

SENATE BILL 140

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HB 1143/98 - CGM

1999 Regular Session
9lr0081
CF 9lr0230

By: **The President (Administration) and Senators Hollinger, Kelley, and Lawlah**

Introduced and read first time: January 22, 1999
Assigned to: Judicial Proceedings

A BILL ENTITLED

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

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

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

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

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

15 (i) Administer oaths and to issue subpoenas;

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

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

19 (2) Any subpoena shall be served by:

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

22 (ii) Personal service of process by:

23 1. An employee of the Commission;

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

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

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

32 (ii) In case of contumacy or refusal to obey a subpoena for the
33 attendance of a witness or the production of books, papers, records, and documents,
34 after notice to the person subpoenaed as a witness or directed to produce books,
35 papers, records and documents, and upon a finding that the attendance and
36 testimony of the witness or the production of the books, papers, records and

1 documents is relevant or necessary for the proceedings of the Commission, the court
2 may issue an order requiring the attendance and testimony of the witness and the
3 production of the books, papers, records and documents.

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

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

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

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

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

23 (II) COMPENSATORY DAMAGES; OR

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

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

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

33 (I) IN THE CASE OF A RESPONDENT WHO HAS 15 OR FEWER
34 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
35 PRECEDING CALENDAR YEAR, \$25,000;

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

1 (III) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 100 AND
2 FEWER THAN 201 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
3 CURRENT OR PRECEDING CALENDAR YEAR, \$100,000;

4 (IV) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 200 AND
5 FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
6 CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

7 (V) IN THE CASE OF A RESPONDENT WHO HAS MORE THAN 500
8 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
9 PRECEDING CALENDAR YEAR, \$300,000.

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

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

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

36 15.

37 For the purposes of this subtitle:

38 (b) The term "employer" means a person engaged in an industry or business
39 who has [fifteen] ONE or more employees for each working day in each of [twenty] 20
40 or more calendar weeks in the current or preceding calendar year, and any agent of
41 such a person; such term does include the State of Maryland to the extent as may be
42 provided in this article but such term does not include a bona fide private

1 membership club (other than a labor organization) which is exempt from taxation
2 under § 501(c) of the Internal Revenue Code.

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