



Maggie Garrett  
Legislative Director

(202) 466-3234 x226  
(202) 898-0955 (fax)  
garrett@au.org

1901 L Street, NW  
Suite 400  
Washington, DC 20036

---

### **Section 5 of HB 757 Sanctions Hiring Discrimination**

Section 5 of HB 757, as passed, includes a religious hiring provision that was debated in neither the House nor the Senate before the bill appeared on the desk of House Members last Wednesday. Now, as the bill moves to the Governor's desk, people are trying to take the time to understand its implications.

Some are arguing that since most hiring discrimination laws contain exemptions for certain religious entities, this language is inconsequential. Unfortunately, the section raises significant concerns and sanctions discrimination. Of most significance, is that this language could be used to justify taxpayer-funded religious discrimination. The devil, of course, is in the details.

#### **Section 5 Is Not Tailored to Apply to Any Specific Hiring Nondiscrimination Protections, Which Will Likely Lead to Unintended Consequences.**

First, Section 5 is not really religious exemption, as there is no state hiring protections from which it is creating an exemption. Instead, it is a stand-alone affirmative statement bolstering the right of certain religious organizations to discriminate. As a result, its broad implications are not entirely clear.

Most laws that prohibit discrimination in employment and any exemptions the laws may have are crafted together so that the scope of an exemption is tailored to address specific concerns and, of course, extends no further than the actual nondiscrimination protections themselves... Title VII of the Civil Rights Act of 1964, as amended, for example, contains a religious exemption. But the exemption was designed to work with affirmative nondiscrimination protections and the scope of the exemption is interpreted within the context of the protections.

In contrast, HB 757 is not accompanied by affirmative state hiring discrimination protections and thus there is no context or limiting parameters for the provision. Instead the provision is designed to apply to all current and future state and local nondiscrimination ordinances, policies, contract provisions, grants, and other governing laws. It is a classic example of creating a square peg to fit in a round hole: how this exemption will work with these various carefully constructed laws, policies, contracts, and grants is unclear and could have significant negative consequences. Indeed, it could disrupt the careful balance contemplated by lawmakers and government officials who created the underlying hiring protections.

#### **This Provision Could Allow Taxpayer-Funded Religious Hiring Discrimination**

Section 5 affirmatively states that faith-based organizations may discriminate in hiring. But, as explained above, there is no context for this provision. And notably, this section lacks a provision like the one in Section 4<sup>1</sup> that clarifies that the government maintains the ability to include hiring nondiscrimination provisions in contracts and grants that are voluntarily entered into by faith-based organizations. As a result, this section could be used to prohibit the government from including hiring nondiscrimination provisions in contracts and grants with faith-based organizations. The result: government-funded jobs will be denied to qualified candidates because they are of the "wrong religion."

---

<sup>1</sup> 10-1-1001(b).

The state of Georgia already has an unfortunate history with such discrimination. In 2001, Alan Yorker was denied a job at a foster home that was run by the United Methodist Homes but paid for by the state of Georgia. When he arrived for the job interview, he was asked to fill out a form indicating:

- (a) his religion, including denomination;
- (b) his church and how long he had been a member; and
- (c) his references, which had to include one minister.<sup>2</sup>

Once the interviewer realized he was Jewish, however, she told him: “We don’t hire people of your faith”; and she ended the interview.<sup>3</sup> After the lawsuit that ensued, the Department of Human Resources entered into a settlement agreement that requires all state contracts with foster care and adoption agencies to include a provision prohibiting such discrimination. Ever since however, legislators have been attempting to gut the settlement agreement in order to allow such discrimination. HB 757 could be the law they have been fighting for.

The potential impact of Section 5 is just as troubling as the discrimination Alan Yorker suffered. The language of the provision allows for discrimination against not just those who hold different religious beliefs, but also anyone who engages in any activity that may conflicts with the particular beliefs of the organization. As a result, a faith-based organization could fire or refuse to hire someone for a taxpayer-funded job if the employee:

- goes to psychiatrist, which violates the church’s opposition to psychiatric medicine;
- has a tattoo or wears earrings, which conflicts with the faith’s views on body modification; or
- reports domestic violence to authorities instead of seeking guidance from her clergy leader.

The government must not discriminate in hiring for any job for which the taxpayer pays the salary – whether in state or local government or in organizations that contract with the government. Unfortunately, Section 5 could allow just that.

---

<sup>2</sup> Written Testimony of Alan Yorker, Statement to U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, for the Hearing on Faith-Based Initiatives: Recommendations of the President’s Advisory Council on Faith-Based and Community Partnerships and Other Current Issues, Dec. 2. 2010, 226. Available at: [http://judiciary.house.gov/\\_files/hearings/printers/111th/111-156\\_62343.PDF](http://judiciary.house.gov/_files/hearings/printers/111th/111-156_62343.PDF).

<sup>3</sup> *Id.*