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Introduced and read first time: February 13, 1998
Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Workplace Religious Freedom Act of 1998**

3 FOR the purpose of requiring an employer to accommodate the religion of an
4 employee or applicant for employment under certain circumstances; altering a
5 certain definition; specifying certain factors that are to be used in making a
6 certain determination; making stylistic changes; providing for the application of
7 this Act; and generally relating to the accommodation of religion in the
8 workplace.

9 BY repealing and reenacting, with amendments,
10 Article 49B - Human Relations Commission
11 Section 15(f) and 16
12 Annotated Code of Maryland
13 (1994 Replacement Volume and 1997 Supplement)

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

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

17 15.

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

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

1 (3) THE FACTORS TO BE CONSIDERED IN DETERMINING WHETHER AN
2 ACCOMMODATION FOR A RELIGIOUS OBSERVANCE, PRACTICE, OR BELIEF REQUIRES
3 THE EMPLOYER TO INCUR SIGNIFICANT DIFFICULTY OR EXPENSE INCLUDE:

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

6 (II) THE NUMBER OF INDIVIDUALS WHO WILL NEED THAT
7 PARTICULAR ACCOMMODATION;

8 (III) THE NATURE AND EXTENT OF CONFLICT BETWEEN THE
9 ACCOMMODATION AND A COLLECTIVE BARGAINING AGREEMENT; AND

10 (IV) THE NATURE AND EXTENT OF THE BURDEN THAT THE
11 ACCOMMODATION PLACES ON OTHER EMPLOYEES.

12 16.

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

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

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

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

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

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

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

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

26 (F) (1) IT SHALL BE AN UNLAWFUL EMPLOYMENT PRACTICE FOR AN
27 EMPLOYER TO FAIL TO REASONABLY ACCOMMODATE THE RELIGION OF AN
28 EMPLOYEE OR APPLICANT FOR EMPLOYMENT.

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

31 (I) THE EMPLOYEE OR APPLICANT FOR EMPLOYMENT
32 DEMONSTRATES TO THE EMPLOYER THE AVAILABILITY OF AN ALTERNATIVE
33 ACCOMMODATION LESS ONEROUS TO THE EMPLOYEE OR APPLICANT FOR
34 EMPLOYMENT THAT MAY BE MADE BY THE EMPLOYER WITHOUT UNDUE HARDSHIP
35 ON THE CONDUCT OF THE EMPLOYER'S BUSINESS; AND

36 (II) THE EMPLOYER REFUSES TO MAKE THE ACCOMMODATION.

37 [(f)] (G) It is an unlawful employment practice for an employer to
38 discriminate against any of his employees or applicants for employment, for an
39 employment agency to discriminate against any individual, or for a labor organization
40 to discriminate against any member thereof or applicant for membership, because he
41 has opposed any practice made an unlawful employment practice by this subtitle or

1 because he has made a charge, testified, assisted, or participated in any manner in an
2 investigation, proceeding, or hearing under this subtitle[;].

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

28 [(h)] (I) Nothing contained in this subtitle shall be interpreted to require any
29 employer, employment agency, labor organization, or joint labor-management
30 committee subject to this subtitle to grant preferential treatment to any individual or
31 to any group because of the race, color, religion, sex, age, national origin or physical or
32 mental handicap of the individual or group on account of an imbalance which may
33 exist with respect to the total number or percentage of persons of any race, color,
34 religion, sex, age, national origin or physically or mentally handicapped persons
35 employed by any employer, referred or classified for employment by any employment
36 agency or labor organization, admitted to membership or classified by any labor
37 agency or labor organization, admitted to membership or classified by any labor
38 organization, or admitted to, or employed in, any apprenticeship or other training
39 program, in comparison with the total number or percentage of persons of such race,
40 color, religion, sex, age, national origin or physically or mentally handicapped persons
41 in any community, State, section, or other area, or in the available work force in any
42 community, State, section, or other area.

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

1 SECTION 3. AND BE IT FURTHER ENACTED, That, for the period October 1,
2 1998 through September 30, 2000, the Maryland Commission on Human Relations
3 shall collect, maintain, and analyze information and data on the implementation of
4 this Act. By December 31, 2000, the Commission shall submit a report of its findings,
5 together with any recommendations it wishes to propose, regarding the
6 implementation of this Act to the Governor and, subject to § 2-1246 of the State
7 Government Article, to the Legislative Policy Committee of the General Assembly.

8 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1998.