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HB 497/96 - CGM

1997 Regular Session
7r0495

By: Chairman, Commerce and Government Matters Committee (Departmental - Human Relations Commission)

Introduced and read first time: January 15, 1997
Assigned to: Commerce and Government Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 21, 1997

CHAPTER _____

1 AN ACT concerning

2 **Maryland Human Relations Commission - Hearings - Relief**

3 FOR the purpose of altering certain provisions relating to the Maryland Human
4 Relations Commission; making a technical change clarifying that certain documents
5 shall be certified to the General Counsel; specifying that the Executive Director,
6 rather than the Chairman, shall cause a certain notice to be issued and served;
7 expanding relief to include compensatory damages ~~for an individual and attorney's~~
8 ~~fees and witness fees for the Human Relations Commission, subject to certain~~
9 limitations; altering the jurisdiction of the Commission over certain employers;
10 making stylistic changes; and generally relating to hearings and relief under the
11 Human Relations Commission law.

12 BY repealing and reenacting, with amendments,
13 Article 49B - Human Relations Commission
14 Section 11 and 15(b)
15 Annotated Code of Maryland
16 (1994 Replacement Volume and 1996 Supplement)

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

19 **Article 49B - Human Relations Commission**

20 11.

21 (a) In case of failure to reach an agreement for the elimination of the acts of
22 discrimination and upon the entry of findings to that effect, the entire file including the
23 complaint and any and all findings made shall be certified to THE GENERAL COUNSEL.

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1 The [Chairman] EXECUTIVE DIRECTOR shall cause a written notice to be issued and
 2 served in the name of the Commission together with a copy of the complaint requiring the
 3 respondent to answer the charges of the complaint at a public hearing before [a hearing
 4 examiner] AN ADMINISTRATIVE LAW JUDGE at a time and place certified in the notice.

5 The case shall thereupon be heard by [a hearing examiner] AN ADMINISTRATIVE
 6 LAW JUDGE and the hearing shall be held in the county where the alleged act of
 7 discrimination took place. A transcript of all testimony at the hearing shall be made. The
 8 case in support of the complaint shall be presented at the hearing by the general counsel
 9 of the Commission.

10 (b) The respondent may file a written answer to the complaint and appear at the
 11 hearing in person, or otherwise, with or without counsel. The respondent may submit
 12 testimony and shall be fully heard. He may examine and cross-examine witnesses.

13 (c) The Commission may permit reasonable amendment to be made to any
 14 complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

15 (d) (1) In the administration and enforcement of the provisions of these several
 16 subtitles, the Commission has power to:

17 (i) Administer oaths and to issue subpoenas;

18 (ii) Compel the attendance and testimony of witnesses; and

19 (iii) Compel the production of books, papers, records and documents
 20 relevant or necessary for proceedings under the particular subtitle.

21 (2) Any subpoena shall be served by:

22 (i) Certified mail, requesting restricted delivery - Show to whom,
 23 date, address of delivery; or

24 (ii) Personal service of process by:

25 1. An employee of the Commission;

26 2. Any person who is not a party and is not less than 18 years of
 27 age; or

28 3. The sheriff or deputy sheriff of the political subdivision in
 29 which is located the residence of the person or the main office of the firm, association,
 30 partnership or corporation against whom or which the subpoena is issued.

31 (3) (i) In case of disobedience to a subpoena, the Commission may apply
 32 to a circuit court in any county for an order requiring the attendance and testimony of
 33 witnesses and the production of books, papers, records, and documents.

34 (ii) In case of contumacy or refusal to obey a subpoena for the
 35 attendance of a witness or the production of books, papers, records, and documents, after
 36 notice to the person subpoenaed as a witness or directed to produce books, papers,
 37 records and documents, and upon a finding that the attendance and testimony of the
 38 witness or the production of the books, papers, records and documents is relevant or
 39 necessary for the proceedings of the Commission, the court may issue an order requiring

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1 the attendance and testimony of the witness and the production of the books, papers,
2 records and documents.

3 (iii) Any failure to obey such an order of the court may be punished by
4 the court as a contempt thereof.

5 (iv) An order issued by the court under this subsection shall be served
6 on the person to whom it is directed by the sheriff or deputy sheriff of the political
7 subdivision where the residence or main office of the person is located.

8 (e) (1) If upon all the evidence, the [hearing examiner] ADMINISTRATIVE
9 LAW JUDGE finds that the respondent has engaged in any discriminatory act within the
10 scope of any of these subtitles, the [hearing examiner] ADMINISTRATIVE LAW JUDGE
11 shall so state the findings. The [hearing examiner] ADMINISTRATIVE LAW JUDGE shall
12 issue and cause to be served upon the respondent an order requiring the respondent to
13 cease and desist from the discriminatory acts and to take affirmative action to effectuate
14 the purposes of the particular subtitle.

15 (2) If the respondent is found to have engaged in or to be engaging in an
16 unlawful employment practice charged in the complaint, the remedy ~~may~~:

17 (I) MAY include, but is not limited to, reinstatement or hiring of
18 employees, with or without back pay (payable by the employer, employment agency, or
19 labor organization, as the case may be, responsible for the unlawful employment
20 practice), ~~COMPENSATORY DAMAGES, or~~:

21 (II) MAY INCLUDE COMPENSATORY DAMAGES, NOT TO EXCEED
22 \$50,000; AND any

23 (III) MAY ALSO INCLUDE ANY other equitable relief that is deemed
24 appropriate.

25 (3) The award of [monetary] BACK PAY relief UNDER PARAGRAPH (2)(I)
26 OF THIS SUBSECTION shall be limited to a 36-month period. The complainant may not
27 be awarded [monetary] BACK PAY relief for losses incurred between the time of the
28 Commission's final determination and the final determination by the circuit court or
29 higher appellate court, as the case may be. Interim earning or amounts earnable with
30 reasonable diligence by the person or persons discriminated against shall operate to
31 reduce the [monetary] BACK PAY relief otherwise allowable. ~~THE ADMINISTRATIVE~~
32 ~~LAW JUDGE MAY ALSO AWARD ATTORNEYS' FEES AND WITNESS FEES TO THE~~
33 ~~COMMISSION.~~

34 (4) In cases of discrimination other than those involving employment, in
35 addition to the award of civil penalties as specifically provided in this article,
36 nonmonetary relief may be granted to the complainant, except that in no event shall an
37 order be issued that substantially affects the cost, level, or type of any transportation
38 services.

39 (5) In cases involving transportation services which are supported fully or
40 partially with funds from the Maryland Department of Transportation, no order may be
41 issued which would require costs, level, or type of transportation services different from
42 or in excess of those required to meet U.S. Department of Transportation regulations

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1 adopted pursuant to § 504 of the Rehabilitation Act of 1974, codified as 49 C.F.R. 27
2 (1984), nor would any such order be enforceable under § 12(a) of this subtitle.

3 (f) The provisions of subsection (e) granting the authority to award monetary
4 relief to a complainant shall apply only to those complaints filed with the Commission on
5 or after July 1, 1977.

6 (g) If upon all the evidence, the [hearing examiner] ADMINISTRATIVE LAW
7 JUDGE or the Commission finds that the respondent has not engaged in any alleged
8 discriminatory act within the scope of the particular subtitle, it shall state its findings of
9 fact and shall similarly issue and file an order dismissing the complaint.

10 15.

11 (b) The term "employer" means a person engaged in an industry or business who
12 has [fifteen] ONE or more employees for each working day in each of twenty or more
13 calendar weeks in the current or preceding calendar year, and any agent of such a person;
14 such term does include the State of Maryland to the extent as may be provided in this
15 article but such term does not include a bona fide private membership club (other than a
16 labor organization) which is exempt from taxation under § 501(c) of the Internal Revenue
17 Code.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 1997.