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HB 497/96 - CGM

1997 Regular Session
7lr0495

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

A BILL ENTITLED

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; making stylistic
9 changes; and generally relating to hearings and relief under the Human Relations
10 Commission law.

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

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

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

19 11.

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

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

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

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

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

8 (i) Administer oaths and to issue subpoenas;

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

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

12 (2) Any subpoena shall be served by:

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

15 (ii) Personal service of process by:

16 1. An employee of the Commission;

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

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

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

25 (ii) In case of contumacy or refusal to obey a subpoena for the
26 attendance of a witness or the production of books, papers, records, and documents, after
27 notice to the person subpoenaed as a witness or directed to produce books, papers,
28 records and documents, and upon a finding that the attendance and testimony of the
29 witness or the production of the books, papers, records and documents is relevant or
30 necessary for the proceedings of the Commission, the court may issue an order requiring
31 the attendance and testimony of the witness and the production of the books, papers,
32 records and documents.

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

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

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

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

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

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