

105TH CONGRESS  
1ST SESSION

# S. 92

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation 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 1997”.

6 **SEC. 2. AMENDMENT.**

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

9 (1) by inserting “(1)” after “(j)”;

1           (2) by inserting “, after initiating and engaging  
2           in an affirmative and bona fide effort,” after “un-  
3           able”; and

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

5           “(2) As used in this subsection, the term ‘undue  
6           hardship’ means an accommodation requiring significant  
7           difficulty or expense. For purposes of determining whether  
8           an accommodation requires significant difficulty or ex-  
9           pense, the factors to be considered shall include—

10           “(A) the identifiable cost of the accommodation  
11           in relation to the size and operating cost of the em-  
12           ployer; and

13           “(B) the number of individuals who will need a  
14           particular accommodation to a religious observance  
15           or practice.”.

16           (b) EMPLOYMENT PRACTICES.—Section 703 of such  
17           Act (42 U.S.C. 2000e–2) is amended by adding at the end  
18           the following:

19           “(o)(1) As used in this subsection:

20           “(A) The term ‘employee’ includes a prospective  
21           employee.

22           “(B) The term ‘undue hardship’ has the mean-  
23           ing given the term in section 701(j)(2).

24           “(2) For purposes of determining whether an em-  
25           ployer has committed an unlawful employment practice

1 under this title by failing to provide a reasonable accom-  
2 modation to the religious observance or practice of an em-  
3 ployee, an accommodation by the employer shall not be  
4 deemed to be reasonable if—

5 “(A) such accommodation does not remove the  
6 conflict between employment requirements and the  
7 religious observance or practice of the employee; or

8 “(B)(i) the employee demonstrates to the em-  
9 ployer the availability of an alternative accommoda-  
10 tion less onerous to the employee that may be made  
11 by the employer without undue hardship on the con-  
12 duct of the employer’s business; and

13 “(ii) the employer refuses to make such accom-  
14 modation.

15 “(3) It shall not be a defense to a claim of unlawful  
16 employment practice under this title for failure to provide  
17 a reasonable accommodation to a religious observance or  
18 practice of an employee that such accommodation would  
19 be in violation of a bona fide seniority system if, in order  
20 for the employer to reasonably accommodate to such ob-  
21 servance or practice—

22 “(A) an adjustment would be made in the em-  
23 ployee’s work hours (including an adjustment that  
24 requires the employee to work overtime in order to  
25 avoid working at a time that abstention from work

1 is necessary to satisfy religious requirements), shift,  
 2 or job assignment, that would not be available to  
 3 any employee but for such accommodation; or

4 “(B) the employee and any other employee  
 5 would voluntarily exchange shifts or job assign-  
 6 ments, or voluntarily make some other arrangement  
 7 between the employees.

8 “(4)(A) An employer shall not be required to pay pre-  
 9 mium wages for work performed during hours to which  
 10 such premium wages would ordinarily be applicable, if  
 11 work is performed during such hours only to accommodate  
 12 religious requirements of an employee.

13 “(B) As used in this paragraph, the term ‘premium  
 14 wages’ includes overtime pay and compensatory time off,  
 15 pay for night, weekend, or holiday work, and pay for  
 16 standby or irregular duty.”.

17 **SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

18 (a) EFFECTIVE DATE.—Except as provided in sub-  
 19 section (b), this Act and the amendments made by section  
 20 2 take effect on the date of enactment of this Act.

21 (b) APPLICATION OF AMENDMENTS.—The amend-  
 22 ments made by section 2 do not apply with respect to con-  
 23 duct occurring before the date of enactment of this Act.

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