

HOUSE BILL 186

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HB 1143/98 - CGM

1999 Regular Session
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CF 9lr0081

By: **The Speaker (Administration) and Delegates Petzold, Benson, Bobo, D. Davis, Hubbard, Mandel, Pitkin, Proctor, Rosenberg, and Turner**

Introduced and read first time: February 1, 1999
Assigned to: Commerce and Government Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 24, 1999

CHAPTER _____

1 AN ACT concerning

2 **Maryland Human Relations Commission - Hearings - Relief**

3 FOR the purpose of altering various provisions relating to the Maryland Human
4 Relations Commission; clarifying that certain documents shall be certified to the
5 general counsel; specifying that an administrative law judge, rather than a
6 hearing examiner, shall hear certain cases; expanding relief to include
7 compensatory damages for an individual, subject to certain limitations;
8 ~~authorizing the award of attorney fees and witness fees to the Commission;~~
9 altering the jurisdiction of the Commission over certain employers; making
10 stylistic changes; and generally relating to hearings and relief under the Human
11 Relations Commission law.

12 BY repealing and reenacting, with amendments,
13 Article 49B - Human Relations Commission
14 Section 11 and 15(b)
15 Annotated Code of Maryland
16 (1998 Replacement Volume)

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

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

20 11.

21 (a) (1) In case of failure to reach an agreement for the elimination of the acts
22 of discrimination and upon the entry of findings to that effect, the entire file including

1 the complaint and any and all findings made shall be certified to THE GENERAL
2 COUNSEL. The [Chairman] CHAIRPERSON shall cause a written notice to be issued
3 and served in the name of the Commission together with a copy of the complaint
4 requiring the respondent to answer the charges of the complaint at a public hearing
5 before [a hearing examiner] AN ADMINISTRATIVE LAW JUDGE at a time and place
6 certified in the notice.

7 (2) The case shall thereupon be heard by [a hearing examiner] AN
8 ADMINISTRATIVE LAW JUDGE and the hearing shall be held in the county where the
9 alleged act of discrimination took place. A transcript of all testimony at the hearing
10 shall be made. The case in support of the complaint shall be presented at the hearing
11 by the general counsel of the Commission.

12 (b) The respondent may file a written answer to the complaint and appear at
13 the hearing in person, or otherwise, with or without counsel. The respondent may
14 submit testimony and shall be fully heard. [He] THE RESPONDENT may examine and
15 cross-examine witnesses.

16 (c) The Commission may permit reasonable amendment to be made to any
17 complaint or answer. Testimony taken at the hearing shall be under oath and
18 recorded.

19 (d) (1) In the administration and enforcement of the provisions of these
20 several subtitles, the Commission has power to:

21 (i) Administer oaths and to issue subpoenas;

22 (ii) Compel the attendance and testimony of witnesses; and

23 (iii) Compel the production of books, papers, records and documents
24 relevant or necessary for proceedings under the particular subtitle.

25 (2) Any subpoena shall be served by:

26 (i) Certified mail, requesting restricted delivery - Show to whom,
27 date, address of delivery; or

28 (ii) Personal service of process by:

29 1. An employee of the Commission;

30 2. Any person who is not a party and is not less than 18 years
31 of age; or

32 3. The sheriff or deputy sheriff of the political subdivision in
33 which is located the residence of the person or the main office of the firm, association,
34 partnership or corporation against whom or which the subpoena is issued.

1 (3) (i) In case of disobedience to a subpoena, the Commission may
2 apply to a circuit court in any county for an order requiring the attendance and
3 testimony of witnesses and the production of books, papers, records, and documents.

4 (ii) In case of contumacy or refusal to obey a subpoena for the
5 attendance of a witness or the production of books, papers, records, and documents,
6 after notice to the person subpoenaed as a witness or directed to produce books,
7 papers, records and documents, and upon a finding that the attendance and
8 testimony of the witness or the production of the books, papers, records and
9 documents is relevant or necessary for the proceedings of the Commission, the court
10 may issue an order requiring the attendance and testimony of the witness and the
11 production of the books, papers, records and documents.

12 (iii) Any failure to obey such an order of the court may be punished
13 by the court as a contempt thereof.

14 (iv) An order issued by the court under this subsection shall be
15 served on the person to whom it is directed by the sheriff or deputy sheriff of the
16 political subdivision where the residence or main office of the person is located.

17 (e) (1) If upon all the evidence, the [hearing examiner] ADMINISTRATIVE
18 LAW JUDGE finds that the respondent has engaged in any discriminatory act within
19 the scope of any of these subtitles, the [hearing examiner] ADMINISTRATIVE LAW
20 JUDGE shall so state the findings. The [hearing examiner] ADMINISTRATIVE LAW
21 JUDGE shall issue and cause to be served upon the respondent an order requiring the
22 respondent to cease and desist from the discriminatory acts and to take affirmative
23 action to effectuate the purposes of the particular subtitle.

24 (2) If the respondent is found to have engaged in or to be engaging in an
25 unlawful employment practice charged in the complaint, the remedy may include[,
26 but is not limited to,]:

27 (I) [reinstatement] REINSTATEMENT or hiring of employees, with
28 or without back pay (payable by the employer, employment agency, or labor
29 organization, as the case may be, responsible for the unlawful employment practice)[,
30 or];

31 (II) COMPENSATORY DAMAGES; OR

32 (III) [any] ANY other equitable relief that is deemed appropriate.

33 (3) COMPENSATORY DAMAGES AWARDED UNDER THIS SECTION ARE IN
34 ADDITION TO ANY BACK PAY, OR ANY INTEREST ON THE BACK PAY, AND ANY OTHER
35 EQUITABLE RELIEF THAT THE COMPLAINING PARTY IS ENTITLED TO RECOVER
36 UNDER ANY OTHER PROVISION OF LAW.

37 (4) THE SUM OF THE AMOUNT OF COMPENSATORY DAMAGES AWARDED
38 UNDER THIS SECTION FOR FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN,
39 SUFFERING INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE, OR
40 NONPECUNIARY LOSSES, MAY NOT EXCEED, FOR EACH COMPLAINING PARTY:

1 (I) IN THE CASE OF A RESPONDENT WHO HAS 15 OR FEWER
2 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
3 PRECEDING CALENDAR YEAR, ~~\$25,000~~ \$1,500;

4 (II) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 15 AND
5 FEWER THAN 101 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
6 CURRENT OR PRECEDING CALENDAR YEAR, ~~\$50,000~~ \$5,000;

7 (III) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 100 AND
8 FEWER THAN 201 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
9 CURRENT OR PRECEDING CALENDAR YEAR, ~~\$100,000~~ \$10,000;

10 (IV) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 200 AND
11 FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
12 CURRENT OR PRECEDING CALENDAR YEAR, ~~\$200,000~~ \$15,000; AND

13 (V) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 500
14 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
15 PRECEDING CALENDAR YEAR, ~~\$300,000~~ \$25,000.

16 (5) The award of [monetary] BACK PAY relief UNDER PARAGRAPH (2) OF
17 THIS SECTION shall be limited to a 36-month period. The complainant may not be
18 awarded [monetary] BACK PAY relief for losses incurred between the time of the
19 Commission's final determination and the final determination by the circuit court or
20 higher appellate court, as the case may be. Interim earning or amounts earnable with
21 reasonable diligence by the person or persons discriminated against shall operate to
22 reduce the [monetary] BACK PAY relief otherwise allowable. ~~THE ADMINISTRATIVE
23 LAW JUDGE MAY ALSO AWARD ATTORNEY FEES AND WITNESS FEES TO THE
24 COMMISSION.~~ In cases of discrimination other than those involving employment, in
25 addition to the award of civil penalties as specifically provided in this article,
26 nonmonetary relief may be granted to the complainant, except that in no event shall
27 an order be issued that substantially affects the cost, level, or type of any
28 transportation services. In cases involving transportation services which are
29 supported fully or partially with funds from the Maryland Department of
30 Transportation, no order may be issued which would require costs, level, or type of
31 transportation services different from or in excess of those required to meet U.S.
32 Department of Transportation regulations adopted pursuant to Section 504 of the
33 Rehabilitation Act of 1973, codified as 29 U.S.C. § 794, nor would any such order be
34 enforceable under Section 12(a) of this subtitle.

35 (f) The provisions of subsection (e) granting the authority to award monetary
36 relief to a complainant shall apply only to those complaints filed with the Commission
37 on or after July 1, 1977.

38 (g) If upon all the evidence, the [hearing examiner] ADMINISTRATIVE LAW
39 JUDGE or the Commission finds that the respondent has not engaged in any alleged
40 discriminatory act within the scope of the particular subtitle, it shall state its findings
41 of fact and shall similarly issue and file an order dismissing the complaint.

1 15.

2 For the purposes of this subtitle:

3 (b) The term "employer" means a person engaged in an industry or business
4 who has [fifteen] ONE or more employees for each working day in each of [twenty] 20
5 or more calendar weeks in the current or preceding calendar year, and any agent of
6 such a person; such term does include the State of Maryland to the extent as may be
7 provided in this article but such term does not include a bona fide private
8 membership club (other than a labor organization) which is exempt from taxation
9 under § 501(c) of the Internal Revenue Code.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 1999.