

HOUSE BILL 1041  
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1998 Regular Session  
8lr0035  
CF 8lr0196

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By: **Delegates Rosenberg, Goldwater, Hubbard, Baldwin, Barve, Beck, Bobo, Boston, E. Burns, M. Burns, Ciliberti, Conroy, Cryor, Curran, C. Davis, DeCarlo, Dewberry, Donoghue, Doory, Dypski, Elliott, Exum, Faulkner, Finifter, Frank, Genn, Getty, Grosfeld, Healey, Hixson, Howard, Jacobs, Kagan, Klausmeier, Klima, Kopp, Krysiak, Linton, Love, Mandel, Marriott, Minnick, Morhaim, T. Murphy, Nathan-Pulliam, O'Donnell, Opara, Owings, Pendergrass, Perry, Petzold, Pitkin, Preis, Proctor, Rawlings, Rzepkowski, Schisler, Shriver, Taylor, Turner, Valderrama, Weir, and Wood**

Introduced and read first time: February 13, 1998

Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Religious Freedom**

3 FOR the purpose of prohibiting governmental authority from burdening religious  
4 exercise; defining certain terms; providing certain exceptions; requiring  
5 governmental authority to demonstrate that certain actions are in compliance  
6 with this Act; providing for the applicability of this Act; permitting certain  
7 persons who are aggrieved by a violation of this Act to obtain certain relief in a  
8 civil action; prohibiting this Act from being construed in a certain manner; and  
9 generally relating to the protection of religious freedom.

10 BY adding to

11 Article - State Government

12 Section 12-601 through 12-606 to be under the new subtitle "Subtitle 6.

13 Religious Exercise"

14 Annotated Code of Maryland

15 (1995 Replacement Volume and 1997 Supplement)

16 **Preamble**

17 WHEREAS, The General Assembly recognizes that the State of Maryland was  
18 founded on the principle of religious tolerance, and that government should not  
19 impede an individual's observance of any religion or discriminate invidiously among  
20 religions; and

21 WHEREAS, Governmental actions that are "neutral" toward religion  
22 nonetheless may burden religious exercise as surely as governmental actions that are  
23 intended to interfere with religious exercise; and

1 WHEREAS, Government should not burden religious exercise without  
2 compelling justification; and

3 WHEREAS, It is the intent of the General Assembly that the provisions of this  
4 Act should be interpreted liberally so as to afford broad protection against  
5 government burdens on religious exercise; and

6 WHEREAS, It is not the intent of the General Assembly to provide a cause of  
7 action to any person to challenge any government accommodation or any granting of  
8 benefits to any other religious individuals or organizations; now, therefore,

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

11 **Article - State Government**

12 **SUBTITLE 6. RELIGIOUS EXERCISE.**

13 12-601.

14 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
15 INDICATED.

16 (B) "COMPELLING GOVERNMENTAL INTEREST" MEANS AN INTEREST ONLY OF  
17 THE HIGHEST ORDER ARISING FROM A SUBSTANTIAL THREAT TO PUBLIC HEALTH,  
18 SAFETY, PEACE, OR ORDER.

19 (C) "DEMONSTRATES" MEANS MEETS THE BURDENS OF GOING FORWARD  
20 WITH THE EVIDENCE AND OF PERSUASION.

21 (D) "GOVERNMENTAL ACTION" MEANS A LAW, REGULATION, ADMINISTRATIVE  
22 ORDER, DECISION, PRACTICE, OR OTHER EXERCISE OF GOVERNMENTAL AUTHORITY.

23 (E) "GOVERNMENTAL AUTHORITY" INCLUDES THE AUTHORITY OF:

24 (1) THE STATE OR ANY COUNTY OR MUNICIPAL CORPORATION OR ANY  
25 SUBDIVISION OF THE STATE, COUNTY, OR MUNICIPAL CORPORATION;

26 (2) ANY AGENCY, DEPARTMENT, UNIT OR INSTRUMENTALITY OF ANY  
27 ENTITY DESCRIBED IN ITEM (1) OF THIS SUBSECTION; AND

28 (3) ANY OFFICIAL OR OTHER INDIVIDUAL ACTING UNDER COLOR OF  
29 ANY ENTITY DESCRIBED IN PARAGRAPHS (1) OR (2) OF THIS SUBSECTION.

30 (F) "LEAST RESTRICTIVE MEANS OF ACHIEVING A COMPELLING  
31 GOVERNMENTAL INTEREST" MEANS THAT:

32 (1) THE APPLICATION OF THE BURDEN TO THE PERSON IS ESSENTIAL  
33 TO ACHIEVE THE STATE'S COMPELLING GOVERNMENTAL INTEREST; AND

1 (2) THERE IS NO ALTERNATIVE MEANS OF ACHIEVING THE STATE'S  
2 COMPELLING GOVERNMENTAL INTEREST THAT WILL IMPOSE A LESSER BURDEN ON  
3 A PERSON'S RELIGIOUS EXERCISE.

4 (G) "PERSON" INCLUDES AN INDIVIDUAL AND A RELIGIOUS ORGANIZATION,  
5 ASSOCIATION, OR CORPORATION.

6 (H) "RELIGIOUS EXERCISE" MEANS AN ACT OR REFUSAL TO ACT THAT IS  
7 SUBSTANTIALLY MOTIVATED BY RELIGIOUS BELIEF, WHETHER OR NOT THE  
8 RELIGIOUS EXERCISE IS COMPULSORY OR CENTRAL TO A LARGER SYSTEM OF  
9 RELIGIOUS BELIEF.

10 12-602.

11 GOVERNMENTAL ACTION MAY NOT SUBSTANTIALLY BURDEN A PERSON'S  
12 RELIGIOUS EXERCISE, EVEN IF THE BURDEN RESULTS FROM GOVERNMENTAL  
13 ACTION OF GENERAL APPLICABILITY, UNLESS THE GOVERNMENTAL AUTHORITY  
14 DEMONSTRATES THAT THE APPLICATION OF THE BURDEN TO THE PERSON IS THE  
15 LEAST RESTRICTIVE MEANS OF ACHIEVING A COMPELLING GOVERNMENTAL  
16 INTEREST.

17 12-603.

18 (A) A PERSON AGGRIEVED BY A VIOLATION OF THIS SUBTITLE MAY OBTAIN  
19 APPROPRIATE RELIEF, INCLUDING RELIEF AGAINST GOVERNMENTAL AUTHORITY, IN  
20 A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION.

21 (B) APPROPRIATE RELIEF UNDER THIS SUBTITLE MAY INCLUDE:

22 (1) INJUNCTIVE RELIEF;

23 (2) MONETARY DAMAGES; AND

24 (3) REASONABLE COUNSEL FEES AND OTHER REASONABLE LITIGATION  
25 COSTS.

26 (C) THE RIGHTS ESTABLISHED UNDER THIS SUBTITLE MAY BE RAISED BY A  
27 PLAINTIFF IN AN ACTION FOR RELIEF UNDER THIS SECTION OR AS A DEFENSE TO AN  
28 ACTION.

29 12-604.

30 THIS SUBTITLE APPLIES TO:

31 (1) EACH GOVERNMENTAL ACTION ENACTED, ADOPTED, OR  
32 IMPLEMENTED BY GOVERNMENTAL AUTHORITY BEFORE THE EFFECTIVE DATE OF  
33 THIS ACT; AND

34 (2) EACH GOVERNMENTAL ACTION ENACTED, ADOPTED, OR  
35 IMPLEMENTED BY GOVERNMENTAL AUTHORITY ON OR AFTER THE EFFECTIVE DATE

1 OF THIS ACT, UNLESS STATE LAW EXPRESSLY EXCLUDES THAT GOVERNMENTAL  
2 ACTION FROM COVERAGE UNDER THIS SUBTITLE.

3 12-605.

4 (A) THIS SUBTITLE DOES NOT AUTHORIZE GOVERNMENTAL AUTHORITY TO  
5 BURDEN ANY RELIGIOUS BELIEF OR RELIGIOUS AFFILIATION.

6 (B) THIS SUBTITLE MAY NOT BE CONSTRUED TO AFFECT, INTERPRET, OR IN  
7 ANY WAY ADDRESS THE SUBSTANCE OF THE MARYLAND DECLARATION OF RIGHTS  
8 OR THE MARYLAND CONSTITUTION.

9 (C) THE PROTECTION OF RELIGIOUS LIBERTY PROVIDED UNDER THIS  
10 SUBTITLE IS IN ADDITION TO, AND DOES NOT REDUCE, THE PROTECTIONS PROVIDED  
11 UNDER THE CONSTITUTION OF MARYLAND OR THE MARYLAND DECLARATION OF  
12 RIGHTS.

13 12-606.

14 (A) THE GRANTING OF ANY GOVERNMENT FUNDING, BENEFITS, OR  
15 EXEMPTIONS TO A PERSON MAY NOT BE CHALLENGED UNDER THIS SUBTITLE BY  
16 ANY OTHER PERSON OR ENTITY.

17 (B) SUBSECTION (A) OF THIS SECTION DOES NOT PRECLUDE A PERSON FROM  
18 USING THIS SUBTITLE TO CHALLENGE THE DENIAL, DELAY, OR CONDITIONING OF  
19 GOVERNMENT FUNDING, BENEFITS, OR EXEMPTIONS TO THAT PERSON.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
21 effect October 1, 1998.