

SENATE BILL 479

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SB 104/01 - JPR

2002 Regular Session
2lr1565
CF 2lr2475

By: **Senator Kelley**

Introduced and read first time: February 1, 2002

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Equal Opportunity Act of 2002**

3 FOR the purpose of altering various provisions of the Maryland Human Relations
4 Commission law; requiring that an administrative law judge, rather than a
5 hearing examiner, hear certain cases; expanding the relief available for acts of
6 discrimination to include the award of compensatory damages to the
7 complainant, subject to certain limitations; authorizing the award of attorney's
8 fees to certain prevailing parties, and the award of expert witness fees to a
9 prevailing party and to the Commission, under certain circumstances; making
10 stylistic changes; providing for the application of this Act; and generally relating
11 to hearings and relief under the Maryland Human Relations Commission law.

12 BY repealing and reenacting, with amendments,
13 Article 49B - Human Relations Commission
14 Section 11
15 Annotated Code of Maryland
16 (1998 Replacement Volume and 2001 Supplement)

17 BY adding to
18 Article 49B - Human Relations Commission
19 Section 11A
20 Annotated Code of Maryland
21 (1998 Replacement Volume and 2001 Supplement)

22 Preamble

23 WHEREAS, Recent actions by the United States Supreme Court have reduced
24 access to individual relief for Maryland State Employees under the Americans with
25 Disabilities Act and the Age Discrimination in Employment Act; and

26 WHEREAS, Current remedies provide inadequate relief to all Marylanders for
27 employment discrimination under State law; now, therefore,

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

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

4 11.

5 (a) (1) In case of failure to reach an agreement for the elimination of the acts
6 of discrimination and upon the entry of findings to that effect, the entire file including
7 the complaint and any and all findings made shall be certified to. The Chairman shall
8 cause a written notice to be issued and served in the name of the Commission
9 together with a copy of the complaint requiring the respondent to answer the charges
10 of the complaint at a public hearing before [a hearing examiner] AN
11 ADMINISTRATIVE LAW JUDGE at a time and place certified in the notice.

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

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

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

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

26 (i) Administer oaths and to issue subpoenas;

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

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

30 (2) Any subpoena shall be served by:

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

33 (ii) Personal service of process by:

34 1. An employee of the Commission;

1 (I) ANY BACK PAY OR INTEREST ON BACK PAY THAT A
2 COMPLAINANT MAY RECOVER UNDER ANY OTHER PROVISION OF LAW; OR

3 (II) ANY EQUITABLE RELIEF THAT A COMPLAINANT MAY RECOVER
4 UNDER ANY OTHER PROVISION OF LAW.

5 (4) FOR EACH COMPLAINANT, THE SUM OF THE AMOUNT OF
6 COMPENSATORY DAMAGES AWARDED UNDER THIS SECTION FOR FUTURE
7 PECUNIARY LOSSES, EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL
8 ANGUISH, LOSS OF ENJOYMENT OF LIFE, OR NONPECUNIARY LOSSES, MAY NOT
9 EXCEED:

10 (I) IN THE CASE OF A RESPONDENT WHO EMPLOYS NOT FEWER
11 THAN 15 AND NOT MORE THAN 100 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR
12 WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR, \$50,000;

13 (II) IN THE CASE OF A RESPONDENT WHO EMPLOYS NOT FEWER
14 THAN 101 AND NOT MORE THAN 200 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR
15 WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR, \$100,000;

16 (III) IN THE CASE OF A RESPONDENT WHO EMPLOYS NOT FEWER
17 THAN 201 AND NOT MORE THAN 500 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR
18 WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

19 (IV) IN THE CASE OF A RESPONDENT WHO EMPLOYS NOT FEWER
20 THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT
21 OR PRECEDING CALENDAR YEAR, \$300,000.

22 (5) The award of [monetary relief] BACK PAY UNDER PARAGRAPH (3) OF
23 THIS SUBSECTION shall be limited to a 36-month period. The complainant may not be
24 awarded [monetary relief] BACK PAY for losses incurred between the time of the
25 Commission's final determination and the final determination by the circuit court or
26 higher appellate court, as the case may be. Interim earning or amounts [earnable]
27 EARNED with reasonable diligence by the person or persons discriminated against
28 shall operate to reduce the [monetary relief] BACK PAY otherwise allowable. THE
29 ADMINISTRATIVE LAW JUDGE ALSO MAY AWARD EXPERT WITNESS FEES TO THE
30 COMMISSION. In cases of discrimination other than those involving employment, in
31 addition to the award of civil penalties as specifically provided in this article,
32 nonmonetary relief may be granted to the complainant, except that in no event shall
33 an order be issued that substantially affects the cost, level, or type of any
34 transportation services. In cases involving transportation services which are
35 supported fully or partially with funds from the Maryland Department of
36 Transportation, no order may be issued which would require costs, level, or type of
37 transportation services different from or in excess of those required to meet U.S.
38 Department of Transportation regulations adopted pursuant to Section 504 of the
39 Rehabilitation Act of 1973, codified as 29 U.S.C. § 794, nor would any such order be
40 enforceable under Section 12(a) of this subtitle.

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

4 (g) If upon all the evidence, the hearing examiner or the Commission finds
5 that the respondent has not engaged in any alleged discriminatory act within the
6 scope of the particular subtitle, it shall state its findings of fact and shall similarly
7 issue and file an order dismissing the complaint.

8 11A.

9 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
10 COMPLAINANT MAY BRING A CIVIL ACTION ALLEGING AN UNLAWFUL EMPLOYMENT
11 PRACTICE AGAINST A RESPONDENT IF:

12 (I) THE COMPLAINANT INITIALLY FILED A COMPLAINT WITH THE
13 COMMISSION AGAINST THE RESPONDENT ALLEGING THE UNLAWFUL EMPLOYMENT
14 PRACTICE; AND

15 (II) AT LEAST 180 DAYS HAVE ELAPSED SINCE THE FILING OF THE
16 COMPLAINT.

17 (2) (I) A COMPLAINING PARTY MAY NOT COMMENCE A CIVIL ACTION
18 UNDER THIS SUBSECTION FOR AN UNLAWFUL EMPLOYMENT PRACTICE THAT FORMS
19 THE BASIS OF AN ORDER ISSUED BY THE COMMISSION IF A HEARING ON THE
20 RECORD UNDER § 11 OF THIS SUBTITLE HAS BEEN COMMENCED BY AN
21 ADMINISTRATIVE LAW JUDGE.

22 (II) AFTER THE BEGINNING OF THE TRIAL OF A CIVIL ACTION
23 UNDER FEDERAL LAW OR THIS SUBTITLE THAT SEEKS RELIEF FOR AN ALLEGED
24 UNLAWFUL EMPLOYMENT PRACTICE, AN ADMINISTRATIVE LAW JUDGE MAY NOT
25 CONTINUE ADMINISTRATIVE PROCEEDINGS UNDER § 11 OF THIS SUBTITLE FOR THE
26 SAME ALLEGED UNLAWFUL EMPLOYMENT PRACTICE.

27 (3) ON TIMELY APPLICATION, THE COURT IN A CIVIL TRIAL UNDER THIS
28 SECTION MAY PERMIT THE COMMISSION TO INTERVENE BY CERTIFYING THAT THE
29 CASE IS OF IMPORTANCE TO THE GENERAL PUBLIC.

30 (B) A CIVIL ACTION MAY BE FILED UNDER THIS SECTION IN THE CIRCUIT
31 COURT OF THE COUNTY WHERE:

32 (1) THE UNLAWFUL EMPLOYMENT PRACTICE IS ALLEGED TO HAVE
33 BEEN COMMITTED; OR

34 (2) THE RECORDS RELEVANT TO THE UNLAWFUL EMPLOYMENT
35 PRACTICE ARE KEPT.

36 (C) COMPENSATORY DAMAGES AWARDED UNDER THIS SUBSECTION ARE IN
37 ADDITION TO ANY BACK PAY, ANY INTEREST ON BACK PAY, AND ANY OTHER

1 EQUITABLE RELIEF THAT THE COMPLAINING PARTY IS ENTITLED TO RECOVER
2 UNDER ANY OTHER PROVISION OF LAW.

3 (D) FOR EACH COMPLAINANT, THE SUM OF THE AMOUNT OF COMPENSATORY
4 DAMAGES AWARDED UNDER THIS SECTION FOR FUTURE PECUNIARY LOSSES,
5 EMOTIONAL PAIN, SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF
6 ENJOYMENT OF LIFE, AND NONPECUNIARY LOSS, UNDER THIS SECTION, MAY NOT
7 EXCEED:

8 (1) IN THE CASE OF A RESPONDENT WHO EMPLOYS NOT FEWER THAN 15
9 AND NOT MORE THAN 100 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN
10 THE CURRENT OR PRECEDING CALENDAR YEAR, \$50,000;

11 (2) IN THE CASE OF A RESPONDENT WHO EMPLOYS NOT FEWER THAN
12 101 AND NOT MORE THAN 200 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR
13 WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR, \$100,000;

14 (3) IN THE CASE OF A RESPONDENT WHO EMPLOYS FEWER THAN 201
15 AND NOT MORE THAN 500 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN
16 THE CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

17 (4) IN THE CASE OF A RESPONDENT WHO EMPLOYS NOT FEWER THAN
18 500 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
19 PRECEDING CALENDAR YEAR, \$300,000.

20 (E) IF A COMPLAINANT SEEKS COMPENSATORY DAMAGES UNDER THIS
21 SECTION:

22 (1) ANY PARTY MAY DEMAND A TRIAL BY JURY; AND

23 (2) THE COURT MAY NOT INFORM THE JURY OF THE LIMITATIONS
24 IMPOSED IN SUBSECTION (D) OF THIS SECTION.

25 (F) WHERE APPROPRIATE AND TO THE EXTENT AUTHORIZED UNDER LAW,
26 THE PARTIES TO ANY DISPUTE ARISING UNDER THIS SUBTITLE IN WHICH THE
27 COMPLAINANT SEEKS COMPENSATORY DAMAGES ARE ENCOURAGED TO USE
28 ALTERNATIVE MEANS OF DISPUTE RESOLUTION, INCLUDING:

29 (1) SETTLEMENT NEGOTIATIONS;

30 (2) CONCILIATION;

31 (3) FACILITATION;

32 (4) MEDIATION;

33 (5) FACT-FINDING;

34 (6) MINITRIALS; AND

35 (7) ARBITRATION.

1 (G) IN A CIVIL ACTION UNDER THIS SECTION, THE COURT MAY AWARD
2 REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING EXPERT WITNESS FEES, AS
3 THE COURT CONSIDERS JUST, TO THE PREVAILING PARTY.

4 (H) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE SCOPE OF, OR THE
5 RELIEF AVAILABLE UNDER, ANY OTHER PROVISION OF STATE OR FEDERAL LAW.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
7 effect October 1, 2002 and shall apply to any complaint filed with the Human
8 Relations Commission on or after October 1, 2002.