

# HOUSE BILL 13

K3, D5

9lr0465

(PRE-FILED)

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By: **Delegate Manno**

Requested: July 31, 2008

Introduced and read first time: January 14, 2009

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Workplace Religious Freedom Act**

3 FOR the purpose of authorizing employees of certain employers to use certain leave for  
4 observance of religious beliefs under certain circumstances; establishing that an  
5 employer is not required to pay certain premium wages or benefits under  
6 certain circumstances; providing that an employee who uses leave under this  
7 Act must comply with the terms of a collective bargaining agreement or  
8 employment policy; providing that an employer may require an employee  
9 without paid leave to use leave without pay or work a certain number of hours;  
10 providing for a certain exemption under certain circumstances; establishing  
11 certain criteria for determining a certain hardship; prohibiting an employer  
12 from taking certain actions against an employee who exercises certain rights,  
13 files a complaint, testifies against, or assists in a certain action; authorizing an  
14 employee to take certain civil action against an employer in a certain manner  
15 for a violation of this Act; authorizing a court to allow certain costs against an  
16 employer for a certain recovery in a certain action; prohibiting an employee  
17 from making certain groundless or malicious complaints or from taking certain  
18 actions in bad faith; authorizing the Commissioner of Labor and Industry to  
19 conduct a certain investigation; defining certain terms; providing for the  
20 application of this Act; and generally relating to the Workplace Religious  
21 Freedom Act.

22 BY repealing and reenacting, without amendments,  
23 Article 49B – Human Relations Commission  
24 Section 16(a)  
25 Annotated Code of Maryland  
26 (2003 Replacement Volume and 2008 Supplement)

27 BY repealing and reenacting, without amendments,  
28 Article – Labor and Employment

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 3–101(b), 3–704(b)(2) and (3), (c), and (f), and 3–802(a)(1) and (2)  
2 Annotated Code of Maryland  
3 (2008 Replacement Volume)

4 BY repealing and reenacting, with amendments,  
5 Article – Labor and Employment  
6 Section 3–102 and 3–103  
7 Annotated Code of Maryland  
8 (2008 Replacement Volume)

9 BY adding to  
10 Article – Labor and Employment  
11 Section 3–803  
12 Annotated Code of Maryland  
13 (2008 Replacement Volume)

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

16 **Article 49B – Human Relations Commission**

17 16.

18 (a) It shall be an unlawful employment practice for an employer:

19 (1) To fail or refuse to hire or to discharge any individual, or otherwise  
20 to discriminate against any individual with respect to the individual’s compensation,  
21 terms, conditions, or privileges of employment, because of such individual’s race, color,  
22 religion, sex, age, national origin, marital status, sexual orientation, genetic  
23 information, or disability unrelated in nature and extent so as to reasonably preclude  
24 the performance of the employment, or because of the individual’s refusal to submit to  
25 a genetic test or make available the results of a genetic test;

26 (2) To limit, segregate, or classify its employees or applicants for  
27 employment in any way which would deprive or tend to deprive any individual of  
28 employment opportunities or otherwise adversely affect the individual’s status as an  
29 employee, because of the individual’s race, color, religion, sex, age, national origin,  
30 marital status, sexual orientation, genetic information, or disability unrelated in  
31 nature and extent so as to reasonably preclude the performance of the employment, or  
32 because of the individual’s refusal to submit to a genetic test or make available the  
33 results of a genetic test; or

34 (3) To request or require genetic tests or genetic information as a  
35 condition for hiring or determining benefits.

36 **Article – Labor and Employment**

37 3–101.

1 (b) "Commissioner" means the Commissioner of Labor and Industry.

2 3-102.

3 (a) In addition to any duties set forth elsewhere, the Commissioner shall:

4 (1) enforce Subtitle 2 of this title;

5 (2) carry out Subtitle 3 of this title; [and]

6 (3) enforce Subtitle 4 of this title; **AND**

7 (4) **CARRY OUT SUBTITLE 8 OF THIS TITLE.**

8 (b) If the Governor declares an emergency or disaster, then, with the consent  
9 of the Governor, the Commissioner may suspend enforcement of any provision of  
10 Subtitle 2 of this title until the emergency or disaster ends.

11 3-103.

12 (a) The Commissioner may conduct an investigation under Subtitle 2 of this  
13 title, on the Commissioner's own initiative or may require a written complaint.

14 (b) The Commissioner may conduct an investigation under Subtitle 4 of this  
15 title, on the Commissioner's own initiative or on receipt of a written complaint.

16 (c) The Commissioner may conduct an investigation to determine whether  
17 Subtitle 5 of this title has been violated on receipt of a written complaint of an  
18 employee.

19 (d) (1) The Commissioner may investigate whether § 3-701 of this title  
20 has been violated on receipt of a written complaint of an applicant for employment.

21 (2) The Commissioner may investigate whether § 3-702 of this title  
22 has been violated on receipt of a written complaint of an applicant for employment or  
23 an employee.

24 (E) **THE COMMISSIONER MAY CONDUCT AN INVESTIGATION UNDER**  
25 **§ 3-803 OF THIS TITLE ON RECEIPT OF A WRITTEN COMPLAINT OF AN**  
26 **EMPLOYEE.**

27 3-704.

28 (b) (2) An employee in a retail establishment may choose, as a day of rest,  
29 Sunday or the sabbath of the employee unless:

1 (i) outside Wicomico County, the employee is a managerial  
2 employee, professional employee, or part-time employee; and

3 (ii) in Wicomico County, the employee is a managerial employee  
4 or professional employee.

5 (3) An employee who chooses a day of rest:

6 (i) shall give written notice to the employer; and

7 (ii) during the course of employment, may change the day of rest  
8 by giving written notice of the change to the employer at least 30 days before its  
9 effective date.

10 (c) (1) This subsection does not apply to a managerial employee or  
11 professional employee or, outside Wicomico County, a part-time employee.

12 (2) If an employer compels an employee to work on the day of rest that  
13 the employee chooses under subsection (b) of this section, the employee is entitled to  
14 bring an action against the employer to recover 3 times the regular rate of pay of the  
15 employee for each hour the employee works on that day.

16 (f) An employer may not:

17 (1) discharge, discipline, discriminate against, or otherwise penalize  
18 an employee who chooses a day of rest; or

19 (2) require an applicant for employment who seeks a workweek of at  
20 least 25 hours to answer any question to identify the day that the applicant chooses as  
21 a day of rest.

22 3-802.

23 (a) (1) In this section the following words have the meanings indicated.

24 (2) (i) "Employer" means a person that employs 15 or more  
25 individuals and is engaged in a business, industry, profession, trade, or other  
26 enterprise in the State.

27 (ii) "Employer" includes a person who acts directly or indirectly  
28 in the interest of another employer with an employee.

29 **3-803.**

30 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
31 **MEANINGS INDICATED.**

1           (2)   **“EMPLOYER” HAS THE MEANING INDICATED IN § 3-802 OF**  
2 **THIS SUBTITLE.**

3           (3)   **“LEAVE WITH PAY” MEANS TIME AWAY FROM WORK FOR**  
4 **WHICH AN EMPLOYEE RECEIVES COMPENSATION.**

5           (4)   **“PREMIUM BENEFITS” MEANS EMPLOYMENT BENEFITS SUCH**  
6 **AS LEAVE, SENIORITY, LIFE, HEALTH, OR DISABILITY INSURANCE, OR**  
7 **EDUCATIONAL OR RETIREMENT BENEFITS THAT ARE GREATER THAN THE**  
8 **GENERAL EMPLOYMENT BENEFITS PROVIDED TO AN EMPLOYEE.**

9           (5)   **“PREMIUM WAGES” MEANS ADDITIONAL COMPENSATION,**  
10 **INCLUDING OVERTIME PAY OR COMPENSATORY LEAVE, FOR WORK PERFORMED**  
11 **BEYOND THE NORMAL HOURS OF THE EMPLOYER’S BUSINESS.**

12           **(B) THIS SECTION APPLIES TO AN EMPLOYER THAT PROVIDES LEAVE**  
13 **UNDER THE TERMS OF:**

14                   (1)   **A BARGAINING AGREEMENT; OR**

15                   (2)   **AN EMPLOYMENT POLICY.**

16           **(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN EMPLOYER**  
17 **MAY NOT PROHIBIT AN EMPLOYEE FROM USING LEAVE TO OBSERVE A SABBATH**  
18 **OR OTHER HOLY DAY IN ACCORDANCE WITH A SINCERELY HELD RELIGIOUS**  
19 **BELIEF.**

20           **(D) (1) AN EMPLOYEE WHO EARNS MORE THAN ONE TYPE OF LEAVE**  
21 **MAY ELECT THE TYPE OF LEAVE TO BE USED UNDER THIS SECTION.**

22                   (2)   **AN EMPLOYEE OF AN EMPLOYER MAY ONLY USE LEAVE:**

23                           (I)   **THAT HAS BEEN EARNED; AND**

24                                   (II) **IN ACCORDANCE WITH THE TERMS OF THE**  
25 **EMPLOYMENT POLICY OR COLLECTIVE BARGAINING AGREEMENT THAT**  
26 **PERTAIN TO THE TYPE OF LEAVE USED.**

27                   (3)   **(I) IF AN EMPLOYEE HAS NOT EARNED OR IS NOT ELIGIBLE**  
28 **FOR LEAVE WITH PAY, THE EMPLOYER MAY REQUIRE THE EMPLOYEE WHO**  
29 **WISHES TO USE LEAVE GRANTED UNDER THIS SECTION TO:**

30                                   1.   **WORK ADDITIONAL HOURS EQUIVALENT TO THE**  
31 **AMOUNT OF LEAVE; OR**

1                                   **2. TAKE LEAVE WITHOUT PAY.**

2                                   **(II) AN EMPLOYEE IS NOT ENTITLED TO PREMIUM WAGES**  
3 **OR BENEFITS THAT MAY OTHERWISE BE APPLICABLE FOR HOURS WORKED TO**  
4 **COMPENSATE FOR LEAVE UNDER THIS PARAGRAPH.**

5                                   **(4) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED AS**  
6 **REDUCING:**

7                                   **(I) THE NUMBER OF HOURS THAT ARE COUNTED TOWARD**  
8 **THE ACCRUAL OF AN EMPLOYEE'S SENIORITY, PENSION, OR OTHER BENEFITS;**  
9 **OR**

10                                   **(II) ANY PREMIUM WAGES OR BENEFITS PROVIDED TO AN**  
11 **EMPLOYEE UNDER THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT.**

12                                   **(E) (1) AN EMPLOYER THAT CAN DEMONSTRATE TO THE**  
13 **COMMISSIONER THAT REASONABLE ACCOMMODATION TO COMPLY WITH THE**  
14 **REQUIREMENTS OF THIS SECTION WOULD CAUSE AN UNDUE HARDSHIP IS**  
15 **EXEMPT FROM THIS SECTION.**

16                                   **(2) THE COMMISSIONER SHALL CONSIDER AN ACCOMMODATION**  
17 **TO BE AN UNDUE HARDSHIP IF THE ACCOMMODATION WOULD:**

18                                   **(I) REQUIRE UNREASONABLE EXPENSE OR DIFFICULTY;**

19                                   **(II) RESULT IN UNREASONABLE INTERFERENCE WITH THE**  
20 **SAFE OR EFFICIENT OPERATION OF THE WORKPLACE; OR**

21                                   **(III) VIOLATE A BONA FIDE SENIORITY SYSTEM OR**  
22 **COLLECTIVE BARGAINING AGREEMENT.**

23                                   **(3) THE COMMISSIONER SHALL CONSIDER THE FOLLOWING**  
24 **CRITERIA TO DETERMINE WHETHER AN ACCOMMODATION CONSTITUTES AN**  
25 **UNDUE HARDSHIP:**

26                                   **(I) THE IDENTIFIABLE COSTS OF THE ACCOMMODATION,**  
27 **INCLUDING THE COSTS ASSOCIATED WITH:**

28                                   **1. LOSS OF PRODUCTIVITY; AND**

29                                   **2. RETAINING, HIRING, OR TRANSFERRING**  
30 **EMPLOYEES FROM ONE FACILITY TO ANOTHER;**

1                   **(II) THE NUMBER OF EMPLOYEES WHO WILL BE USING**  
2 **LEAVE GRANTED UNDER THIS SECTION; AND**

3                   **(III) FOR AN EMPLOYER WITH MULTIPLE FACILITIES, THE**  
4 **DEGREE TO WHICH THE DISTANCE OR ADMINISTRATIVE OR FISCAL**  
5 **RELATIONSHIP BETWEEN THE FACILITIES MAKES THE ACCOMMODATION MORE**  
6 **DIFFICULT OR EXPENSIVE.**

7           **(F) AN EMPLOYEE MAY BRING A CIVIL ACTION AGAINST AN EMPLOYER**  
8 **THAT VIOLATES ANY PROVISION OF THIS SECTION:**

9                   **(1) AFTER NO MORE THAN 90 DAYS AFTER THE ALLEGED**  
10 **VIOLATION OCCURRED; AND**

11                   **(2) IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE**  
12 **ALLEGED VIOLATION OCCURRED OR THE COUNTY IN WHICH THE PRINCIPAL**  
13 **OFFICE OF THE EMPLOYER IS LOCATED.**

14           **(G) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO**  
15 **RECOVERY IN AN ACTION UNDER THIS SECTION, THE COURT MAY AWARD**  
16 **REINSTATEMENT OF ANY BACK PAY, REASONABLE COUNSEL FEES, AND**  
17 **REASONABLE COURT COSTS.**

18           **(H) AN EMPLOYER MAY NOT DISCHARGE, DEMOTE, SUSPEND,**  
19 **DISCIPLINE, OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE OR**  
20 **THREATEN TO TAKE ANY OF THESE ACTIONS AGAINST AN EMPLOYEE:**

21                   **(1) WHO EXERCISES RIGHTS GRANTED UNDER THIS SECTION; OR**

22                   **(2) WHO FILES A COMPLAINT, TESTIFIES AGAINST, OR ASSISTS IN**  
23 **AN ACTION BROUGHT AGAINST THE EMPLOYER FOR A VIOLATION OF THIS**  
24 **SECTION.**

25           **(I) AN EMPLOYEE MAY NOT:**

26                   **(1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT AGAINST AN**  
27 **EMPLOYER;**

28                   **(2) IN BAD FAITH, BRING AN ACTION UNDER THIS SECTION; OR**

29                   **(3) IN BAD FAITH, TESTIFY IN AN ACTION UNDER THIS SECTION.**

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2009.