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**By: Delegates Finifter, Rosenberg, McIntosh, Turner, Bobo, Campbell, Morhaim, Kagan, Petzold, Faulkner, Dembrow, Rosapepe, Hixson, and Goldwater** ~~Goldwater, R. Baker, Genn, Frank, E. Burns, and Parker~~

Introduced and read first time: January 31, 1997

Assigned to: Commerce and Government Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 1997

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CHAPTER \_\_\_\_\_

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~~ altering a certain definition;  
8 specifying certain factors that are to be used in making a certain determination;  
9 making stylistic changes; providing for the application of this Act; and generally  
10 relating to the accommodation of religion in the workplace.

11 BY repealing and reenacting, with amendments,  
12 Article 49B - Human Relations Commission  
13 Section 15(f) and 16  
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 15.

20 (f) (1) The term "religion" includes all aspects of religious observances and  
21 practice, as well as belief, except in those cases when the observance, practice, or belief  
22 cannot be reasonably accommodated by an employer, AFTER INITIATING AND

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1 ENGAGING IN AN AFFIRMATIVE AND BONA FIDE EFFORT, without causing undue  
2 hardship OR EXPENSE on the conduct of the employer's business.

3 ~~(2) IN PARAGRAPH (1) OF THIS SUBSECTION, "UNDUE HARDSHIP"~~  
4 ~~MEANS SIGNIFICANT DIFFICULTY OR EXPENSE.~~

5 ~~(3)~~ (2) THE FOLLOWING FACTORS SHALL BE ~~INCLUDED~~ CONSIDERED  
6 IN DETERMINING WHETHER AN ACCOMMODATION FOR A RELIGIOUS OBSERVANCE,  
7 PRACTICE, OR BELIEF ~~REQUIRES THE EMPLOYER TO INCUR SIGNIFICANT~~  
8 ~~DIFFICULTY~~ CAUSES THE EMPLOYER UNDUE HARDSHIP OR EXPENSE:

9 (I) THE IDENTIFIABLE COST OF THE ACCOMMODATION IN  
10 RELATION TO THE SIZE AND OPERATING COST OF THE EMPLOYER; ~~AND~~

11 (II) THE NUMBER OF INDIVIDUALS WHO WILL NEED THAT  
12 PARTICULAR ACCOMMODATION;

13 (III) THE ACTION CONFLICTS WITH A COLLECTIVE BARGAINING  
14 AGREEMENT; AND

15 (IV) THE ACTION PLACES A SIGNIFICANT BURDEN ON OTHER  
16 EMPLOYEES.

17 (3) AN ACCOMMODATION BY AN EMPLOYER TO AN EMPLOYEE FOR A  
18 RELIGIOUS OBSERVANCE, PRACTICE, OR BELIEF THAT CAUSES THE EMPLOYER TO  
19 INCUR DE MINIMIS EXPENSE IS NOT AN UNDUE HARDSHIP OR EXPENSE UNDER THIS  
20 SUBSECTION.

21 16.

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

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

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

34 (b) It shall be an unlawful employment practice for an employment agency to fail  
35 or refuse to refer for employment, or otherwise to discriminate against, any individual  
36 because of his race, color, religion, sex, age, national origin, marital status, or physical or  
37 mental handicap unrelated in nature and extent so as to reasonably preclude the  
38 performance of the employment, or to classify or refer for employment any individual on  
39 the basis of his race, color, religion, sex, age, national origin, marital status, or physical or  
40 mental handicap unrelated in nature and extent so as to reasonably preclude the  
41 performance of the employment[;].

1 (c) It shall be an unlawful employment practice for a labor organization: (1) to  
 2 exclude or to expel from its membership, or otherwise to discriminate against, any  
 3 individual because of his race, color, religion, sex, age, national origin, marital status, or  
 4 physical or mental handicap unrelated in nature and extent so as to reasonably preclude  
 5 the performance of the employment; (2) to limit, segregate or classify its membership, or  
 6 to classify or fail or refuse to refer for employment any individual, in any way which would  
 7 deprive or tend to deprive any individual of employment opportunities, or would limit  
 8 such employment opportunities or otherwise adversely affect his status as an employee or  
 9 as an applicant for employment, because of such individual's race, color, religion, sex,  
 10 age, national origin, marital status, or physical or mental handicap unrelated in nature  
 11 and extent so as to reasonably preclude the performance of the employment; or (3) to  
 12 cause or attempt to cause an employer to discriminate against an individual in violation of  
 13 this section[;].

14 (d) It shall be an unlawful employment practice for any employer, labor  
 15 organization, or joint labor-management committee controlling apprenticeship or other  
 16 training or retraining, including on-the-job training programs to discriminate against any  
 17 individual because of his race, color, religion, sex, age, national origin, marital status, or  
 18 physical or mental handicap unrelated in nature or extent so as to reasonably preclude  
 19 the performance of the employment in admission to, or employment in, any program  
 20 established to provide apprenticeship or other training[;].

21 (e) It is an unlawful employment practice for an employer, labor organization, or  
 22 employment agency to print or cause to be printed or published any notice or  
 23 advertisement relating to employment by the employer or membership in or any  
 24 classification or referral for employment by the labor organization, or relating to any  
 25 classification or referral for employment by the agency, indicating any preference,  
 26 limitation, specification, or discrimination, based on race, color, religion, sex, age,  
 27 national origin or on the basis of a physical or mental qualification. However, a notice or  
 28 advertisement may indicate a preference, limitation, specification, or discrimination  
 29 based on religion, sex, age, national origin or physical or mental qualification when  
 30 religion, sex, age, national origin or physical or mental qualification is a bona fide  
 31 occupational qualification for employment[;].

32 ~~(F) (1) IT SHALL BE AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN~~  
 33 ~~EMPLOYER TO FAIL TO REASONABLY ACCOMMODATE THE RELIGION OF AN~~  
 34 ~~EMPLOYEE OR APPLICANT FOR EMPLOYMENT.~~

35 ~~(2) AN ACCOMMODATION FOR RELIGION BY AN EMPLOYER MAY NOT~~  
 36 ~~BE DEEMED TO BE REASONABLE IF:~~

37 ~~(I) THE ACCOMMODATION DOES NOT REMOVE THE CONFLICT~~  
 38 ~~BETWEEN EMPLOYMENT REQUIREMENTS AND THE RELIGION OF THE EMPLOYEE~~  
 39 ~~OR APPLICANT FOR EMPLOYMENT; OR~~

40 ~~(II) 1. THE EMPLOYEE OR APPLICANT FOR EMPLOYMENT~~  
 41 ~~DEMONSTRATES TO THE EMPLOYER THE AVAILABILITY OF AN ALTERNATIVE~~  
 42 ~~ACCOMMODATION LESS ONEROUS TO THE EMPLOYEE OR APPLICANT FOR~~  
 43 ~~EMPLOYMENT THAT MAY BE MADE BY THE EMPLOYER WITHOUT UNDUE HARDSHIP~~  
 44 ~~ON THE CONDUCT OF THE EMPLOYER'S BUSINESS; AND~~

1   ~~2. THE EMPLOYER REFUSES TO MAKE THE~~  
2 ~~ACCOMMODATION.~~

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

6                             ~~(I) AN ADJUSTMENT WOULD BE MADE IN THE EMPLOYEE'S WORK~~  
7 ~~HOURS, SHIFT, OR JOB ASSIGNMENT, INCLUDING AN ADJUSTMENT THAT REQUIRES~~  
8 ~~THE EMPLOYEE TO WORK OVERTIME IN ORDER TO AVOID WORKING AT A TIME~~  
9 ~~THAT ABSTENTION FROM WORK IS NECESSARY TO SATISFY RELIGIOUS~~  
10 ~~REQUIREMENTS, THAT WOULD NOT BE AVAILABLE TO ANY EMPLOYEE BUT FOR~~  
11 ~~THE ACCOMMODATION; OR~~

12                            ~~(II) THE EMPLOYEE AND ANY OTHER EMPLOYEE WOULD~~  
13 ~~VOLUNTARILY EXCHANGE SHIFTS OR JOB ASSIGNMENTS, OR VOLUNTARILY MAKE~~  
14 ~~SOME OTHER ARRANGEMENT BETWEEN THE EMPLOYEES.~~

15                            ~~(4) (I) IN THIS PARAGRAPH, "PREMIUM WAGES" INCLUDES PREMIUM~~  
16 ~~OVERTIME PAY, PAY FOR NIGHT, WEEKEND, OR HOLIDAY WORK, AND PAY FOR~~  
17 ~~STANDBY OR IRREGULAR DUTY.~~

18                            ~~(II) AN EMPLOYER MAY NOT BE REQUIRED TO PAY PREMIUM~~  
19 ~~WAGES FOR WORK PERFORMED DURING HOURS TO WHICH THE PREMIUM WAGES~~  
20 ~~WOULD ORDINARILY BE APPLICABLE, IF WORK IS PERFORMED DURING THE HOURS~~  
21 ~~ONLY TO ACCOMMODATE AN EMPLOYEE'S RELIGION.~~

22                            (F) IT IS AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN EMPLOYER NOT TO  
23 REASONABLY ACCOMMODATE AN EMPLOYEE, OR AN APPLICANT FOR  
24 EMPLOYMENT, FOR RELIGIOUS OBSERVANCE, PRACTICE, OR BELIEF UNLESS IT IS  
25 DETERMINED THAT THE ACCOMMODATION CAUSES THE EMPLOYER AN UNDUE  
26 HARDSHIP OR EXPENSE UNDER § 15(F)(2) OF THIS SUBTITLE.

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

34                    [(g)] (H) Notwithstanding any other provision of this subtitle, (1) it is not an  
35 unlawful employment practice for an employer to hire and employ employees, for an  
36 employment agency to classify, or refer for employment any individual, for a labor  
37 organization to classify its membership or to classify or refer for employment any  
38 individual, or for an employer, labor organization or joint labor-management committee  
39 controlling apprenticeship or other training or retraining programs to admit or employ  
40 any individual in any such program, on the basis of his religion, national origin or physical  
41 or mental qualification in those instances where sex, age, religion, national origin or  
42 physical or mental qualification is a bona fide occupational qualification reasonably  
43 necessary to the normal operation of that particular business or enterprise; (2) it is not an

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1 unlawful employment practice for an employer to establish standards concerning an  
 2 employee's dress and grooming if the standards are directly related to the nature of the  
 3 employment of the employee; (3) it is not an unlawful employment practice for a school,  
 4 college, university, or other educational institution or institution of learning to hire and  
 5 employ employees of a particular religion if the school, college, university, or other  
 6 educational institution or institution of learning is, in whole or in substantial part, owned,  
 7 supported, controlled, or managed by a particular religion or by a particular religious  
 8 corporation, association, or society or if the curriculum of the school, college, university,  
 9 or other educational institution or institution of learning is directed toward the  
 10 propagation of a particular religion; and (4) it is not unlawful for an employer,  
 11 employment agency or labor organization to observe the terms of a bona fide seniority  
 12 system or any bona fide employee benefit plan such as a retirement, pension or insurance  
 13 plan, which is not a subterfuge to evade the purposes of this subtitle; however, no  
 14 employee benefit plan shall excuse the failure to hire any individual[;].

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

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

32 SECTION 3. AND BE IT FURTHER ENACTED, That, for the period October 1,  
 33 1997 through September 30, 1999, the Maryland Commission on Human Relations shall  
 34 collect, maintain, and analyze information and data on the implementation of this Act. By  
 35 December 31, 1999, the Commission shall submit a report of its findings, together with  
 36 any recommendations it wishes to propose, regarding the implementation of this Act to  
 37 the Governor and, subject to § 2-1312 of the State Government Article, to the Legislative  
 38 Policy Committee of the General Assembly.

39 SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 40 October 1, 1997.

