

SENATE BILL 515

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1998 Regular Session
8lr2459

By: **Senators Miller, Bromwell, Colburn, Collins, Della, Dyson, Forehand,
Green, Hogan, Hoffman, Hollinger, Kelley, McCabe, Middlebrooks,
Neall, Ruben, and Stone**

Introduced and read first time: February 6, 1998
Assigned to: Judicial Proceedings

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

24 WHEREAS, Government should not burden religious exercise without
25 compelling justification; and

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

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

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

9 **Article - State Government**

10 **SUBTITLE 6. RELIGIOUS EXERCISE.**

11 12-601.

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

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

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

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

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

22 (1) THE STATE OR ANY COUNTY OR MUNICIPAL CORPORATION OR ANY
23 SUBDIVISION OF THE STATE, COUNTY, OR MUNICIPAL CORPORATION;

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

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

28 (F) "LEAST RESTRICTIVE MEANS OF ACHIEVING A COMPELLING
29 GOVERNMENTAL INTEREST" MEANS THAT:

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

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

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

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

7 12-602.

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

14 12-603.

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

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

19 (1) INJUNCTIVE RELIEF;

20 (2) MONETARY DAMAGES; AND

21 (3) REASONABLE COUNSEL FEES AND OTHER REASONABLE LITIGATION
22 COSTS.

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

26 12-604.

27 %THIS SUBTITLE APPLIES TO:

28 (1) EACH GOVERNMENTAL ACTION ENACTED, ADOPTED, OR
29 IMPLEMENTED BY GOVERNMENTAL AUTHORITY BEFORE THE EFFECTIVE DATE OF
30 THIS ACT; AND

31 (2) EACH GOVERNMENTAL ACTION ENACTED, ADOPTED, OR
32 IMPLEMENTED BY GOVERNMENTAL AUTHORITY ON OR AFTER THE EFFECTIVE DATE
33 OF THIS ACT, UNLESS STATE LAW EXPRESSLY EXCLUDES THAT GOVERNMENTAL
34 ACTION FROM COVERAGE UNDER THIS SUBTITLE.

1 12-605.

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

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

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

11 12-606.

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

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

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