

SENATE BILL 205

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HB 315/99 - JUD

2001 Regular Session
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By: **The President (Administration) and Senators Blount, Conway, Forehand, Frosh, Hoffman, Hollinger, Kelley, Lawlah, McFadden, Pinsky, Ruben, Sfikas, Teitelbaum, and Van Hollen**

Introduced and read first time: January 22, 2001
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 26, 2001

CHAPTER _____

1 AN ACT concerning

2

Antidiscrimination Act of 2001

3 FOR the purpose of prohibiting discrimination based on sexual orientation with
4 regard to public accommodations, housing, and employment; making certain
5 remedies and procedures regarding discrimination applicable to discrimination
6 based on sexual orientation; making certain exemptions from certain provisions
7 of law that prohibit certain discrimination applicable to provisions of this Act
8 regarding discrimination based on sexual orientation; providing immunity from
9 liability for certain acts taken by employers in response to certain charges;
10 defining "sexual orientation"; making certain technical changes; providing for
11 the construction and application of this Act; and generally relating to
12 discrimination based on sexual orientation.

13 BY repealing and reenacting, with amendments,
14 Article 49B - Human Relations Commission
15 Section 5, 8(a), 14, 16, 18, 19(a), 20(t), 21(a), 22(a), 23, and 37(a)
16 Annotated Code of Maryland
17 (1998 Replacement Volume and 2000 Supplement)

18 BY adding to
19 Article 49B - Human Relations Commission
20 Section 15(h) and 20(u)
21 Annotated Code of Maryland
22 (1998 Replacement Volume and 2000 Supplement)

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

3 **Article 49B - Human Relations Commission**

4 5.

5 (a) IN THIS SUBHEADING, "SEXUAL ORIENTATION" MEANS THE
6 IDENTIFICATION OF AN INDIVIDUAL AS TO MALE OR FEMALE HOMOSEXUALITY,
7 HETEROSEXUALITY, OR BISEXUALITY.

8 (B) It is unlawful for an owner or operator of a place of public accommodation
9 or an agent or employee of the owner or operator, because of the race, creed, sex, age,
10 color, national origin, marital status, SEXUAL ORIENTATION, or disability of any
11 person, to refuse, withhold from, or deny to such person any of the accommodations,
12 advantages, facilities and privileges of such place of public accommodation.

13 [(b)] (C) Nothing in this section shall be construed or interpreted to prohibit
14 the proprietor of any establishment, or the employees of the establishment, from the
15 right to deny service to any person for failure to conform to the usual and regular
16 requirements, standards and regulations for the establishment so long as the denial
17 is not based upon discrimination on the grounds of race, sex, age, color, creed,
18 national origin, marital status, SEXUAL ORIENTATION, or disability.

19 [(c)] (D) For the purpose of this subtitle, a place of public accommodation
20 means:

21 (1) Any inn, hotel, motel, or other establishment which provides lodging
22 to transient guests, other than an establishment located within a building which
23 contains not more than five rooms for rent or hire and which is actually occupied by
24 the proprietor of such establishment as the proprietor's residence;

25 (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain,
26 or other facility principally engaged in selling food or alcoholic beverages for
27 consumption on or off the premises, including, but not limited to, any such facility
28 located on the premises of any retail establishment; or any gasoline station;

29 (3) Any motion picture house, theater, concert hall, sports arena,
30 stadium or other place of exhibition or entertainment; and

31 (4) Any establishment which:

32 (i) 1. Is physically located within the premises of any
33 establishment otherwise covered by this section; or

34 2. Within the premises of which is physically located any
35 establishment otherwise covered by this section; and

36 (ii) Which holds itself out as serving patrons of such covered
37 establishment.

1 [(d)] (E) (1) For the purposes of this section, a "place of public
2 accommodation" also means any establishment that:

- 3 (i) Is operated by a public or private entity;
- 4 (ii) Is not included in subsection [(c)] (D) of this section; and
- 5 (iii) Is a retail establishment, whether offering goods, services,
6 entertainment, recreation, or transportation.

7 (2) This section does not require structural changes, modifications, or
8 additions to buildings or vehicles, except as required by this paragraph or as
9 otherwise required by law. In addition, any building constructed, modified or altered
10 in compliance with, or pursuant to a waiver from, the Maryland Building Code for the
11 Handicapped under Article 83B, § 6-102 of the Code shall not be subject to this
12 section.

13 (i) When structural changes, modifications, or the provision of
14 special equipment is necessary to accommodate an individual with a disability, the
15 accommodation shall be "reasonable".

16 (ii) 1. "Reasonable accommodation" for the purposes of this
17 paragraph means to make a public accommodation suitable for access, use, and
18 patronage by a person without danger to the person's health or safety and without
19 undue hardship or expense to a business or other activity making such an
20 accommodation.

21 2. With respect to a private motor coach transportation
22 carrier, for the purposes of this subsection, "reasonable accommodation" means that
23 any requirement to satisfy the provisions of this article will not exceed a maximum
24 expense of \$2,500 per operating vehicle. However, beginning January 1, 1990, at least
25 10 percent of the total operating fleet of any private motor coach transportation
26 carrier doing business in the State shall comply with the provisions of this article.

27 3. The Human Relations Commission shall make a
28 determination in the first instance whether an accommodation is "reasonable". In
29 making this determination for buildings, the Human Relations Commission may
30 consult with the Department of Housing and Community Development and such
31 others as may be useful as to the cost and feasibility of any structural changes,
32 modifications, additions or the provision of special equipment.

33 [(e)] (F) The provisions of this section shall not apply to a private club or other
34 establishment not in fact open to the public, except to the extent that the facilities of
35 such establishments are made available to the customers or patrons of an
36 establishment within the scope of this section.

37 [(f)] (G) With respect to sex discrimination, this section may not be construed
38 to apply to those facilities which are uniquely private and personal in nature,
39 designed to accommodate only a particular sex.

1 [(g)] (H) (1) If the Commission finds that a respondent has engaged in an
2 unlawful practice under this section, in addition to other relief authorized, the
3 Commission may seek an order assessing a civil penalty against the respondent:

4 (i) If the respondent has not been adjudged to have committed any
5 prior discriminatory practice, in an amount not exceeding \$500;

6 (ii) If the respondent has been adjudged to have committed 1 other
7 discriminatory practice during the 5-year period ending on the date of the filing of
8 this charge, in an amount not exceeding \$1,000; and

9 (iii) If the respondent has been adjudged to have committed 2 or
10 more discriminatory practices during the 7-year period ending on the date of the
11 filing of this charge, in an amount not exceeding \$2,500.

12 (2) If the acts constituting the discriminatory practice are committed by
13 the same natural person who has been previously adjudged to have committed
14 discriminatory practices, then the civil penalties set forth in [subsections (g)(1)(ii)
15 and (iii)] SUBSECTION (H)(1)(II) AND (III) may be imposed without regard to the period
16 of time within which any subsequent discriminatory practice occurred.

17 (3) All civil penalties shall be paid to the General Fund of the State of
18 Maryland.

19 8.

20 (a) It is unlawful for any person, business, corporation, partnership,
21 copartnership or association or any other individual, agent, employee, group or firm
22 which is licensed or regulated by a unit in the Department of Labor, Licensing, and
23 Regulation as set out in § 2-108 of the Business Regulation Article to refuse, withhold
24 from, deny or discriminate against any person the accommodations, advantages,
25 facilities, privileges, sales, or services because of the race, sex, creed, color, national
26 origin, marital status, SEXUAL ORIENTATION, or disability of any person. Nothing in
27 this section shall be construed or interpreted to prohibit any person, business,
28 corporation, partnership, copartnership, association or any other individual, agent,
29 employee, group or firm which is licensed or regulated by the Department of Labor,
30 Licensing, and Regulation from the right to refuse, withhold from, or deny any person
31 for failure to conform to the usual and regular requirements, standards, and
32 regulations of any person, business, corporation, partnership, copartnership, or
33 association contemplated by this section so long as the denial is not based upon
34 discrimination on the grounds of race, sex, color, creed, [or] national origin, marital
35 status, SEXUAL ORIENTATION, or disability.

36 14.

37 It is hereby declared to be the policy of the State of Maryland, in the exercise of
38 its police power for the protection of the public safety, public health and general
39 welfare, for the maintenance of business and good government and for the promotion
40 of the State's trade, commerce and manufacturers to assure all persons equal
41 opportunity in receiving employment and in all labor management-union relations

1 regardless of race, color, religion, ancestry or national origin, sex, age, marital status,
2 SEXUAL ORIENTATION, or disability unrelated in nature and extent so as to
3 reasonably preclude the performance of the employment, and to that end to prohibit
4 discrimination in employment by any person, group, labor organization, organization
5 or any employer or his agents.

6 15.

7 For the purposes of this subtitle:

8 (H) "SEXUAL ORIENTATION" MEANS THE IDENTIFICATION OF AN INDIVIDUAL
9 AS TO MALE OR FEMALE HOMOSEXUALITY, HETEROSEXUALITY, OR BISEXUALITY.

10 16.

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

12 (1) To fail or refuse to hire or to discharge any individual, or otherwise to
13 discriminate against any individual with respect to his compensation, terms,
14 conditions, or privileges of employment, because of such individual's race, color,
15 religion, sex, age, national origin, marital status, SEXUAL ORIENTATION, or disability
16 unrelated in nature and extent so as to reasonably preclude the performance of the
17 employment; or

18 (2) To limit, segregate, or classify his employees or applicants for
19 employment in any way which would deprive or tend to deprive any individual of
20 employment opportunities or otherwise adversely affect his status as an employee,
21 because of the individual's race, color, religion, sex, age, national origin, marital
22 status, SEXUAL ORIENTATION, or disability unrelated in nature and extent so as to
23 reasonably preclude the performance of the employment.

24 (b) It shall be an unlawful employment practice for an employment agency to
25 fail or refuse to refer for employment, or otherwise to discriminate against, any
26 individual because of his race, color, religion, sex, age, national origin, marital status,
27 SEXUAL ORIENTATION, or disability unrelated in nature and extent so as to
28 reasonably preclude the performance of the employment, or to classify or refer for
29 employment any individual on the basis of his race, color, religion, sex, age, national
30 origin, marital status, SEXUAL ORIENTATION, or disability unrelated in nature and
31 extent so as to reasonably preclude the performance of the employment.

32 (c) It shall be an unlawful employment practice for a labor organization: (1) to
33 exclude or to expel from its membership, or otherwise to discriminate against, any
34 individual because of his race, color, religion, sex, age, national origin, marital status,
35 SEXUAL ORIENTATION, or disability unrelated in nature and extent so as to
36 reasonably preclude the performance of the employment; (2) to limit, segregate or
37 classify its membership, or to classify or fail or refuse to refer for employment any
38 individual, in any way which would deprive or tend to deprive any individual of
39 employment opportunities, or would limit such employment opportunities or
40 otherwise adversely affect his status as an employee or as an applicant for
41 employment, because of such individual's race, color, religion, sex, age, national

1 origin, marital status, SEXUAL ORIENTATION, or disability unrelated in nature and
2 extent so as to reasonably preclude the performance of the employment; or (3) to
3 cause or attempt to cause an employer to discriminate against an individual in
4 violation of this section.

5 (d) It shall be an unlawful employment practice for any employer, labor
6 organization, or joint labor-management committee controlling apprenticeship or
7 other training or retraining, including on-the-job training programs to discriminate
8 against any individual because of his race, color, religion, sex, age, national origin,
9 marital status, SEXUAL ORIENTATION, or disability unrelated in nature or extent so
10 as to reasonably preclude the performance of the employment in admission to, or
11 employment in, any program established to provide apprenticeship or other training.

12 (e) It is an unlawful employment practice for an employer, labor organization,
13 or employment agency to print or cause to be printed or published any notice or
14 advertisement relating to employment by the employer or membership in or any
15 classification or referral for employment by the labor organization, or relating to any
16 classification or referral for employment by the agency, indicating any preference,
17 limitation, specification, or discrimination, based on race, color, religion, sex, age,
18 national origin, SEXUAL ORIENTATION, or on the basis of a disability. However, a
19 notice or advertisement may indicate a preference, limitation, specification, or
20 discrimination based on religion, sex, age, national origin or disability when religion,
21 sex, age, national origin or disability is a bona fide occupational qualification for
22 employment.

23 (f) It is an unlawful employment practice for an employer to discriminate
24 against any of his employees or applicants for employment, for an employment agency
25 to discriminate against any individual, or for a labor organization to discriminate
26 against any member thereof or applicant for membership, because he has opposed
27 any practice made an unlawful employment practice by this subtitle or because he
28 has made a charge, testified, assisted, or participated in any manner in an
29 investigation, proceeding, or hearing under this subtitle.

30 (g) Notwithstanding any other provision of this subtitle, (1) it is not an
31 unlawful employment practice for an employer to hire and employ employees, for an
32 employment agency to classify, or refer for employment any individual, for a labor
33 organization to classify its membership or to classify or refer for employment any
34 individual, or for an employer, labor organization or joint labor-management
35 committee controlling apprenticeship or other training or retraining programs to
36 admit or employ any individual in any such program, on the basis of his religion,
37 national origin or disability in those instances where sex, age, religion, national origin
38 or disability is a bona fide occupational qualification reasonably necessary to the
39 normal operation of that particular business or enterprise; (2) it is not an unlawful
40 employment practice for an employer to establish standards concerning an employee's
41 dress and grooming if the standards are directly related to the nature of the
42 employment of the employee; (3) it is not an unlawful employment practice for a
43 school, college, university, or other educational institution or institution of learning to
44 hire and employ employees of a particular religion if the school, college, university, or
45 other educational institution or institution of learning is, in whole or in substantial

1 part, owned, supported, controlled, or managed by a particular religion or by a
2 particular religious corporation, association, or society or if the curriculum of the
3 school, college, university, or other educational institution or institution of learning is
4 directed toward the propagation of a particular religion; and (4) it is not unlawful for
5 an employer, employment agency or labor organization to observe the terms of a bona
6 fide seniority system or any bona fide employee benefit plan such as a retirement,
7 pension or insurance plan, which is not a subterfuge to evade the purposes of this
8 subtitle; however, no employee benefit plan shall excuse the failure to hire any
9 individual.

10 (h) Nothing contained in this subtitle shall be interpreted to require any
11 employer, employment agency, labor organization, or joint labor-management
12 committee subject to this subtitle to grant preferential treatment to any individual or
13 to any group because of the race, color, religion, sex, age, national origin, SEXUAL
14 ORIENTATION, or disability of the individual or group on account of an imbalance
15 which may exist with respect to the total number or percentage of persons of any race,
16 color, religion, sex, age, national origin, SEXUAL ORIENTATION, or persons with
17 disabilities employed by any employer, referred or classified for employment by any
18 employment agency or labor organization, admitted to membership or classified by
19 any labor agency or labor organization, admitted to membership or classified by any
20 labor organization, or admitted to, or employed in, any apprenticeship or other
21 training program, in comparison with the total number or percentage of persons of
22 such race, color, religion, sex, age, national origin, SEXUAL ORIENTATION, or persons
23 with disabilities in any community, State, section, or other area, or in the available
24 work force in any community, State, section, or other area.

25 (I) AN EMPLOYER SHALL BE IMMUNE FROM LIABILITY, UNDER THIS ARTICLE
26 OR UNDER THE COMMON LAW, ARISING OUT OF THE EMPLOYER'S REASONABLE ACTS
27 TO VERIFY THE SEXUAL ORIENTATION OF ANY EMPLOYEE OR APPLICANT TAKEN BY
28 THE EMPLOYER IN RESPONSE TO A CHARGE FILED AGAINST THE EMPLOYER ON THE
29 BASIS OF SEXUAL ORIENTATION.

30 18.

31 This subtitle shall not apply to:

32 (1) [an] AN employer with respect to the employment of aliens outside of
33 the State[, or to]; OR

34 (2) [a] A religious corporation, association, educational institution or
35 society with respect to the employment of individuals of a particular religion OR
36 SEXUAL ORIENTATION to perform work connected with the carrying on by such
37 corporation, association, educational institution or society of its activities.

38 19.

39 (a) It is the policy of the State of Maryland to provide for fair housing
40 throughout the State of Maryland, to all its citizens, regardless of race, color, religion,
41 sex, familial status, national origin, marital status, SEXUAL ORIENTATION, or
42 disability; and to that end to prohibit discriminatory practices with respect to

1 residential housing by any person or group of persons, in order that the peace, health,
2 safety, prosperity and general welfare of all the inhabitants of the State may be
3 protected and insured.

4 20.

5 (t) "Restrictive covenants" means any specification limiting the transfer,
6 rental, or lease of any dwelling because of race, color, religion, marital status, SEXUAL
7 ORIENTATION, sex, familial status, disability, or national origin.

8 (U) "SEXUAL ORIENTATION" MEANS THE IDENTIFICATION OF AN INDIVIDUAL
9 AS TO MALE OR FEMALE HOMOSEXUALITY, HETEROSEXUALITY, OR BISEXUALITY.

10 21.

11 (a) This subtitle does not apply to:

12 (1) The sale or rental of a single family dwelling, if the dwelling is sold or
13 rented without:

14 (i) The use of the sales or rental facilities or services of any:

- 15 1. Real estate broker, agent, or salesman;
- 16 2. Agent of any real estate broker, agent, or salesman;
- 17 3. Person in the business of selling or renting dwellings; or
- 18 4. Agent of a person in the business of selling or renting
19 dwellings; or

20 (ii) The publication, posting, or mailing, after notice, of any
21 advertisement or written notice in violation of this subtitle; and

22 (2) With respect to discrimination on the basis of [either] sex, SEXUAL
23 ORIENTATION, or marital status:

24 (i) The rental of rooms in any dwelling, if the owner maintains the
25 dwelling as the owner's principal residence; or

26 (ii) The rental of any apartment in a dwelling that contains no more
27 than 5 rental units, if the owner maintains the dwelling as the owner's principal
28 residence.

29 22.

30 (a) Except as provided in § 21 of this subtitle, it is unlawful:

31 (1) To refuse to sell or rent after the making of a bona fide offer, or to
32 refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a

1 dwelling to any person because of race, color, religion, sex, disability, marital status,
2 familial status, SEXUAL ORIENTATION, or national origin;

3 (2) To discriminate against any person in the terms, conditions, or
4 privileges of sale or rental of a dwelling, or in the provision of services or facilities in
5 connection with the sale or rental of a dwelling, because of race, color, religion, sex,
6 disability, marital status, familial status, SEXUAL ORIENTATION, or national origin;

7 (3) To make, print, or publish, or cause to be made, printed, or published
8 any notice, statement, or advertisement, with respect to the sale or rental of a
9 dwelling that indicates any preference, limitation, or discrimination based on race,
10 color, religion, sex, disability, marital status, familial status, SEXUAL ORIENTATION,
11 or national origin, or an intention to make any preference, limitation, or
12 discrimination;

13 (4) To represent to any person because of race, color, religion, sex,
14 disability, marital status, familial status, SEXUAL ORIENTATION, or national origin
15 that any dwelling is not available for inspection, sale, or rental when the dwelling is
16 in fact available;

17 (5) For profit, to induce or attempt to induce any person to sell or rent
18 any dwelling by representations regarding the entry or prospective entry into the
19 neighborhood of a person or persons of a particular race, color, religion, sex, disability,
20 marital status, familial status, SEXUAL ORIENTATION, or national origin;

21 (6) To discriminate in the sale or rental, or otherwise make unavailable
22 or deny, a dwelling to any buyer or renter because of a disability of:

23 (i) The buyer or renter; or

24 (ii) A person residing in or intending to reside in the dwelling after
25 it is so sold, rented, or made available;

26 (7) To discriminate against any person in the terms, conditions, or
27 privileges of sale or rental of a dwelling, or in the provision of services or facilities in
28 connection with the dwelling, because of a disability of:

29 (i) The person; or

30 (ii) A person residing in or intending to reside in the dwelling after
31 it is so sold, rented, or made available;

32 (8) To refuse to permit, at the expense of the person with a disability,
33 reasonable modifications of existing premises occupied or to be occupied by the
34 individual if:

35 (i) The modifications may be necessary to afford the person with a
36 disability full enjoyment of the dwelling; and

1 (ii) For a rental dwelling, the tenant agrees, at the tenant's
2 expense, to restore, reasonable wear and tear excepted, the interior of the dwelling to
3 the condition that existed before the modification on vacating the dwelling;

4 (9) To refuse to make reasonable accommodations in rules, policies,
5 practices, or services when the accommodations may be necessary to afford an
6 individual with a disability equal opportunity to use and enjoy a dwelling; or

7 (10) To fail to design or construct a covered multifamily dwelling for first
8 occupancy as required under subsection (b) of this section.

9 23.

10 (a) (1) It is unlawful for any person or other entity whose business includes
11 engaging in residential real estate related transactions to discriminate against any
12 person in making available a transaction, or in the terms or conditions of a
13 transaction, because of race, color, religion, sex, disability, marital status, familial
14 status, SEXUAL ORIENTATION, or national origin.

15 (2) Nothing in paragraph (1) of this subsection prohibits a person
16 engaged in the business of furnishing appraisals of real property to take into
17 consideration factors other than race, color, religion, national origin, sex, disability,
18 marital status, SEXUAL ORIENTATION, or familial status.

19 (b) It is unlawful, because of race, color, religion, sex, disability, marital
20 status, familial status, SEXUAL ORIENTATION, or national origin, to deny a person
21 access to or membership or participation in a multiple-listing service, real estate
22 brokers' organization or other service, organization, or facility relating to the business
23 of selling or renting dwellings, or to discriminate against a person in the terms or
24 conditions of membership or participation.

25 37.

26 (a) Whether or not acting under color of law it is unlawful for any person, by
27 force or threat of force, to willfully injure, intimidate, interfere with, or attempt to
28 injure, intimidate, or interfere with:

29 (1) Any person because of race, color, religion, sex, disability, marital
30 status, familial status, SEXUAL ORIENTATION, or national origin and because the
31 person is or has been:

32 (i) Selling, purchasing, renting, financing, occupying, or
33 contracting or negotiating for the sale, purchase, rental, financing, or occupation of
34 any dwelling; or

35 (ii) Applying for or participating in any service, organization, or
36 facility relating to the business of selling or renting dwellings; [or]

37 (2) Any person because the person is or has been, or in order to
38 intimidate the person or any other person or any class of persons from:

1 (i) Participating without discrimination on account of race, color,
2 religion, sex, disability, marital status, familial status, SEXUAL ORIENTATION, or
3 national origin in any of the activities, services, organizations, or facilities described
4 in paragraph (1) of this subsection; or

5 (ii) Affording another person or class of persons the opportunity or
6 protection to participate in any of the activities, services, organizations or facilities
7 described in paragraph (1) of this subsection; or

8 (3) Any person because the person is or has been, or in order to
9 discourage the person or any other person from:

10 (i) Lawfully aiding or encouraging other persons to participate,
11 without discrimination on account of race, color, religion, sex, disability, marital
12 status, familial status, SEXUAL ORIENTATION, or national origin, in any of the
13 activities, services, organizations, or facilities described in paragraph (1) of this
14 subsection; or

15 (ii) Participating lawfully in speech or peaceful assembly opposing
16 any denial of the opportunity to participate in any of the activities, services,
17 organizations or facilities described in paragraph (1) of this subsection.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act:

19 (1) may not be construed to authorize or validate a marriage between
20 two individuals of the same sex;

21 (2) may not be construed to require or prohibit an employer to offer
22 health insurance benefits to unmarried domestic partners;

23 (3) does not mandate any public or private educational institution to
24 promote any form of sexuality or sexual orientation or to include such matters in its
25 curriculum; and

26 (4) is intended to ensure specific defined rights and not to endorse or
27 confer legislative approval of any form of sexual behavior.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act does not apply to
29 the Boy Scouts of America or the Girl Scouts of America with respect to the
30 employment of individuals of a particular sexual orientation to perform work
31 connected with the activities of those organizations.

32 ~~SECTION 4.~~ AND BE IT FURTHER ENACTED, That this Act shall take
33 effect October 1, 2001.

