
By: Delegates Petzold, Cummings, Barve, Benson, Boston, Exum, Hecht, Howard, B. Hughes, Kagan, Mandel, Marriott, Menes, Montague, Nathan-Pulliam, Oaks, Perry, Pitkin, and Proctor

Introduced and read first time: February 2, 1996

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Fair Employment Practices Act**

3 FOR the purpose of establishing the responsibilities and authority of certain hearing
4 examiners and the courts in certain employment discrimination cases;authorizing a
5 hearing examiner to enjoin certain actions and order certain damages, attorney fees,
6 and costs in employment discrimination cases under certain circumstances;
7 declaring certain findings by the General Assembly; providing compensatory
8 damages, punitive damages, and other equitable or monetary relief incertain
9 employment discrimination cases; imposing upon the General Counsel of the
10 Commission certain burden of proof with regard to the existence of damages in
11 certain cases; requiring that actual malice be proven by clear and convincing
12 evidence in certain cases; making technical changes; making provisions of this Act
13 severable; making the provisions of this Act applicable only to cases arising on or
14 after the effective date of this Act; and generally relating to prohibited unlawful
15 employment practices.

16 BY repealing and reenacting, with amendments,
17 Article 49B - Human Relations Commission
18 Section 11(e), 14, and 16
19 Annotated Code of Maryland
20 (1994 Replacement Volume and 1995 Supplement)

21 BY adding to
22 Article 49B - Human Relations Commission
23 Section 16A
24 Annotated Code of Maryland
25 (1994 Replacement Volume and 1995 Supplement)

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

2

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

2 11.

3 (e) If upon all the evidence, the hearing examiner finds that the respondent has
4 engaged in any discriminatory act within the scope of any of these subtitles, the hearing
5 examiner shall so state the findings. The hearing examiner shall issue and cause to be
6 served upon the respondent an order requiring the respondent to cease and desist from
7 the discriminatory acts and to take affirmative action to effectuate the purposes of the
8 particular subtitle. If the respondent is found to have engaged in or to be engaging in an
9 unlawful employment practice charged in the complaint, the remedy may include, but is
10 not limited to, reinstatement or hiring of employees, with or without back pay (payable by
11 the employer, employment agency, or labor organization, as the case maybe, responsible
12 for the unlawful employment practice), or any other equitable relief that is deemed
13 appropriate. The award of monetary relief shall be limited to a 36-month period. The
14 complainant may not be awarded monetary relief for losses incurred between the time of
15 the Commission's final determination and the final determination by the circuit court or
16 higher appellate court, as the case may be. Interim earning or amounts earnable with
17 reasonable diligence by the person or persons discriminated against shall operate to
18 reduce the monetary relief otherwise allowable. In cases of discrimination other than
19 those involving employment, in addition to the award of civil penalties specifically
20 provided in this article, nonmonetary relief may be granted to the complainant, except
21 that in no event shall an order be issued that substantially affects the cost, level, or type
22 of any transportation services. In cases involving transportation services which are
23 supported fully or partially with funds from the Maryland Department of Transportation,
24 no order may be issued which would require costs, level, or type of transportation services
25 different from or in excess of those required to meet U.S. Department of Transportation
26 regulations adopted pursuant to § 504 of the Rehabilitation Act of 1974, codified as 49
27 C.F.R. 27 (1984), nor would any such order be enforceable under § 12(a) of this subtitle.
28 IN ADDITION TO THE AUTHORITY GRANTED UNDER THIS SECTION, THE HEARING
29 EXAMINER HAS THE AUTHORITY PROVIDED UNDER THE SUBTITLE
30 "DISCRIMINATION IN EMPLOYMENT" IN THIS ARTICLE.

31 14.

32 (A) THE GENERAL ASSEMBLY FINDS THAT:

33 (1) ADDITIONAL REMEDIES UNDER STATE LAW ARE NEEDED TO DETER
34 UNLAWFUL HARASSMENT AND INTENTIONAL DISCRIMINATION IN THE
35 WORKPLACE; AND

36 (2) LEGISLATION IS NECESSARY TO PROVIDE ADDITIONAL
37 PROTECTIONS AGAINST UNLAWFUL DISCRIMINATION IN EMPLOYMENT.

38 (B) THE PURPOSE OF THIS SUBTITLE IS TO PROVIDE APPROPRIATE REMEDIES
39 FOR INTENTIONAL DISCRIMINATION AND UNLAWFUL HARASSMENT IN THE
40 WORKPLACE.

41 (C) It is hereby declared to be the policy of the State of Maryland, in the exercise
42 of its police power for the protection of the public safety, public health and general
43 welfare, for the maintenance of business and good government and for the promotion of
44 the State's trade, commerce and manufacturers to assure all persons equal opportunity in

3

1 receiving employment and in all labor management-union relations regardless of race,
2 color, religion, ancestry or national origin, sex, age, marital status, or physical or mental
3 handicap unrelated in nature and extent so as to reasonably preclude the performance of
4 the employment, and to that end to prohibit discrimination in employment by any person,
5 group, labor organization, organization or any employer or his agents.

6 16.

7 (a) It shall be an unlawful employment practice for an employer:

8 (1) To fail or refuse to hire or to discharge any individual, or otherwise to
9 discriminate against any individual with respect to his compensation, terms, conditions, or
10 privileges of employment, because of such individual's race, color, religion, sex, age,
11 national origin, marital status, or physical or mental handicap unrelated in nature and
12 extent so as to reasonably preclude the performance of the employment; or

13 (2) To limit, segregate, or classify his employees or applicants for
14 employment in any way which would deprive or tend to deprive any individual of
15 employment opportunities or otherwise adversely affect his status as an employee,
16 because of the individual's race, color, religion, sex, age, national origin, marital status, or
17 physical or mental handicap unrelated in nature and extent so as to reasonably preclude
18 the performance of the employment[;].

19 (b) It shall be an unlawful employment practice for an employment agency to fail
20 or refuse to refer for employment, or otherwise to discriminate against, any individual
21 because of his race, color, religion, sex, age, national origin, marital status, or physical or
22 mental handicap unrelated in nature and extent so as to reasonably preclude the
23 performance of the employment, or to classify or refer for employment any individual on
24 the basis of his race, color, religion, sex, age, national origin, marital status, or physical or
25 mental handicap unrelated in nature and extent so as to reasonably preclude the
26 performance of the employment[;].

27 (c) It shall be an unlawful employment practice for a labor organization: (1) to
28 exclude or to expel from its membership, or otherwise to discriminate against, any
29 individual because of his race, color, religion, sex, age, national origin, marital status, or
30 physical or mental handicap unrelated in nature and extent so as to reasonably preclude
31 the performance of the employment; (2) to limit, segregate or classify its membership, or
32 to classify or fail or refuse to refer for employment any individual, in any way which would
33 deprive or tend to deprive any individual of employment opportunities, or would limit
34 such employment opportunities or otherwise adversely affect his status as an employee or
35 as an applicant for employment, because of such individual's race, color, religion, sex,
36 age, national origin, marital status, or physical or mental handicap unrelated in nature
37 and extent so as to reasonably preclude the performance of the employment; or (3) to
38 cause or attempt to cause an employer to discriminate against an individual in violation of
39 this section[;].

40 (d) It shall be an unlawful employment practice for any employer, labor
41 organization, or joint labor-management committee controlling apprenticeship or other
42 training or retraining, including on-the-job training programs to discriminate against any
43 individual because of his race, color, religion, sex, age, national origin, marital status, or
44 physical or mental handicap unrelated in nature or extent so as to reasonably preclude

4

1 the performance of the employment in admission to, or employment in, any program
2 established to provide apprenticeship or other training[;].

3 (e) It is an unlawful employment practice for an employer, labor organization, or
4 employment agency to print or cause to be printed or published any notice or
5 advertisement relating to employment by the employer or membership in or any
6 classification or referral for employment by the labor organization, or relating to any
7 classification or referral for employment by the agency, indicating any preference,
8 limitation, specification, or discrimination, based on race, color, religion, sex, age,
9 national origin or on the basis of a physical or mental qualification. However, a notice or
10 advertisement may indicate a preference, limitation, specification, or discrimination
11 based on religion, sex, age, national origin or physical or mental qualification when
12 religion, sex, age, national origin or physical or mental qualification is a bona fide
13 occupational qualification for employment[;].

14 (f) It is an unlawful employment practice for an employer to discriminate against
15 any [of his] employees or applicants for employment, for an employment agency to
16 discriminate against any individual, or for a labor organization to discriminate against any
17 member thereof or applicant for membership, because [he] THE EMPLOYEE,
18 APPLICANT, MEMBER, OR INDIVIDUAL has opposed any practice made an unlawful
19 employment practice by this subtitle or because [he] THE EMPLOYEE, APPLICANT,
20 MEMBER, OR INDIVIDUAL has made a charge, testified, assisted, or participated in any
21 manner in an investigation, proceeding, or hearing under this subtitle[;].

22 (g) Notwithstanding any other provision of this subtitle, (1) it is not an unlawful
23 employment practice for an employer to hire and employ employees, for an employment
24 agency to classify, or refer for employment any individual, for a labor organization to
25 classify its membership or to classify or refer for employment any individual, or for an
26 employer, labor organization or joint labor-management committee controlling
27 apprenticeship or other training or retraining programs to admit or employ any individual
28 in any such program, on the basis of [his] religion, national origin or physical or mental
29 qualification in those instances where sex, age, religion, national origin or physical or
30 mental qualification is a bona fide occupational qualification reasonably necessary to the
31 normal operation of that particular business or enterprise; (2) it is not an unlawful
32 employment practice for an employer to establish standards concerning an employee's
33 dress and grooming if the standards are directly related to the nature of the employment
34 of the employee; (3) it is not an unlawful employment practice for a school, college,
35 university, or other educational institution or institution of learning to hire and employ
36 employees of a particular religion if the school, college, university, or other educational
37 institution or institution of learning is, in whole or in substantial part, owned, supported,
38 controlled, or managed by a particular religion or by a particular religious corporation,
39 association, or society or if the curriculum of the school, college, university, or other
40 educational institution or institution of learning is directed toward the propagation of a
41 particular religion; and (4) it is not unlawful for an employer, employment agency or labor
42 organization to observe the terms of a bona fide seniority system or any bona fide
43 employee benefit plan such as a retirement, pension or insurance plan, which is not a
44 subterfuge to evade the purposes of this subtitle; however, no employee benefit plan shall
45 excuse the failure to hire any individual[;].

1 (h) Nothing contained in this subtitle shall be interpreted to require any
2 employer, employment agency, labor organization, or joint labor-management committee
3 subject to this subtitle to grant preferential treatment to any individual or to any group
4 because of the race, color, religion, sex, age, national origin or physical or mental
5 handicap of the individual or group on account of an imbalance which may exist with
6 respect to the total number or percentage of persons of any race, color, religion, sex, age,
7 national origin or physically or mentally handicapped persons employed by any employer,
8 referred or classified for employment by any employment agency or labor organization,
9 admitted to membership or classified by any labor agency or labor organization, admitted
10 to membership or classified by any labor organization, or admitted to, or employed in, any
11 apprenticeship or other training program, in comparison with the total number or
12 percentage of persons of such race, color, religion, sex, age, national origin or physically
13 or mentally handicapped persons in any community, State, section, or other area, or in
14 the available work force in any community, State, section, or other area.

15 16A.

16 (A) IN ADDITION TO ANY OTHER DAMAGES AWARDED UNDER § 11(E) OF THIS
17 ARTICLE, IN AN ACTION AGAINST A RESPONDENT WHO ENGAGED IN, OR IS
18 ENGAGING IN, AN UNLAWFUL INTENTIONAL EMPLOYMENT PRACTICE (NOT AN
19 EMPLOYMENT PRACTICE THAT IS UNLAWFUL BECAUSE OF ITS DISPARATE IMPACT),
20 THE FOLLOWING DAMAGES MAY BE AWARDED:

21 (1) COMPENSATORY DAMAGES; AND

22 (2) IF THE RESPONDENT, OTHER THAN A GOVERNMENT, GOVERNMENT
23 AGENCY, OR A POLITICAL SUBDIVISION, ENGAGED IN THE UNLAWFUL
24 INTENTIONAL EMPLOYMENT PRACTICE WITH ACTUAL MALICE, A CIVIL PENALTY
25 MAY BE ASSESSED TO BE PAID TO THE GENERAL FUND OF THE STATE IN AN
26 AMOUNT NOT EXCEEDING:

27 (I) \$10,000 IF THE RESPONDENT HAS NOT BEEN ADJUDGED TO
28 HAVE COMMITTED ANY PRIOR UNLAWFUL EMPLOYMENT PRACTICE;

29 (II) \$25,000 IF THE RESPONDENT HAS BEEN ADJUDGED TO HAVE
30 COMMITTED ONE OTHER UNLAWFUL EMPLOYMENT PRACTICE DURING THE 5-YEAR
31 PERIOD ENDING ON THE DATE OF THE FILING OF THIS CHARGE; AND

32 (III) \$50,000 IF THE RESPONDENT HAS BEEN ADJUDGED TO HAVE
33 COMMITTED TWO OR MORE UNLAWFUL EMPLOYMENT PRACTICES DURING THE
34 7-YEAR PERIOD ENDING ON THE DATE OF THE FILING OF THIS CHARGE.

35 (B) IF THE ACTS CONSTITUTING AN UNLAWFUL EMPLOYMENT PRACTICE
36 THAT IS THE OBJECT OF THE CHARGE ARE COMMITTED BY THE SAME NATURAL
37 PERSON WHO HAS BEEN PREVIOUSLY ADJUDGED TO HAVE COMMITTED ACTS
38 CONSTITUTING AN UNLAWFUL EMPLOYMENT PRACTICE, THEN THE CIVIL
39 PENALTIES SET FORTH IN THIS SECTION MAY BE IMPOSED WITHOUT REGARD TO
40 THE PERIOD OF TIME WITHIN WHICH ANY SUBSEQUENT UNLAWFUL EMPLOYMENT
41 PRACTICE OCCURRED.

42 (C) THE SUM OF THE AMOUNT OF COMPENSATORY DAMAGES AWARDED
43 UNDER THIS SECTION FOR FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN,

6

1 SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE,
2 AND OTHER NONPECUNIARY LOSSES, AND THE AMOUNT OF CIVIL PENALTIES
3 AWARDED UNDER THIS SECTION, MAY NOT EXCEED, FOR EACH COMPLAINING
4 PARTY:

5 (1) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 14 AND
6 FEWER THAN 101 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
7 CURRENT OR PRECEDING CALENDAR YEAR, \$50,000;

8 (2) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 100 AND
9 FEWER THAN 201 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
10 CURRENT OR PRECEDING CALENDAR YEAR, \$100,000;

11 (3) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 200 AND
12 FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
13 CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

14 (4) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 500
15 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
16 PRECEDING CALENDAR YEAR, \$300,000.

17 (D) IN CASES WHERE AN UNLAWFUL EMPLOYMENT PRACTICE INVOLVES A
18 REASONABLE ACCOMMODATION, DAMAGES MAY NOT BE AWARDED UNDER THIS
19 SECTION:

20 (1) IF THE PERSON WITH THE DISABILITY HAS INFORMED THE
21 COVERED ENTITY THAT ACCOMMODATION IS NEEDED; AND

22 (2) IF, IN CONSULTATION WITH THE PERSON WITH THE DISABILITY, THE
23 COVERED ENTITY DEMONSTRATES GOOD FAITH EFFORTS TO IDENTIFY
24 REASONABLE ACCOMMODATION THAT:

25 (I) WOULD PROVIDE THE INDIVIDUAL WITH AN EQUALLY
26 EFFECTIVE OPPORTUNITY; AND

27 (II) WOULD NOT CAUSE AN UNDUE HARDSHIP ON THE OPERATOR
28 OF THE BUSINESS.

29 (E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE SCOPE OF, OR THE
30 RELIEF AVAILABLE UNDER, ANY OTHER PROVISION OF STATE OR FEDERAL LAW.

31 (F) (1) THE GENERAL COUNSEL HAS THE BURDEN OF PROOF UNDER THIS
32 SECTION TO PROVIDE BY THE PREPONDERANCE OF THE EVIDENCE THAT EACH
33 ITEM OF DAMAGE EXISTS AND WAS CAUSED BY THE RESPONDENT.

34 (2) ACTUAL MALICE MUST BE PROVEN BY CLEAR AND CONVINCING
35 EVIDENCE.

36 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act
37 or the application thereof to any person or circumstance is held invalid for any reason in
38 a court of competent jurisdiction, the invalidity does not affect otherprovisions or any
39 other application of this Act which can be given effect without the invalid provision or
40 application, and for this purpose the provisions of this Act are declared severable.

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1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1996, and shall apply only to cases arising on or after thatdate.