

112TH CONGRESS
2D SESSION

S. 3686

To amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodations in employment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2012

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodations in employment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Workplace Religious
5 Freedom Act of 2013”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) In enacting title VII of the Civil Rights Act
2 of 1964 (42 U.S.C. 2000e et seq.) (referred to in
3 this Act as “title VII”), Congress—

4 (A) recognized the widespread incidence of
5 and harm caused by religious discrimination in
6 employment;

7 (B) expressly intended to establish that re-
8 ligion is a class protected from discrimination
9 in employment, as race, color, sex, and national
10 origin are protected classes; and

11 (C) recognized that, absent undue hard-
12 ship, a covered employer’s failure to reasonably
13 accommodate an employee’s religious practice is
14 discrimination within the meaning of that title.

15 (2) Eradicating religious discrimination in em-
16 ployment is essential to reach the goal of full equal
17 employment opportunity in the United States.

18 (3) In *Trans World Airlines, Inc. v. Hardison*,
19 432 U.S. 63 (1977), the Supreme Court held that
20 an employer could deny an employee’s request for
21 religious accommodation based on any burden great-
22 er than a de minimis burden on the employer, and
23 thus narrowed the scope of protection of title VII
24 against religious discrimination in employment, con-
25 trary to the intent of Congress.

1 (4) As a consequence of the Hardison decision
2 and resulting appellate and trial court decisions, dis-
3 crimination against employees on the basis of reli-
4 gion in employment continues to be an unfortunate
5 and unacceptable reality.

6 (5) Federal, State, and local government, and
7 private employers have a history and have estab-
8 lished a continuing pattern of discrimination in un-
9 reasonably denying religious accommodations in em-
10 ployment, including in the areas of garb, grooming,
11 and scheduling.

12 (6) Although this Act addresses requests for ac-
13 commodation with respect to garb, grooming, and
14 scheduling due to employees' religious practices, en-
15 actment of this Act does not represent a determina-
16 tion that other religious accommodation requests do
17 not deserve similar attention or future resolution by
18 Congress.

19 (7) The Supreme Court has held in *Fitzpatrick*
20 *v. Bitzer*, 427 U.S. 445 (1976) that Congress has
21 clearly authorized Federal courts to award monetary
22 damages in favor of a private individual against a
23 State government found in violation of title VII, and
24 this holding is supported by *Quern v. Jordan*, 440
25 U.S. 332 (1979).

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (1) to address the history and widespread pat-
4 tern of discrimination by private sector employers
5 and Federal, State, and local government employers
6 in unreasonably denying religious accommodations in
7 employment, specifically in the areas of garb, groom-
8 ing, and scheduling;

9 (2) to provide a comprehensive Federal prohibi-
10 tion of employment discrimination on the basis of re-
11 ligion, including that denial of accommodations, spe-
12 cifically in the areas of garb, grooming, and sched-
13 uling;

14 (3) to confirm Congress' clear and continuing
15 intention to abrogate States' 11th amendment im-
16 munity from claims made under title VII; and

17 (4) to invoke congressional powers to prohibit
18 employment discrimination, including the powers to
19 enforce the 14th amendment, and to regulate inter-
20 state commerce pursuant to section 8 of article I of
21 the Constitution, in order to prohibit discrimination
22 on the basis of religion, including unreasonable de-
23 nial of religious accommodations, specifically in the
24 areas of garb, grooming, and scheduling.

1 **SEC. 4. AMENDMENTS.**

2 (a) DEFINITIONS.—Section 701(j) of the Civil Rights
3 Act of 1964 (42 U.S.C. 2000e(j)) is amended—

4 (1) by inserting “(1)” after “(j)”;

5 (2) in paragraph (1), as so designated, by strik-
6 ing “he is unable” and inserting “the employer is
7 unable, after initiating and engaging in an affirma-
8 tive and bona fide effort,”; and

9 (3) by adding at the end the following:

10 “(2) For purposes of paragraph (1), with re-
11 spect to the practice of wearing religious clothing or
12 a religious hairstyle, or of taking time off for a reli-
13 gious reason, an accommodation of such a religious
14 practice—

15 “(A) shall not be considered to be a rea-
16 sonable accommodation unless the accommoda-
17 tion removes the conflict between employment
18 requirements and the religious practice of the
19 employee;

20 “(B) shall be considered to impose an
21 undue hardship on the conduct of the employ-
22 er’s business only if the accommodation imposes
23 a significant difficulty or expense on the con-
24 duct of the employer’s business when considered
25 in light of relevant factors set forth in section
26 101(10)(B) of the Americans with Disabilities

1 Act of 1990 (42 U.S.C. 12111(10)(B)) (includ-
2 ing accompanying regulations); and

3 “(C) shall not be considered to be a rea-
4 sonable accommodation if the accommodation
5 requires segregation of an employee from cus-
6 tomers or the general public.

7 “(3) In this subsection:

8 “(A) The term ‘taking time off for a reli-
9 gious reason’ means taking time off for a holy
10 day or to participate in a religious observance.

11 “(B) The term ‘wearing religious clothing
12 or a religious hairstyle’ means—

13 “(i) wearing religious apparel the
14 wearing of which is part of the observance
15 of the religious faith practiced by the indi-
16 vidual;

17 “(ii) wearing jewelry or another orna-
18 ment the wearing of which is part of the
19 observance of the religious faith practiced
20 by the individual;

21 “(iii) carrying an object the carrying
22 of which is part of the observance of the
23 religious faith practiced by the individual;
24 or

1 “(iv) adopting the presence, absence,
2 or style of a person’s hair or beard the
3 adoption of which is part of the observance
4 of the religious faith practiced by the indi-
5 vidual.”.

6 **SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS;**
7 **SEVERABILITY.**

8 (a) **EFFECTIVE DATE.**—Except as provided in sub-
9 section (b), this Act and the amendments made by section
10 4 take effect on the date of enactment of this Act.

11 (b) **APPLICATION OF AMENDMENTS.**—This Act and
12 the amendments made by section 4 do not apply with re-
13 spect to conduct occurring before the date of enactment
14 of this Act.

15 (c) **NO DIMINUTION OF RIGHTS.**—With respect to re-
16 ligious practices not described in section 701(j)(2) of the
17 Civil Rights Act of 1964, as amended by section 4(a)(3),
18 nothing in this Act or an amendment made by this Act
19 shall be construed to diminish any right that may exist,
20 or remedy that may be available, on the day before the
21 date of enactment of this Act, for discrimination in em-
22 ployment because of religion by reason of failure to pro-
23 vide a reasonable accommodation of a religious practice,
24 pursuant to title VII of the Civil Rights Act of 1964 (42
25 U.S.C. 2000e et seq.).

1 (d) SEVERABILITY.—

2 (1) IN GENERAL.—If any provision of an
3 amendment made by this Act, or any application of
4 such provision to any person or circumstance, is held
5 to be unconstitutional, the remainder of the amend-
6 ments made by this Act and the application of the
7 provision to any other person or circumstance shall
8 not be affected.

9 (2) DEFINITION OF RELIGION.—If, in the
10 course of determining a claim brought under title
11 VII of the Civil Rights Act of 1964 (42 U.S.C.
12 2000e et seq.), a court holds that the application of
13 the provision described in paragraph (1) to a person
14 or circumstance is unconstitutional, the court shall
15 determine the claim with respect to that person or
16 circumstance by applying the definition of the term
17 “religion” specified in section 701 of that Act (42
18 U.S.C. 2000e), as in effect on the day before the
19 date of enactment of this Act.

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