

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2572

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

MAY 23, 2002

Mr. KERRY (for himself, Mr. SANTORUM, Mr. LIEBERMAN, Mr. SMITH of Oregon, Ms. MIKULSKI, Mr. BROWNBACK, Mrs. MURRAY, and Mr. HUTCHINSON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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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 2002”.

6       **SEC. 2. AMENDMENTS.**

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

1 (1) by inserting “(1)” after “(j)”;

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

5 (3) by striking “an employee’s” and all that fol-  
6 lows through “religious” and inserting “an employ-  
7 ee’s religious”; and

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

9 “(2)(A) In this subsection, the term ‘employee’ in-  
10 cludes an employee (as defined in subsection (f)), or a pro-  
11 spective employee, who, with or without reasonable accom-  
12 modation, is qualified to perform the essential functions  
13 of the employment position that such individual holds or  
14 desires.

15 “(B) In this paragraph, the term ‘perform the essen-  
16 tial functions’ includes carrying out the core requirements  
17 of an employment position and does not include carrying  
18 out practices relating to clothing, practices relating to tak-  
19 ing time off, or other practices that may have a temporary  
20 or tangential impact on the ability to perform job func-  
21 tions, if any of the practices described in this subpara-  
22 graph restrict the ability to wear religious clothing, to take  
23 time off for a holy day, or to participate in a religious  
24 observance or practice.

1       “(3) In this subsection, the term ‘undue hardship’  
2 means an accommodation requiring significant difficulty  
3 or expense. For purposes of determining whether an ac-  
4 commodation requires significant difficulty or expense,  
5 factors to be considered in making the determination shall  
6 include—

7               “(A) the identifiable cost of the accommodation,  
8 including the costs of loss of productivity and of re-  
9 training or hiring employees or transferring employ-  
10 ees from 1 facility to another;

11               “(B) the overall financial resources and size of  
12 the employer involved, relative to the number of its  
13 employees; and

14               “(C) for an employer with multiple facilities,  
15 the geographic separateness or administrative or fis-  
16 cal relationship of the facilities.”.

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

20       “(o)(1) In this subsection:

21               “(A) The term ‘employee’ has the meaning  
22 given the term in section 701(j)(2).

23               “(B) The term ‘leave of general usage’ means  
24 leave provided under the policy or program of an  
25 employer, under which—

1           “(i) an employee may take leave by adjust-  
2           ing or altering the work schedule or assignment  
3           of the employee according to criteria deter-  
4           mined by the employer; and

5           “(ii) the employee may determine the pur-  
6           pose for which the leave is to be utilized.

7           “(2) For purposes of determining whether an em-  
8           ployer has committed an unlawful employment practice  
9           under this title by failing to provide a reasonable accom-  
10          modation to the religious observance or practice of an em-  
11          ployee, for an accommodation to be considered to be rea-  
12          sonable, the accommodation shall remove the conflict be-  
13          tween employment requirements and the religious observ-  
14          ance or practice of the employee.

15          “(3) An employer shall be considered to commit such  
16          a practice by failing to provide such a reasonable accom-  
17          modation for an employee if the employer refuses to per-  
18          mit the employee to utilize leave of general usage to re-  
19          move such a conflict solely because the leave will be used  
20          to accommodate the religious observance or practice of the  
21          employee.”.

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

23          (a) EFFECTIVE DATE.—Except as provided in sub-  
24          section (b), this Act and the amendments made by section  
25          2 take effect on the date of enactment of this Act.

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

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