
By: Delegates Finifter, Rosenberg, McIntosh, Turner, Bobo, Campbell, Morhaim, Kagan, Petzold, Faulkner, Dembrow, Rosapepe, Hixson, and Goldwater

Introduced and read first time: January 31, 1997

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Workplace Religious Freedom Act of 1997**

3 FOR the purpose of requiring an employer to accommodate the religion of an employee
4 or applicant for employment under certain circumstances; defining certain terms;
5 providing factors to be considered for certain standards; altering certain existing
6 definitions; providing certain situations under which an accommodation is not
7 reasonable; prohibiting the use of certain defenses; making stylistic changes;
8 providing for the application of this Act; and generally relating to the
9 accommodation of religion in the workplace.

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

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

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

18 15.

19 (f) (1) The term "religion" includes all aspects of religious observances and
20 practice, as well as belief, except in those cases when the observance, practice, or belief
21 cannot be reasonably accommodated by an employer, AFTER INITIATING AND
22 ENGAGING IN AN AFFIRMATIVE AND BONA FIDE EFFORT, without causing undue
23 hardship on the conduct of the employer's business.

24 (2) IN PARAGRAPH (1) OF THIS SUBSECTION, "UNDUE HARDSHIP"
25 MEANS SIGNIFICANT DIFFICULTY OR EXPENSE.

26 (3) THE FOLLOWING FACTORS SHALL BE INCLUDED IN DETERMINING
27 WHETHER AN ACCOMMODATION FOR A RELIGIOUS OBSERVANCE, PRACTICE, OR
28 BELIEF REQUIRES THE EMPLOYER TO INCUR SIGNIFICANT DIFFICULTY OR
29 EXPENSE:

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1 (I) THE IDENTIFIABLE COST OF THE ACCOMMODATION IN
2 RELATION TO THE SIZE AND OPERATING COST OF THE EMPLOYER; AND

3 (II) THE NUMBER OF INDIVIDUALS WHO WILL NEED THAT
4 PARTICULAR ACCOMMODATION.

5 16.

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

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

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

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

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

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

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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) (1) IT SHALL BE AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN
15 EMPLOYER TO FAIL TO REASONABLY ACCOMMODATE THE RELIGION OF AN
16 EMPLOYEE OR APPLICANT FOR EMPLOYMENT.

17 (2) AN ACCOMMODATION FOR RELIGION BY AN EMPLOYER MAY NOT
18 BE DEEMED TO BE REASONABLE IF:

19 (I) THE ACCOMMODATION DOES NOT REMOVE THE CONFLICT
20 BETWEEN EMPLOYMENT REQUIREMENTS AND THE RELIGION OF THE EMPLOYEE
21 OR APPLICANT FOR EMPLOYMENT; OR

22 (II) 1. THE EMPLOYEE OR APPLICANT FOR EMPLOYMENT
23 DEMONSTRATES TO THE EMPLOYER THE AVAILABILITY OF AN ALTERNATIVE
24 ACCOMMODATION LESS ONEROUS TO THE EMPLOYEE OR APPLICANT FOR
25 EMPLOYMENT THAT MAY BE MADE BY THE EMPLOYER WITHOUT UNDUE HARDSHIP
26 ON THE CONDUCT OF THE EMPLOYER'S BUSINESS; AND

27 2. THE EMPLOYER REFUSES TO MAKE THE
28 ACCOMMODATION.

29 (3) IT IS NOT A DEFENSE TO A CLAIM OF A VIOLATION OF THIS SECTION
30 THAT THE ACCOMMODATION WOULD VIOLATE A BONA FIDE SENIORITY SYSTEM IF,
31 FOR THE EMPLOYER TO REASONABLY ACCOMMODATE THE RELIGION:

32 (I) AN ADJUSTMENT WOULD BE MADE IN THE EMPLOYEE'S WORK
33 HOURS, SHIFT, OR JOB ASSIGNMENT, INCLUDING AN ADJUSTMENT THAT REQUIRES
34 THE EMPLOYEE TO WORK OVERTIME IN ORDER TO AVOID WORKING AT A TIME
35 THAT ABSTENTION FROM WORK IS NECESSARY TO SATISFY RELIGIOUS
36 REQUIREMENTS, THAT WOULD NOT BE AVAILABLE TO ANY EMPLOYEE BUT FOR
37 THE ACCOMMODATION; OR

38 (II) THE EMPLOYEE AND ANY OTHER EMPLOYEE WOULD
39 VOLUNTARILY EXCHANGE SHIFTS OR JOB ASSIGNMENTS, OR VOLUNTARILY MAKE
40 SOME OTHER ARRANGEMENT BETWEEN THE EMPLOYEES.

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1 (4) (I) IN THIS PARAGRAPH, "PREMIUM WAGES" INCLUDES PREMIUM
2 OVERTIME PAY, PAY FOR NIGHT, WEEKEND, OR HOLIDAY WORK, AND PAY FOR
3 STANDBY OR IRREGULAR DUTY.

4 (II) AN EMPLOYER MAY NOT BE REQUIRED TO PAY PREMIUM
5 WAGES FOR WORK PERFORMED DURING HOURS TO WHICH THE PREMIUM WAGES
6 WOULD ORDINARILY BE APPLICABLE, IF WORK IS PERFORMED DURING THE HOURS
7 ONLY TO ACCOMMODATE AN EMPLOYEE'S RELIGION.

8 [(f)] (G) It is an unlawful employment practice for an employer to discriminate
9 against any of his employees or applicants for employment, for an employment agency to
10 discriminate against any individual, or for a labor organization to discriminate against any
11 member thereof or applicant for membership, because he has opposed any practice made
12 an unlawful employment practice by this subtitle or because he has made a charge,
13 testified, assisted, or participated in any manner in an investigation, proceeding, or
14 hearing under this subtitle[;].

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

39 [(h)] (I) Nothing contained in this subtitle shall be interpreted to require any
40 employer, employment agency, labor organization, or joint labor-management committee
41 subject to this subtitle to grant preferential treatment to any individual or to any group
42 because of the race, color, religion, sex, age, national origin or physical or mental
43 handicap of the individual or group on account of an imbalance which may exist with
44 respect to the total number or percentage of persons of any race, color, religion, sex, age,
45 national origin or physically or mentally handicapped persons employed by any employer,
46 referred or classified for employment by any employment agency or labor organization,

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1 admitted to membership or classified by any labor agency or labor organization, admitted
2 to membership or classified by any labor organization, or admitted to, or employed in, any
3 apprenticeship or other training program, in comparison with the total number or
4 percentage of persons of such race, color, religion, sex, age, national origin or physically
5 or mentally handicapped persons in any community, State, section, or other area, or in
6 the available work force in any community, State, section, or other area.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
8 only prospectively and may not be applied or interpreted to have any effect or application
9 before the effective date of this Act.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 1997.