; ch. 875, § 1; 1975, ch. 333; 1976, ch. 12; 1978, ch. 684, § 2; 1999, ch. 60; 2001, chs. 11, 12; 2001, ch. 340.)

Cross references. — For a discussion of the relationship between the tort of wrongful discharge and claims of employment discrimination under Article 49B, see Mazaroff, *Maryland Employment Law*, § 5.1 (C) (1990 and 1996 Cum. Supp.). For a discussion

of mixed motive cases, see Mazaroff, *Maryland Employment Law*, § 7.3 (A)(5), (1990 and 1996 Cum. Supp.).

Effect of amendments. — Chapters 11 and 12, Acts 2001, both effective Oct. 1, 2001, made identical changes. Each rewrote (a) (1) and (a) (2); added (a) (3); substituted “the individual’s” for “his” throughout (b), (c), (d), and (g); and in (f), substituted “its employees” for “his employees” and twice substituted “the individual” for “he.”

Chapter 340, Acts 2001, effective Nov. 21, 2001, inserted “sexual orientation” throughout the section; and added (i).

Editor’s note. — The effectiveness of Chapter 340, Acts 2001, the Antidiscrimination Act of 2001, was suspended upon the Secretary of State’s certification that the requisite number of signatures had been obtained to refer the enactment to the voters at the 2002 general election. On November 21, 2001, the Circuit Court for Anne Arundel County issued a declaratory judgment that the signatures did not satisfy the Maryland Constitution’s referendum requirements and declared that the suspension of the effectiveness of Chapter 340 was null and void. Chapter 340, Acts 2001, took effect November 21, 2001.

Section 2, ch. 340, Acts 2001, provides that “this Act:

- (1) May not be construed to authorize or validate a marriage between two individuals of the same sex;
- (2) May not be construed to require or prohibit an employer to offer health insurance benefits to unmarried domestic partners;
- (3) Does not mandate any public or private educational institution to promote any form of sexuality or sexual orientation or to include such matters in its curriculum; and
- (4) Is intended to ensure specific defined rights and not to endorse or confer legislative approval of any form of sexual behavior.”

Section 3, ch. 340, Acts 2001, provides that “this Act does not apply to the Boy Scouts of America or the Girl Scouts of America with respect to the employment of individuals of a particular sexual orientation to perform work connected with the activities of those organizations.”

Maryland Law Review. — For survey of Maryland Court of Appeals decisions, 1975-1976, regarding administrative law, see 37 Md. L. Rev. 61 (1977).

For article, “Never on Sunday: The Blue Laws Controversy,” see 39 Md. L. Rev. 679 (1980).

For article, “Survey of Developments in Maryland Law, 1984-85,” see 45 Md. L. Rev. 473 (1986).

For comment, “Comparable Worth and the Maryland ERA,” see 47 Md. L. Rev. 1129 (1988).

For article, “Risky Business: Age and Race Discrimination in Capital Redeployment Decisions,” see 48 Md. L. Rev. 901 (1989).

For comment, “The AIDS Project: Creating a Public Health Policy—Rights and Obligations of Health Care Workers,” see 48 Md. L. Rev. 93 (1989).

For survey, “Developments in Maryland Law, 1990-91,” see 51 Md. L. Rev. 507 (1992).

University of Baltimore Law Review. — For article, “Employment Discrimination — The Equal Employment Opportunity Commission and the Deferral Quagmire,” see 5 U. Balt. L. Rev. 221 (1976).

For note discussing affirmative action measures by private employers to eliminate racial imbalance in traditionally segregated job categories, see 9 U. Balt. L. Rev. 271 (1980).

For article, “Recognition of a Cause of Action for Abusive Discharge in Maryland,” see 10 U. Balt. L. Rev. 257 (1981).

For article, “The EEOC Sexual Harassment Guidelines: Welcome Advances Under Title VII,” see 10 U. Balt. L. Rev. 275 (1981).

For note discussing operation of joint tortfeasor’s payment for pro rata release in excess of its pro rata share as satisfaction of injured party’s judgment entered against nonsettling joint tort-feasor, see 15 U. Balt. L. Rev. 330 (1986).

For Comment, “A Return to State Sovereignty: How Individuals with Disabilities in Maryland May Still Seek Relief Against Employers After Board of Trustees of the University of Alabama v. Garrett,” see 31 U. Balt. L. Rev. 67 (2001).

University of Baltimore Law Forum. — For article, “Acquired Immune Deficiency Syndrome and Employment Discrimination: A Workplace Dilemma,” see 18.2 U. Balt. Law Forum 8 (1988).

Common law. — At common law no claim may be successfully asserted on the ground that the claimant was discriminated against in employment because of a physical handicap or disability. *Dillon v. Great Atl. & Pac. Tea Co.*, 43 Md. App. 161, 403 A.2d 406 (1979).

Construction of section. — This section, which is in derogation of the common law, is to be construed strictly. *Dillon v. Great Atl. & Pac. Tea Co.*, 43 Md. App. 161, 403 A.2d 406 (1979).

Construction of section with local legislation. — Montgomery County Code § 27-17 and § 27-19, which prohibit employment discrimination on the basis of sexual orientation, supplement State law, but do not conflict with it. *Broadcast Equities v. Montgomery County*, 123 Md. App. 363, 718 A.2d 648 (1998).

Federal law. — To resolve questions as to the proper interpretation of this article, Maryland courts have often found federal cases arising under 42 U.S.C. §§ 2000e et seq. (“Title VII”) to be persuasive, since the salient portion of Title VII was similar in wording and substance to this section; although Congress significantly altered Title VII in 1991, cases construing Title VII before the effective date of the 1991 amendments remain persuasive. *Brandon v. Molesworth*, 104 Md. App. 167, 655 A.2d 1292 (1995), aff’d as modified, 341 Md. 621, 672 A.2d 608 (1996).

FEPA enforcement process is exclusive. — On the basis of an alleged violation of subsection (f), the commission was not entitled to file suit in the circuit court to obtain a final injunction permanently restraining appellee from prosecuting a civil action. This is because the enforcement process established by the Fair Employment Practices Act (FEPA) is the exclusive means by which the merits of an alleged violation of subsection (f) may be adjudicated; this process does not authorize direct civil actions by the commission in circuit court. *Maryland Comm’n on Human Relations v. Downey Communications, Inc.*, 110 Md. App. 493, 678 A.2d 55 (1996).

Small employers not exempt from public policy. — The exemption in § 15 (b) of this article merely excludes small businesses from the administrative process of the Fair Employment Practices Act under the aegis of the Human Relations Commission, but not from the public policy of § 14 of this article. The legislative history and decisions of the court of appeals and other state and federal courts support this conclusion. *Molesworth v. Brandon*, 341 Md. 621, 672 A.2d 608 (1996).

Article 49B, § 14 provides a clear statement of public policy sufficient to support a common law cause of action for wrongful discharge against an employer exempted by Art. 49B, § 15 (b). Section 15 (b) merely excludes small employers from the administrative process of the Act, but does not exclude them from the policy announced in § 14. The General Assembly did not intend to permit small employers to discriminate against their employees, but rather intended to promote a policy of ending sex discrimination statewide. *Molesworth v. Brandon*, 341 Md. 621, 672 A.2d 608 (1996).

Statutory remedy provided under this article is exclusive for claims of employment discrimination and preempts application of general civil common law, absent indication by the legislature to the contrary. *Chekey v. BTR Realty, Inc.*, 575 F. Supp. 715 (D. Md. 1983).

Common-law tort action for wrongful discharge, founded on an allegation that the discharge was prompted by and amounted to unlawful employment discrimination by reason of sex, does not lie when there is a specific statutory procedure and remedy for the redress of that kind of conduct. *Makovi v. Sherwin-Williams Co.*, 75 Md. App. 58, 540 A.2d 494 (1988), aff’d, 316 Md. 603, 561 A.2d 179 (1989).

Abusive discharge is inherently limited to remedying only those discharges in violation of a clear mandate of public policy which otherwise would not be vindicated by a civil remedy; thus where director of personnel alleged unjust discharge from his position by private hospital and had available to him a civil remedy under both federal and State law, provided he met his burden of proof, application of a tort remedy to his discharge from employment was precluded. *Chappell v. Southern Md. Hosp.*, 320 Md. 483, 578 A.2d 766 (1990).

Section provided remedy for cause of action. — Where employee argued that the circuit court erred by dismissing her complaint for common law wrongful discharge, where employer countered that employee’s legal claim for wrongful discharge was

properly dismissed because an available civil statutory remedy existed, and where employee looked to the Fair Labor Standards Act, Title VII, and this section as policy sources to support her argument that her firing contravened “some clear mandate of public policy,” these provisions all provided mechanisms for redressing equal pay violations and retaliatory or abusive dismissals. Therefore, the very statutes that employee relied on to establish her policy claim provided a remedy for her cause of action. *Gaskins v. Marshall Craft Assocs.*, 110 Md. App. 705, 678 A.2d 615 (1996).

Res judicata. — The doctrine of res judicata does not bar the Human Relations Commission from resolving a complaint filed under this article even though the Secretary of Personnel has previously resolved [now § 13-203] of the Education Article grievance involving the same matter. *University of Md. v. Boyd*, 93 Md. App. 303, 612 A.2d 305 (1992).

Employee grievances and claims under this article are independent. — Employee grievances and claims before the Human Relations Commission are now procedurally independent of one another. *University of Md. v. Boyd*, 93 Md. App. 303, 612 A.2d 305 (1992).

This section does not create a private right of action in tort. *Childers v. C & P Tel. Co.*, 881 F.2d 1259 (4th Cir. 1989).

Job applicant failed to state a claim under the Maryland Fair Employment Practices Law, Md. Ann. Code art. 49B, §§ 14-18 (1998), because there was no private right of action under Art. 49B to remedy alleged employment discrimination. *Willey v. Ward*, 197 F. Supp. 2d 384 (D. Md. 2002).

Remedy for constructive discharge claim. — This article provides the exclusive State remedy for a constructive discharge claim based upon sex discrimination in employment. *Glezos v. Amalfi Ristorante Italiano, Inc.*, 651 F. Supp. 1271 (D. Md. 1987).

Temporary injunction where action involves issues pending before commission. — The institution or prosecution of a lawsuit that involves substantially the same issues that are pending before the commission or the Equal Employment Opportunity Commission constitutes a wrong that may be temporarily enjoined pursuant to Article 49B, § 4. Appellee’s lawsuit would have to await the completion of the statutorily mandated agency process. *Maryland Comm’n on Human Relations v. Downey Communications, Inc.*, 110 Md. App. 493, 678 A.2d 55 (1996).

Removal of employee appointed for indefinite term. — To the extent that an employer does not contravene an express statutory prohibition or some other clear mandate of public policy, he or she has the authority to remove, with or without cause, an employee appointed for an indefinite term by a predecessor. 68 Op. Att’y Gen. 315 (1983).

This section and § 17 of this article are legitimate exercises of State’s police powers. *Westinghouse Elec. Corp. v. Maryland Comm’n on Human Relations*, 520 F. Supp. 539 (D. Md. 1981).

This section and § 17 of this article are not preempted by Employee Retirement Income Security Act, 29 U.S.C. § 1144. *Westinghouse Elec. Corp. v. Maryland Comm’n on Human Relations*, 520 F. Supp. 539 (D. Md. 1981).

A case of handicap discrimination is not made by a single disqualification from a single job. *Mass Transit Admin. v. Maryland Comm’n on Human Relations*, 68 Md. App. 703, 515 A.2d 781 (1986), cert. denied, 308 Md. 382, 519 A.2d 1283 (1987).

Reasonable accommodation. — This article prohibits discharge only if a reasonable accommodation would enable the handicapped person to perform the essential functions of the position the person was hired to perform. *Maryland Comm’n on Human Relations v. Mayor of Baltimore*, 86 Md. App. 167, 586 A.2d 37, cert. denied, 323 Md. 309, 593 A.2d 668 (1991).

Although this article does not expressly impose an obligation on employers to provide reasonable accommodation for employees with a physical or mental handicap, the Court of Special Appeals has interpreted the article to contain such a requirement. *Martin Marietta Corp. v. Maryland Comm’n on Human Relations*, 38 F.3d 1392 (4th Cir. 1994).

Possibility of future hazard not bar to employment of handicapped. — In handicap discrimination claim, employer failed to carry its burden of persuasion, found by the court to be an implicit part of paragraph (a) (1) of this section, that applicant’s physical handicap would create future hazard to his health or safety where employer failed to show anything more than a

possibility of a future hazard. *B & O R.R. v. Bowen*, 60 Md. App. 299, 482 A.2d 921 (1984).

Finding of discriminatory act does not necessarily constitute finding of unlawful discriminatory act. — Since discrimination on the basis of marital status is lawful if required by “business necessity,” the appeal board’s finding that an employer engaged in a discriminatory act, violating this article, does not necessarily constitute a finding that the employer had engaged in an unlawful discriminatory act. *Maryland Comm’n on Human Relations v. Baltimore Gas & Elec. Co.*, 296 Md. 46, 459 A.2d 205 (1983).

Burden of proof. — The initial burden rests with the alleged victim to establish that he is qualified to do the job at issue; only when the complainant shows that he is qualified does the burden shift to the employer to establish that the handicap reasonably precludes the performance of the job. *Maryland Comm’n on Human Relations v. Mayor of Baltimore*, 86 Md. App. 167, 586 A.2d 37, cert. denied, 323 Md. 309, 593 A.2d 668 (1991).

In order to prevail, the plaintiff must prove that he or she is a member of a class protected by this article and that the employer’s decision to discharge was made because of the employee’s membership in that class. *Brandon v. Molesworth*, 104 Md. App. 167, 655 A.2d 1292 (1995), aff’d as modified, 341 Md. 621, 672 A.2d 608 (1996).

In a hostile environment claim, the employer may not rely on a “same actor inference” to increase the employee’s burden of proof in opposing an employer’s motion for summary judgment, and evidence that the same person hired and fired the plaintiff within a relatively short period of time does not merit abandoning the established rule that all evidentiary inferences must be drawn in the light most favorable to the party opposing summary judgment. *Magee v. Dansources Tech. Servs., Inc.*, 137 Md. App. 527, 769 A.2d 231 (2001).

Mixed motives for discharge. — In order to determine whether the discrimination caused the discharge in a mixed-motive case where the employer had some discriminatory animus but also had independent, legitimate grounds for discharging the plaintiff, the court must consider whether the employer’s unlawful discriminatory intent or motive played a role in the decision to discharge or if, even without consideration of the bias, discharge would have resulted. *Brandon v. Molesworth*, 104 Md. App. 167, 655 A.2d 1292 (1995), aff’d as modified, 341 Md. 621, 672 A.2d 608 (1996).

Where the administrative law judge (ALJ) had found that a supervisor treated African American employees more harshly than whites, but also found that the fired employee was not performing well, the ALJ, the only person with an opportunity to observe the demeanor of witnesses and determine credibility, should have resolved the conflicting evidence, and it was error, in the absence of such a determination by the ALJ, for the Appeal Board of the Maryland Commission on Human Relations to make that determination for itself; this kept the decision of the agency from being supported by substantial evidence, and remand was required to enable the ALJ to make all the missing findings. *State Comm’n on Human Rels. v. Kaydon Ring & Seal, Inc.*, 149 Md. App. 666, 818 A.2d 259 (2003).

Negligent refusal to hire a person does not give rise to a right of action by the “would-be” employee against the “would-be” employer. *Dillon v. Great Atl. & Pac. Tea Co.*, 43 Md. App. 161, 403 A.2d 406 (1979).

Retaliatory discharge for refusal to violate privacy rights of another. — Constitutionally protected right of privacy, the right to be free of others’ snooping, spying, rummaging, or searching through one’s personal and private papers, is such a fundamental right that no employer may require an employee to violate it as a condition of employment, and firing an employee for refusing to commit such a wrongful act is in contravention of a clear mandate of public policy. *Kessler v. Equity Mgt., Inc.*, 82 Md. App. 577, 572 A.2d 1144 (1990).

Firing an at-will employee for refusing to carry out an instruction to snoop through a third person’s private papers constituted a wrongful discharge and trial judge erred in refusing to so instruct the jury. *Kessler v. Equity Mgt., Inc.*, 82 Md. App. 577, 572 A.2d 1144 (1990).

Prima facie case of retaliation. — To prove a prima facie retaliation case under the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3 (a) requires a showing (1) that there was a statutorily

protected “opposition” or “participation”; (2) that an adverse employment action occurred; and (3) that there was a causal link between the protected activity and the adverse employment action; and as the Maryland statute tracks the language of § 2000e-3 (a), these same criteria would determine whether a prima facie violation of the State law was established. *Chappell v. Southern Md. Hosp.*, 320 Md. 483, 578 A.2d 766 (1990).

To demonstrate a retaliatory discharge claim under Maryland anti-discrimination law, a plaintiff must show that: (1) there was a statutorily protected “opposition” or “participation”; (2) an adverse employment action occurred; and (3) there was a causal link between the protected activity and the adverse employment action. *Martin Marietta Corp. v. Maryland Comm’n on Human Relations*, 38 F.3d 1392 (4th Cir. 1994).

Discrimination held within subsection (a) (1). — Instances of discrimination in employment involving the termination of a white, complainant employee because of his association with his black fiancée are plainly within the contemplation and coverage of subsection (a) (1) of this section. *Gutwein v. Easton Publishing Co.*, 272 Md. 563, 325 A.2d 740 (1974), cert. denied, 420 U.S. 991, 95 S. Ct. 1427, 43 L. Ed. 2d 673 (1975).

Subsection (f) read in harmony with 42 U.S.C. § 2000e-3 (a). — In the absence of legislative intent to the contrary, subsection (f) reads in harmony with the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3 (a) and the two provisions are construed to fulfill the same objectives. *Chappell v. Southern Md. Hosp.*, 320 Md. 483, 578 A.2d 766 (1990).

Appeal board’s remand to determine justification for discriminatory policy not “final decision.” — The appeal board’s order remanding a case to the hearing examiner to determine whether an employer’s discriminatory policy was justified by a “business necessity” was not a “final decision” entitling the employer to immediate judicial review. *Maryland Comm’n on Human Relations v. Baltimore Gas & Elec. Co.*, 296 Md. 46, 459 A.2d 205 (1983).

Alcoholism is not a condition that is covered by State antidiscrimination laws. 68 Op. Att’y Gen. 322 (1983).

Epilepsy is a physical handicap or impairment within the meaning of this section. 68 Op. Att’y Gen. 322 (1983).

Hypertension. — Because hypertension may be a handicap, the Commission has jurisdiction to hear employment discrimination claims on such a ground; however, the burden of establishing a prima facie case of discrimination rests on the complainant. *Mass Transit Admin. v. Maryland Comm’n on Human Relations*, 68 Md. App. 703, 515 A.2d 781 (1986), cert. denied, 308 Md. 382, 519 A.2d 1283 (1987).

Pseudofolliculitis barbae (PFB). — University’s “no beard” policy adversely affected the African American male population afflicted with pseudofolliculitis barbae (PFB), a skin condition aggravated by shaving. *University of Md. v. Boyd*, 93 Md. App. 303, 612 A.2d 305 (1992).

Regulation of Police Training Commission, which requires applicants who desire to attend an approved police training school to be between 21 and 36 years of age, does not violate this subtitle. 62 Op. Att’y Gen. 705 (1977).

Broad powers in awarding equitable relief. — Pursuant to this article, the Maryland Commission on Human Relations possesses broad powers to issue a consensual order requiring an employer to eliminate discrimination and reinstate an employee, and to award further equitable relief. *Martin Marietta Corp. v. Maryland Comm’n on Human Relations*, 38 F.3d 1392 (4th Cir. 1994).

Instructions properly refused. — The trial court properly denied a requested instruction because under federal and state law it was not applicable in a case involving direct evidence of discrimination. In addition, the instruction was not applicable to the facts of this case and the area of law was fairly covered by the instructions given. *Molesworth v. Brandon*, 341 Md. 621, 672 A.2d 608 (1996).

The trial court properly refused to instruct the jury that where the same person hires and fires the plaintiff they must infer that the discharge was not motivated by sex discrimination. Such an instruction is not applicable, under federal Title VII law, in a case involving direct evidence of discrimination. Likewise, under Maryland law, the instruction constitutes a presumption which is inap-

propriate where direct evidence is presented. *Molesworth v. Brandon*, 341 Md. 621, 672 A.2d 608 (1996).

Age requirement for correctional officer. — A Division of Correction (“DOC”) policy that required an applicant for a correctional officer position to be at least 21 years old would violate the prohibition against age discrimination in employment unless the DOC could establish that such an age criterion is a “bona fide occupational qualification” for a correctional officer for a correctional officer. 87 Op. Att’y Gen. — (Oct. 7, 2002).

Applied in *Maryland Shipbuilding & Drydock Co. v. Maryland Comm’n on Human Relations*, 70 Md. App. 538, 521 A.2d 1263 (1987); *Ritchie v. Donnelly*, 324 Md. 344, 597 A.2d 432 (1991).

Quoted in *Adler v. American Std. Corp.*, 291 Md. 31, 432 A.2d 464 (1981); *Maryland Comm’n on Human Relations v. Mass Transit Admin.*, 294 Md. 225, 449 A.2d 385 (1982); *Maryland Comm’n on Human Relations v. Bethlehem Steel Corp.*, 295 Md. 586, 457 A.2d 1146 (1983); *Gaither v. Anne Arundel County*, 94 Md. App. 569, 618 A.2d 244 (1993).

Stated in *Makovi v. Sherwin-Williams Co.*, 316 Md. 603, 561 A.2d 179 (1989); *Maryland Comm’n on Human Relations v. Mass Transit Admin.*, 82 Md. App. 275, 571 A.2d 840 (1990); *Office of Occupational Medicine & Safety v. Baltimore Community Relations Comm’n*, 88 Md. App. 420, 594 A.2d 1237 (1991); *Ford v. Dep’t of Pub. Safety & Corr. Servs.*, 149 Md. App. 488, 817 A.2d 264 (2003).

Cited in *National Asphalt Pavement Ass’n v. Prince George’s County*, 292 Md. 75, 437 A.2d 651 (1981); *Burnett v. Grattan*, 468 U.S. 42, 104 S. Ct. 2924, 82 L. Ed. 2d 36 (1984); *Goldberg v. B. Green & Co.*, 836 F.2d 845 (4th Cir. 1988); *Parlato v. State Comm’n on Human Relations*, 76 Md. App. 695, 548 A.2d 144 (1988); *Biscoe v. Baltimore City Police Dep’t*, 96 Md. App. 1, 623 A.2d 666, cert. denied, 331 Md. 88, 626 A.2d 371 (1993); *Replacement Rent-A-Car, Inc. v. Smith*, 99 Md. App. 588, 638 A.2d 1217 (1994); *Collier v. Service Am. Corp.*, 934 F. Supp. 168 (D. Md. 1996); *LOOC, Inc. v. Kohli*, 347 Md. 258, 701 A.2d 92 (1997); *Nelson v. PE Biosystems Corp. Celera Genomics*, — F. Supp. 2d — (D. Md. Sept. 17, 2001); *Wholey v. Sears, Roebuck & Co.*, 370 Md. 38, 803 A.2d 482 (2002).

ARTICLE 49D.

OFFICE FOR CHILDREN, YOUTH, AND FAMILIES.

Out-of-State Placement of Children

Sec.

20.1. Placement of children with special needs [Amendment subject to abrogation].

Maryland School-Based Health Policy Advisory Council

- 46. Definitions.
- 47. Established.
- 48. General provisions.
- 49. Procedure.
- 50. Purpose and duties.

Editor’s note. — Section 2, ch. 426, Acts 1978, provides that “the office established under the provisions of this Act, shall be reviewed and evaluated, on or before July 1, 1983, in a manner consistent with the procedures provided in § 486 of Article 41 (pertaining to the reestablishment of certain regulatory boards) of Chapter 808 of the Acts of 1978 (H.B. 611/S.B. 405) and shall terminate on July 1, 1984, if the General Assembly fails to reestablish the office by statute.” Article 41, § 486 was repealed by ch. 284, Acts 1984. As to the Maryland Program Evaluation Act, see §§ 8-401 to 8-413 of the State Government Article.

(Abrogation of repeal effective June 30, 2005.)

OUT-OF-STATE PLACEMENT OF CHILDREN

§ 20.1. Placement of children with special needs [Amendment subject to abrogation].

(a) *Policy.* — The General Assembly declares that the policy of this State is:

(1) To the extent that funds are available, to provide for and encourage the development of a continuum of quality education, treatment, and residential services for the children of this State;

(2) To serve children:

(i) In their homes; or

(ii) In the least restrictive setting most appropriate to their individual needs;

(3) That unless the State has determined that the individual needs of a child with special needs cannot be met through additional support to the home, nonresidential school, foster home, alternative living unit, or group home, the State may not fund the child's placement in a more restrictive setting; and

(4) To prevent the unnecessary placement of children with special needs in facilities outside of the child's home community.

(b) *Out-of-state placements.* — (1) A local or State agency may approve a new out-of-state placement of any child only if:

(i) The out-of-state placement is closer in distance to the child's home than an alternative in-State placement;

(ii) An equally appropriate individualized in-State program is not available for the child, for up to 100% of the average cost per placement for all appropriate out-of-state programs for which application would be made on behalf of the child;

(iii) The child is currently in detention pursuant to a court order;

(iv) Compliance with the federal Individuals with Disabilities Education Act requires out-of-state placement; or

(v) The child is hospitalized in an acute care psychiatric hospital under the following circumstances:

1. The child is committed to the Department of Juvenile Services, a local department of social services, or the Department of Health and Mental Hygiene;

2. The child's treatment team has determined that the child is ready for discharge or must be discharged to a recommended placement within 30 days; and

3. The only available appropriate placement is out of state.

(2) At the time of application to the State Coordinating Council for an out-of-state placement, the

referring agency, in consultation with the local coordinating council as defined in § 13 of this article, shall begin to plan for the child's return.

(c) *Flexible use of funds.* — Each department's funds available for out-of-home care may be used flexibly for less restrictive care, in accordance with the plan developed by the Subcabinet.

(d) *Regulations.* — The Subcabinet shall adopt regulations necessary to carry out the provisions of this section, including regulations establishing:

(1) Eligibility requirements;

(2) Service priorities;

(3) Procedures for families to access services;

(4) Requirements for determining any parental contribution to the cost of services; and

(5) Parental appeal procedures.

(e) *Implementation of plan.* — The Special Secretary for Children, Youth, and Families, the Secretaries of Health and Mental Hygiene, Human Resources, Juvenile Services, and Budget and Management, and the State Superintendent of Schools shall implement the plan developed by the Subcabinet, subject to the availability of funding. (1992, ch. 264; 1993, ch. 556; 1994, ch. 3, § 21; 1995, ch. 3, § 1; ch. 8, § 5; ch. 193; 1996, ch. 349, § 13; 1999, ch. 702, § 5; 2002, ch. 282, §§ 1, 2; 2003, ch. 53, § 2.)

Effect of amendments. — Section 1, ch. 282, Acts 2002, effective July 1, 2002, repealed former (b)(1). Section 2 of ch. 282 substituted "the policy of the State is" for "it is the policy of this State" in the introductory language of (a); in (a)(3), substituted "child with special needs" for "special needs child," substituted "home, nonresidential school, foster home" for "nonresidential school, home, foster home," and substituted "child's placement" for "placement of a child with special needs"; substituted "facilities outside of the child's home community" for "out-of-state institutions" in (a)(4); redesignated former (c) through (f) as present (b) through (e); deleted "Until the plan developed under subsection (b) of this section is fully implemented" at the beginning of the introductory language of present (b)(1); added (b)(1)(iv) and (b)(1)(v); substituted "by the Subcabinet" for "under subsection (c) of this section" in present (c); deleted the former (d)(1) substituted "Subcabinet" for "Office for Children, Youth, and Families," added "including regulations establishing," deleted former (2), and added present (1) through (5); and substituted "by the Subcabinet, subject to the availability of funding" for "under this section" in present (e).

Section 2, ch. 53, Acts 2003, effective July 1, 2003, substituted "Services" for "Justice" in (b)(1)(v)1. and (e).

Editor's note. — Section 21, ch. 3, Acts 1994, approved Feb. 28, 1994, and effective from date of enactment, transferred former § 19.1 of this article to be present § 20.1 of this article.

Section 5, ch. 282, Acts 2002, provides that "this Act shall take effect July 1, 2002. It shall remain effective for a period of 3 years and, at the end of June 30, 2005, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect."

Out-of-state placement. — If the Local Coordinating Council recommends an out-of-state private placement for a child, final State funding approval is authorized by the State Coordinating Council, an interagency committee representing State agencies serving children: if funding for private out-of-state placement is approved by the State, the portion which the local education agency and the state education agency must contribute, respectively, is