

HOUSE BILL 966

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1999 Regular Session
9lr0393
CF 9lr2344

By: **Delegate Rosenberg**
Introduced and read first time: February 12, 1999
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Rights - Religious Exercise**

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

11 BY adding to
12 Article - State Government
13 Section 12-601 through 12-605 to be under the new subtitle "Subtitle 6.
14 Religious Exercise"
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 1998 Supplement)

17 **Preamble**

18 WHEREAS, The General Assembly recognizes that the State of Maryland was
19 founded on the principle of religious tolerance, and that government should not
20 substantially burden an individual's observance of any religion without compelling
21 justification; and

22 WHEREAS, From 1963 to 1990, the federal and State courts established legal
23 standards and burdens which struck a sensible balance between an individual's
24 exercise of religion and the interests of government in preserving good order, health,
25 peace, safety and general welfare; and

26 WHEREAS, In 1990, the United States Supreme Court in the case of
27 *Employment Division v. Smith*, 494 U.S. 872 (1990), altered the standards and
28 burdens applicable to claims alleging violations of the Free Exercise Clause of the
29 First Amendment; and

1 WHEREAS, The General Assembly believes that the legal standards and
2 burdens developed and applied by the courts with respect to claims brought under the
3 Free Exercise Clause of the First Amendment and Article 36 of the Maryland
4 Declaration of Rights prior to the Supreme Court's decision in Employment Division v.
5 Smith, should be preserved through the adoption of a statutory cause of action under
6 this Act; and

7 WHEREAS, It is the intent of the General Assembly that the standards set
8 forth in this Act shall be interpreted and applied in a manner consistent with legal
9 precedent developed by the Maryland and federal courts between the Supreme
10 Court's decision in Sherbert v. Werner, 374 U.S. 398, in 1963 and the issuance of the
11 Supreme Court's decision in Employment Division v. Smith, for claims brought under
12 the Free Exercise Clause of the United States Constitution and Article 36 of the
13 Maryland Declaration of Rights; now, therefore,

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

16 **Article - State Government**

17 **SUBTITLE 6. RELIGIOUS EXERCISE.**

18 12-601.

19 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

21 (B) "COMPELLING GOVERNMENTAL INTEREST" MEANS AN INTEREST ARISING
22 FROM A SUBSTANTIAL THREAT TO PUBLIC HEALTH, SAFETY, PEACE, ORDER, OR
23 GENERAL WELFARE.

24 (C) "GOVERNMENTAL ACTION" MEANS A LAW, REGULATION, ADMINISTRATIVE
25 ORDER, DECISION, PRACTICE, OR OTHER EXERCISE OF GOVERNMENTAL AUTHORITY.

26 (D) "GOVERNMENTAL AUTHORITY" INCLUDES THE AUTHORITY OF:

27 (1) THE STATE OR ANY COUNTY OR MUNICIPAL CORPORATION OR ANY
28 SUBDIVISION OF THE STATE, COUNTY, OR MUNICIPAL CORPORATION; AND

29 (2) ANY OFFICIAL OR OTHER INDIVIDUAL ACTING WITHIN THE SCOPE
30 OF THEIR EMPLOYMENT BY ANY ENTITY DESCRIBED IN PARAGRAPH (1) OF THIS
31 SUBSECTION.

32 (E) "PERSON" INCLUDES:

33 (1) AN INDIVIDUAL; AND

34 (2) A RELIGIOUS ORGANIZATION, ASSOCIATION, OR CORPORATION.

1 12-602.

2 (A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION,
3 GOVERNMENTAL AUTHORITY MAY NOT SUBSTANTIALLY BURDEN A PERSON'S
4 EXERCISE OF RELIGION EVEN IF THE BURDEN RESULTS FROM A RULE OF GENERAL
5 APPLICABILITY.

6 (B) GOVERNMENT MAY SUBSTANTIALLY BURDEN A PERSON'S EXERCISE OF
7 RELIGION ONLY IF IT DEMONSTRATES THAT APPLICATION OF THE BURDEN TO THE
8 PERSON:

9 (1) IS IN FURTHERANCE OF A COMPELLING GOVERNMENTAL INTEREST;

10 (2) IS THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT
11 COMPELLING GOVERNMENTAL INTEREST; AND

12 (3) THAT THE ALTERNATIVE PROPOSED BY THE PERSON WILL UNDULY
13 INTERFERE WITH THE FULFILLMENT OF THE COMPELLING GOVERNMENTAL
14 INTEREST.

15 (C) GOVERNMENT MAY SUBSTANTIALLY BURDEN THE EXERCISE OF
16 RELIGION OF A PERSON CONFINED IN A STATE OR FEDERAL PENOLOGICAL
17 INSTITUTION OR IN A FACILITY DESCRIBED UNDER ARTICLE 27, § 139(A)(2) OF THE
18 CODE IF IT IS REASONABLY RELATED TO LEGITIMATE PENOLOGICAL INTERESTS.

19 12-603.

20 (A) A PERSON AGGRIEVED BY A VIOLATION OF THIS SUBTITLE MAY OBTAIN
21 APPROPRIATE RELIEF IN A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION.

22 (B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, APPROPRIATE RELIEF
23 UNDER THIS SUBTITLE MAY INCLUDE:

24 (1) INJUNCTIVE RELIEF; AND

25 (2) COMPENSATORY DAMAGES.

26 (C) A PERSON AGGRIEVED BY A VIOLATION OF THIS SUBTITLE BY AN
27 OFFICIAL OR EMPLOYEE OF A GOVERNMENTAL AUTHORITY MAY:

28 (1) SEEK INJUNCTIVE RELIEF AGAINST THE GOVERNMENTAL
29 AUTHORITY; AND

30 (2) SEEK INJUNCTIVE RELIEF AND COMPENSATORY DAMAGES AGAINST
31 THE OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL AUTHORITY.

32 (D) THE RIGHTS ESTABLISHED UNDER THIS SUBTITLE MAY BE RAISED BY A
33 PLAINTIFF IN AN ACTION FOR RELIEF UNDER THIS SECTION OR AS A DEFENSE TO AN
34 ACTION.

35 (E) A CLAIM FOR DAMAGES BROUGHT UNDER THIS SUBTITLE IS SUBJECT TO:

1 (1) THE LOCAL GOVERNMENT TORT CLAIMS ACT UNDER TITLE 5,
2 SUBTITLE 3 OF THE COURTS ARTICLE; OR

3 (2) THE MARYLAND TORT CLAIMS ACT UNDER TITLE 12, SUBTITLE 1 OF
4 THE STATE GOVERNMENT ARTICLE.

5 (F) UNLESS FUTILE, A PERSON WHO ALLEGES A VIOLATION OF THIS
6 SUBTITLE MAY NOT MAINTAIN A CIVIL ACTION UNTIL THE PERSON HAS EXHAUSTED
7 ALL ADMINISTRATIVE REMEDIES FOR RESOLVING THE GOVERNMENTAL ACTION
8 THAT IS ALLEGED TO BE A VIOLATION OF THIS SUBTITLE.

9 12-604.

10 THIS SUBTITLE APPLIES TO EACH GOVERNMENTAL ACTION TAKEN BY A
11 GOVERNMENTAL AUTHORITY ON OR AFTER OCTOBER 1, 1999, INCLUDING A
12 GOVERNMENTAL ACTION TAKEN PURSUANT TO A LAW, REGULATION, POLICY,
13 GUIDELINE, OR OTHER AUTHORITY THAT WAS IN EFFECT PRIOR TO OCTOBER 1, 1999,
14 UNLESS STATE LAW EXPRESSLY EXCLUDES THAT GOVERNMENTAL ACTION FROM
15 COVERAGE UNDER THIS SUBTITLE.

16 12-605.

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

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

22 (C) THE PROTECTION OF RELIGIOUS LIBERTY PROVIDED UNDER THIS
23 SUBTITLE IS IN ADDITION TO, AND DOES NOT REDUCE, THE PROTECTIONS PROVIDED
24 UNDER THE CONSTITUTION OF MARYLAND OR THE MARYLAND DECLARATION OF
25 RIGHTS.

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