
By: ~~Delegate Curran~~ Delegates Curran and Petzold

Rules suspended

Introduced and read first time: March 15, 1996 Assigned to: Rules and Executive Nominations

Re-referred to: Commerce and Government Matters, March 18, 1996

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 1996

CHAPTER ____

1 AN ACT concerning

2 Human Relations Commission - Jurisdiction - Employment Discrimination

3 FOR the purpose of altering the jurisdiction of the Maryland Human Relations

4 Commission with regard to matters involving discrimination in employment; making

5 stylistic changes; and generally relating to the jurisdiction of the Maryland Human

6 Relations Commission with regard to matters involving employment discrimination.

7 BY repealing and reenacting, with amendments,

8 Article 49B - Human Relations Commission

9 Section 11(a), (e), and (g) and 15

10 Annotated Code of Maryland

11 (1994 Replacement Volume and 1995 Supplement)

12 BY repealing and reenacting, without amendments,

13 Article 49B - Human Relations Commission

14 Section 14, 16, 17, and 18

15 Annotated Code of Maryland

16 (1994 Replacement Volume and 1995 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

18 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article 49B - Human Relations Commission**2 11.

3 (a) In case of failure to reach an agreement for the elimination of the acts of
 4 discrimination and upon the entry of findings to that effect, the entire file including the
 5 complaint and any and all findings made shall be certified to THE GENERAL COUNSEL.
 6 The [Chairman] EXECUTIVE DIRECTOR shall cause a written notice to be issued and
 7 served in the name of the Commission together with a copy of the complaint requiring the
 8 respondent to answer the charges of the complaint at a public hearing before [a hearing
 9 examiner at a time and place certified in the notice] AN ADMINISTRATIVE LAW JUDGE.

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

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

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

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1 14.

2 It is hereby declared to be the policy of the State of Maryland, in the exercise of its
3 police power for the protection of the public safety, public health and general welfare, for
4 the maintenance of business and good government and for the promotion of the State's
5 trade, commerce and manufacturers to assure all persons equal opportunity in receiving
6 employment and in all labor management-union relations regardless of race, color,
7 religion, ancestry or national origin, sex, age, marital status, or physical or mental
8 handicap unrelated in nature and extent so as to reasonably preclude the performance of
9 the employment, and to that end to prohibit discrimination in employment by any person,
10 group, labor organization, organization or any employer or his agents.

11 15.

12 For the purposes of this subtitle:

13 (a) The term "person" includes one or more individuals, labor unions,
14 partnerships, associations, corporations, legal representatives, mutual companies,
15 joint-stock companies, trusts, unincorporated organizations, trustees, trustees in
16 bankruptcy, or receivers.

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

24 (c) The term "employment agency" means any person regularly undertaking with
25 or without compensation to procure employees for an employer or to procure for
26 employees opportunities to work for an employer and includes an agent or such a person;
27 but shall not include an agency of the United States or an agency of the State of Maryland
28 or political subdivision thereof, except such term shall include the United States
29 Employment Service and the system of State and local employment services receiving
30 federal assistance.

31 (d) The term "labor organization" means a labor organization engaged in an
32 industry and any agent of such an organization, and includes any organization of any kind,
33 any agency, or employee representation committee, group, association, or plan so
34 engaged in which employees participate and which exists for the purpose, in whole or in
35 part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay,
36 hours, or other terms or conditions of employment, and any conference, general
37 committee, joint or system board, or joint council so engaged which is subordinate to a
38 national or international labor organization.

39 (e) The term "employee" means an individual employed by an employer, except
40 that "employee" does not include any person elected to public office or any person chosen
41 by the officer to be on the officer's personnel staff, or an appointee in the policy making
42 level or an immediate advisor with respect to the exercise of the constitutional or legal

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1 powers of the office. The exception set forth in the preceding sentence does not include
2 employees subject to the State or local civil service laws.

3 (f) The term "religion" includes all aspects of religious observances and practice,
4 as well as belief, except in those cases when the observance, practice, or belief cannot be
5 reasonably accommodated by an employer without causing undue hardship on the
6 conduct of the employer's business.

7 (g) The term "physical or mental handicap" means any physical disability,
8 infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or
9 illness including epilepsy, and which shall include, but not be limited to, any degree of
10 paralysis, amputation, lack of physical coordination, blindness or visual impairment,
11 deafness or hearing impairment, muteness or speech impediment or physical reliance on
12 a seeing eye dog, wheelchair, or other remedial appliance or device; and any mental
13 impairment or deficiency as, but not limited to, retardation or such other which may have
14 necessitated remedial or special education and related services.

15 16.

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

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

22 (2) To limit, segregate, or classify his employees or applicants for
23 employment in any way which would deprive or tend to deprive any individual of
24 employment opportunities or otherwise adversely affect his status as an employee,
25 because of the individual's race, color, religion, sex, age, national origin, marital status, or
26 physical or mental handicap unrelated in nature and extent so as to reasonably preclude
27 the performance of the employment;

28 (b) It shall be an unlawful employment practice for an employment agency to fail
29 or refuse to refer for employment, or otherwise to discriminate against, any individual
30 because of his race, color, religion, sex, age, national origin, marital status, or physical or
31 mental handicap unrelated in nature and extent so as to reasonably preclude the
32 performance of the employment, or to classify or refer for employment any individual on
33 the basis of his race, color, religion, sex, age, national origin, marital status, or physical or
34 mental handicap unrelated in nature and extent so as to reasonably preclude the
35 performance of the employment;

36 (c) It shall be an unlawful employment practice for a labor organization: (1) to
37 exclude or to expel from its membership, or otherwise to discriminate against, any
38 individual because of his race, color, religion, sex, age, national origin, marital status, or
39 physical or mental handicap unrelated in nature and extent so as to reasonably preclude
40 the performance of the employment; (2) to limit, segregate or classify its membership, or
41 to classify or fail or refuse to refer for employment any individual, in any way which would
42 deprive or tend to deprive any individual of employment opportunities, or would limit
43 such employment opportunities or otherwise adversely affect his status as an employee or

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1 as an applicant for employment, because of such individual's race, color, religion, sex,
2 age, national origin, marital status, or physical or mental handicap unrelated in nature
3 and extent so as to reasonably preclude the performance of the employment; or (3) to
4 cause or attempt to cause an employer to discriminate against an individual in violation of
5 this section;

6 (d) It shall be an unlawful employment practice for any employer, labor
7 organization, or joint labor-management committee controlling apprenticeship or other
8 training or retraining, including on-the-job training programs to discriminate against any
9 individual because of his race, color, religion, sex, age, national origin, marital status, or
10 physical or mental handicap unrelated in nature or extent so as to reasonably preclude
11 the performance of the employment in admission to, or employment in, any program
12 established to provide apprenticeship or other training;

13 (e) It is an unlawful employment practice for an employer, labor organization, or
14 employment agency to print or cause to be printed or published any notice or
15 advertisement relating to employment by the employer or membership in or any
16 classification or referral for employment by the labor organization, or relating to any
17 classification or referral for employment by the agency, indicating any preference,
18 limitation, specification, or discrimination, based on race, color, religion, sex, age,
19 national origin or on the basis of a physical or mental qualification. However, a notice or
20 advertisement may indicate a preference, limitation, specification, or discrimination
21 based on religion, sex, age, national origin or physical or mental qualification when
22 religion, sex, age, national origin or physical or mental qualification is a bona fide
23 occupational qualification for employment;

24 (f) It is an unlawful employment practice for an employer to discriminate against
25 any of his employees or applicants for employment, for an employment agency to
26 discriminate against any individual, or for a labor organization to discriminate against any
27 member thereof or applicant for membership, because he has opposed any practice made
28 an unlawful employment practice by this subtitle or because he has made a charge,
29 testified, assisted, or participated in any manner in an investigation, proceeding, or
30 hearing under this subtitle;

31 (g) Notwithstanding any other provision of this subtitle, (1) it is not an unlawful
32 employment practice for an employer to hire and employ employees, for an employment
33 agency to classify, or refer for employment any individual, for a labor organization to
34 classify its membership or to classify or refer for employment any individual, or for an
35 employer, labor organization or joint labor-management committee controlling
36 apprenticeship or other training or retraining programs to admit or employ any individual
37 in any such program, on the basis of his religion, national origin or physical or mental
38 qualification in those instances where sex, age, religion, national origin or physical or
39 mental qualification is a bona fide occupational qualification reasonably necessary to the
40 normal operation of that particular business or enterprise; (2) it is not an unlawful
41 employment practice for an employer to establish standards concerning an employee's
42 dress and grooming if the standards are directly related to the nature of the employment
43 of the employee; (3) it is not an unlawful employment practice for a school, college,
44 university, or other educational institution or institution of learning to hire and employ
45 employees of a particular religion if the school, college, university, or other educational
46 institution or institution of learning is, in whole or in substantial part, owned, supported,

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

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

23 17.

24 Disabilities caused or contributed to by pregnancy or childbirth, are temporary
25 disabilities for all job-related purposes, and shall be treated as such under any health or
26 temporary disability insurance or sick leave plan available in connection with
27 employment. Written and unwritten employment policies and practices involving matters
28 such as the commencement and duration of leave, the availability of extensions, the
29 accrual of seniority and other benefits and privileges, reinstatement and payment under
30 any health or temporary disability insurance or sick leave plan, formal or informal, shall
31 be applied to disability due to pregnancy or childbirth on the same terms and conditions
32 as they are applied to other temporary disabilities subject to the provisions of this section.

33 18.

34 This subtitle shall not apply to an employer with respect to the employment of
35 aliens outside of the State, or to a religious corporation, association, educational
36 institution or society with respect to the employment of individuals of a particular religion
37 to perform work connected with the carrying on by such corporation, association,
38 educational institution or society of its activities.

39 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
40 October 1, 1996.

