

HOUSE BILL 945

D5

71r0691
CF SB 516

By: **Delegates Jones, Ali, Barkley, Barnes, Feldman, Gilchrist, Gutierrez, Hixson, Holmes, Hubbard, Hucker, Kaiser, Lawton, Lee, Manno, Mizeur, Montgomery, Nathan-Pulliam, Niemann, Ramirez, Rice, Schuler, Simmons, F. Turner, and Waldstreicher**

Introduced and read first time: February 9, 2007

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Human Relations – Sexual Orientation and Gender Identity and Expression**
3 **– Antidiscrimination**

4 FOR the purpose of prohibiting discrimination based on gender identity and
5 expression with regard to public accommodations, housing, and employment;
6 prohibiting discrimination based on sexual orientation or gender identity and
7 expression with regard to the leasing of property for commercial usage or in the
8 provision of certain services or facilities; making certain remedies and
9 procedures regarding discrimination applicable to discrimination based on
10 sexual orientation and gender identity and expression; requiring certain State
11 personnel actions to be made without regard to gender identity and expression
12 or sexual orientation; defining the term “gender identity and expression”; and
13 generally relating to discrimination based on sexual orientation and gender
14 identity and expression.

15 BY repealing and reenacting, with amendments,
16 Article 49B – Human Relations Commission
17 Section 5(a), (b), and (c), 8(a), 8A, 14, 16, 19(a), 20(t), 21(a), 22(a), 23, and 37(a)
18 Annotated Code of Maryland
19 (2003 Replacement Volume and 2006 Supplement)

20 BY adding to
21 Article 49B – Human Relations Commission

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 15(k) and 20(k-1)
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2006 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – State Personnel and Pensions
6 Section 2-302
7 Annotated Code of Maryland
8 (2004 Replacement Volume and 2006 Supplement)

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

11 **Article 49B – Human Relations Commission**

12 5.

13 (a) (1) In this subheading[,] **THE FOLLOWING WORDS HAVE THE**
14 **MEANINGS INDICATED.**

15 (2) **“GENDER IDENTITY AND EXPRESSION” MEANS A**
16 **GENDER-RELATED IDENTITY, APPEARANCE, EXPRESSION, OR BEHAVIOR OF AN**
17 **INDIVIDUAL REGARDLESS OF THE INDIVIDUAL’S ASSIGNED SEX AT BIRTH.**

18 (3) [“sexual] **“SEXUAL orientation”** means the identification of an
19 individual as to male or female homosexuality, heterosexuality, or bisexuality.

20 (b) It is unlawful for an owner or operator of a place of public accommodation
21 or an agent or employee of the owner or operator, because of the race, creed, sex, age,
22 color, national origin, marital status, sexual orientation, **GENDER IDENTITY AND**
23 **EXPRESSION**, or disability of any person, to refuse, withhold from, or deny to such
24 person any of the accommodations, advantages, facilities and privileges of such place
25 of public accommodation.

26 (c) Nothing in this section shall be construed or interpreted to prohibit the
27 proprietor of any establishment, or the employees of the establishment, from the right
28 to deny service to any person for failure to conform to the usual and regular
29 requirements, standards and regulations for the establishment so long as the denial is
30 not based upon discrimination on the grounds of race, sex, age, color, creed, national
31 origin, marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or
32 disability.

1 8.

2 (a) It is unlawful for any person, business, corporation, partnership,
3 copartnership or association or any other individual, agent, employee, group or firm
4 which is licensed or regulated by a unit in the Department of Labor, Licensing, and
5 Regulation as set out in § 2-108 of the Business Regulation Article to refuse, withhold
6 from, deny or discriminate against any person the accommodations, advantages,
7 facilities, privileges, sales, or services because of the race, sex, creed, color, national
8 origin, marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or
9 disability of any person. Nothing in this section shall be construed or interpreted to
10 prohibit any person, business, corporation, partnership, copartnership, association or
11 any other individual, agent, employee, group or firm which is licensed or regulated by
12 the Department of Labor, Licensing, and Regulation from the right to refuse, withhold
13 from, or deny any person for failure to conform to the usual and regular requirements,
14 standards, and regulations of any person, business, corporation, partnership,
15 copartnership, or association contemplated by this section so long as the denial is not
16 based upon discrimination on the grounds of race, sex, color, creed, national origin,
17 marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or
18 disability.

19 8A.

20 It is an unlawful practice for an owner or operator of commercial property, an
21 agent or employee of the owner or operator of commercial property, or persons or
22 businesses licensed or regulated by the State to discriminate against an individual in
23 the terms, conditions, or privileges of the leasing of property for commercial usage, or
24 in the provision of services or facilities in connection with the leasing of property for
25 commercial usage, because of the individual's race, color, religion, sex, age, handicap,
26 marital status, **SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION**, or
27 national origin.

28 14.

29 It is hereby declared to be the policy of the State of Maryland, in the exercise of
30 its police power for the protection of the public safety, public health and general
31 welfare, for the maintenance of business and good government and for the promotion
32 of the State's trade, commerce and manufacturers to assure all persons equal
33 opportunity in receiving employment and in all labor management-union relations
34 regardless of race, color, religion, ancestry or national origin, sex, age, marital status,
35 sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or disability unrelated in
36 nature and extent so as to reasonably preclude the performance of the employment,

1 and to that end to prohibit discrimination in employment by any person, group, labor
2 organization, organization or any employer or his agents.

3 15.

4 (K) **“GENDER IDENTITY AND EXPRESSION” MEANS A GENDER-RELATED**
5 **IDENTITY, APPEARANCE, EXPRESSION, OR BEHAVIOR OF AN INDIVIDUAL**
6 **REGARDLESS OF THE INDIVIDUAL’S ASSIGNED SEX AT BIRTH.**

7 16.

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

9 (1) To fail or refuse to hire or to discharge any individual, or otherwise
10 to discriminate against any individual with respect to the individual’s compensation,
11 terms, conditions, or privileges of employment, because of such individual’s race, color,
12 religion, sex, age, national origin, marital status, sexual orientation, **GENDER**
13 **IDENTITY AND EXPRESSION**, genetic information, or disability unrelated in nature
14 and extent so as to reasonably preclude the performance of the employment, or
15 because of the individual’s refusal to submit to a genetic test or make available the
16 results of a genetic test;

17 (2) To limit, segregate, or classify its employees or applicants for
18 employment in any way which would deprive or tend to deprive any individual of
19 employment opportunities or otherwise adversely affect the individual’s status as an
20 employee, because of the individual’s race, color, religion, sex, age, national origin,
21 marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, genetic
22 information, or disability unrelated in nature and extent so as to reasonably preclude
23 the performance of the employment, or because of the individual’s refusal to submit to
24 a genetic test or make available the results of a genetic test; or

25 (3) To request or require genetic tests or genetic information as a
26 condition for hiring or determining benefits.

27 (b) It shall be an unlawful employment practice for an employment agency to
28 fail or refuse to refer for employment, or otherwise to discriminate against, any
29 individual because of the individual’s race, color, religion, sex, age, national origin,
30 marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or
31 disability unrelated in nature and extent so as to reasonably preclude the performance
32 of the employment, or to classify or refer for employment any individual on the basis of
33 the individual’s race, color, religion, sex, age, national origin, marital status, sexual

1 orientation, **GENDER IDENTITY AND EXPRESSION**, or disability unrelated in nature
2 and extent so as to reasonably preclude the performance of the employment.

3 (c) It shall be an unlawful employment practice for a labor organization: (1)
4 to exclude or to expel from its membership, or otherwise to discriminate against, any
5 individual because of the individual's race, color, religion, sex, age, national origin,
6 marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or
7 disability unrelated in nature and extent so as to reasonably preclude the performance
8 of the employment; (2) to limit, segregate or classify its membership, or to classify or
9 fail or refuse to refer for employment any individual, in any way which would deprive
10 or tend to deprive any individual of employment opportunities, or would limit such
11 employment opportunities or otherwise adversely affect the individual's status as an
12 employee or as an applicant for employment, because of such individual's race, color,
13 religion, sex, age, national origin, marital status, sexual orientation, **GENDER**
14 **IDENTITY AND EXPRESSION**, or disability unrelated in nature and extent so as to
15 reasonably preclude the performance of the employment; or (3) to cause or attempt to
16 cause an employer to discriminate against an individual in violation of this section.

17 (d) It shall be an unlawful employment practice for any employer, labor
18 organization, or joint labor-management committee controlling apprenticeship or
19 other training or retraining, including on-the-job training programs to discriminate
20 against any individual because of the individual's race, color, religion, sex, age,
21 national origin, marital status, sexual orientation, **GENDER IDENTITY AND**
22 **EXPRESSION**, or disability unrelated in nature or extent so as to reasonably preclude
23 the performance of the employment in admission to, or employment in, any program
24 established to provide apprenticeship or other training.

25 (e) It is an unlawful employment practice for an employer, labor
26 organization, or employment agency to print or cause to be printed or published any
27 notice or advertisement relating to employment by the employer or membership in or
28 any classification or referral for employment by the labor organization, or relating to
29 any classification or referral for employment by the agency, indicating any preference,
30 limitation, specification, or discrimination, based on race, color, religion, sex, age,
31 national origin, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or on the
32 basis of a disability. However, a notice or advertisement may indicate a preference,
33 limitation, specification, or discrimination based on religion, sex, age, national origin
34 or disability when religion, sex, age, national origin or disability is a bona fide
35 occupational qualification for employment.

36 (f) It is an unlawful employment practice for an employer to discriminate
37 against any of its employees or applicants for employment, for an employment agency
38 to discriminate against any individual, or for a labor organization to discriminate

1 against any member thereof or applicant for membership, because the individual has
2 opposed any practice made an unlawful employment practice by this subtitle or
3 because the individual has made a charge, testified, assisted, or participated in any
4 manner in an investigation, proceeding, or hearing under this subtitle.

5 (g) Notwithstanding any other provision of this subtitle, (1) it is not an
6 unlawful employment practice for an employer to hire and employ employees, for an
7 employment agency to classify, or refer for employment any individual, for a labor
8 organization to classify its membership or to classify or refer for employment any
9 individual, or for an employer, labor organization or joint labor-management
10 committee controlling apprenticeship or other training or retraining programs to
11 admit or employ any individual in any such program, on the basis of the individual's
12 religion, national origin or disability in those instances where sex, age, religion,
13 national origin or disability is a bona fide occupational qualification reasonably
14 necessary to the normal operation of that particular business or enterprise; (2) it is not
15 an unlawful employment practice for an employer to establish standards concerning
16 an employee's dress and grooming if the standards are directly related to the nature of
17 the employment of the employee; (3) it is not an unlawful employment practice for a
18 school, college, university, or other educational institution or institution of learning to
19 hire and employ employees of a particular religion if the school, college, university, or
20 other educational institution or institution of learning is, in whole or in substantial
21 part, owned, supported, controlled, or managed by a particular religion or by a
22 particular religious corporation, association, or society or if the curriculum of the
23 school, college, university, or other educational institution or institution of learning is
24 directed toward the propagation of a particular religion; and (4) it is not unlawful for
25 an employer, employment agency or labor organization to observe the terms of a bona
26 fide seniority system or any bona fide employee benefit plan such as a retirement,
27 pension or insurance plan, which is not a subterfuge to evade the purposes of this
28 subtitle; however, no employee benefit plan shall excuse the failure to hire any
29 individual.

30 (h) Nothing contained in this subtitle shall be interpreted to require any
31 employer, employment agency, labor organization, or joint labor-management
32 committee subject to this subtitle to grant preferential treatment to any individual or
33 to any group because of the race, color, religion, sex, age, national origin, sexual
34 orientation, **GENDER IDENTITY AND EXPRESSION**, or disability of the individual or
35 group on account of an imbalance which may exist with respect to the total number or
36 percentage of persons of any race, color, religion, sex, age, national origin, sexual
37 orientation, **GENDER IDENTITY AND EXPRESSION**, or persons with disabilities
38 employed by any employer, referred or classified for employment by any employment
39 agency or labor organization, admitted to membership or classified by any labor
40 agency or labor organization, admitted to membership or classified by any labor

1 organization, or admitted to, or employed in, any apprenticeship or other training
2 program, in comparison with the total number or percentage of persons of such race,
3 color, religion, sex, age, national origin, sexual orientation, **GENDER IDENTITY AND**
4 **EXPRESSION**, or persons with disabilities in any community, State, section, or other
5 area, or in the available work force in any community, State, section, or other area.

6 (i) An employer shall be immune from liability under this article or under
7 the common law, arising out of the employer’s reasonable acts to verify the sexual
8 orientation of any employee or applicant taken by the employer in response to a charge
9 filed against the employer on the basis of sexual orientation.

10 19.

11 (a) It is the policy of the State of Maryland to provide for fair housing
12 throughout the State of Maryland, to all its citizens, regardless of race, color, religion,
13 sex, familial status, national origin, marital status, sexual orientation, **GENDER**
14 **IDENTITY AND EXPRESSION**, or disability; and to that end to prohibit discriminatory
15 practices with respect to residential housing by any person or group of persons, in
16 order that the peace, health, safety, prosperity and general welfare of all the
17 inhabitants of the State may be protected and insured.

18 20.

19 **(K-1) “GENDER IDENTITY AND EXPRESSION” MEANS A GENDER-RELATED**
20 **IDENTITY, APPEARANCE, EXPRESSION, OR BEHAVIOR OF AN INDIVIDUAL**
21 **REGARDLESS OF THE INDIVIDUAL’S ASSIGNED SEX AT BIRTH.**

22 (t) “Restrictive covenants” means any specification limiting the transfer,
23 rental, or lease of any dwelling because of race, color, religion, marital status, sexual
24 orientation, **GENDER IDENTITY AND EXPRESSION**, sex, familial status, disability, or
25 national origin.

26 21.

27 (a) This subtitle does not apply to:

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

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

31 1. Real estate broker, agent, or salesman;

- 1 2. Agent of any real estate broker, agent, or salesman;
- 2 3. Person in the business of selling or renting dwellings;
- 3 or
- 4 4. Agent of a person in the business of selling or renting
- 5 dwellings; or

6 (ii) The publication, posting, or mailing, after notice, of any

7 advertisement or written notice in violation of this subtitle; and

8 (2) With respect to discrimination on the basis of sex, sexual

9 orientation, **GENDER IDENTITY AND EXPRESSION**, or marital status:

10 (i) The rental of rooms in any dwelling, if the owner maintains

11 the dwelling as the owner's principal residence; or

12 (ii) The rental of any apartment in a dwelling that contains no

13 more than 5 rental units, if the owner maintains the dwelling as the owner's principal

14 residence.

15 22.

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

17 (1) To refuse to sell or rent after the making of a bona fide offer, or to

18 refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a

19 dwelling to any person because of race, color, religion, sex, disability, marital status,

20 familial status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or national

21 origin;

22 (2) To discriminate against any person in the terms, conditions, or

23 privileges of sale or rental of a dwelling, or in the provision of services or facilities in

24 connection with the sale or rental of a dwelling, because of race, color, religion, sex,

25 disability, marital status, familial status, sexual orientation, **GENDER IDENTITY AND**

26 **EXPRESSION**, or national origin;

27 (3) To make, print, or publish, or cause to be made, printed, or

28 published any notice, statement, or advertisement, with respect to the sale or rental of

29 a dwelling that indicates any preference, limitation, or discrimination based on race,

30 color, religion, sex, disability, marital status, familial status, sexual orientation,

1 **GENDER IDENTITY AND EXPRESSION**, or national origin, or an intention to make
2 any preference, limitation, or discrimination;

3 (4) To represent to any person because of race, color, religion, sex,
4 disability, marital status, familial status, sexual orientation, **GENDER IDENTITY AND**
5 **EXPRESSION**, or national origin that any dwelling is not available for inspection, sale,
6 or rental when the dwelling is in fact available;

7 (5) For profit, to induce or attempt to induce any person to sell or rent
8 any dwelling by representations regarding the entry or prospective entry into the
9 neighborhood of a person or persons of a particular race, color, religion, sex, disability,
10 marital status, familial status, sexual orientation, **GENDER IDENTITY AND**
11 **EXPRESSION**, or national origin;

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

14 (i) The buyer or renter; or

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

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

20 (i) The person; or

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

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

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

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

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

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

6 23.

7 (a) (1) It is unlawful for any person or other entity whose business
8 includes engaging in residential real estate related transactions to discriminate
9 against any person in making available a transaction, or in the terms or conditions of
10 a transaction, because of race, color, religion, sex, disability, marital status, familial
11 status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or national origin.

12 (2) Nothing in paragraph (1) of this subsection prohibits a person
13 engaged in the business of furnishing appraisals of real property to take into
14 consideration factors other than race, color, religion, national origin, sex, disability,
15 marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or familial
16 status.

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

24 37.

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

28 (1) Any person because of race, color, religion, sex, disability, marital
29 status, familial status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or
30 national origin and because the person is or has been:

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

1 (ii) Applying for or participating in any service, organization, or
2 facility relating to the business of selling or renting dwellings;

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

5 (i) Participating without discrimination on account of race,
6 color, religion, sex, disability, marital status, familial status, sexual orientation,
7 **GENDER IDENTITY AND EXPRESSION**, or national origin in any of the activities,
8 services, organizations, or facilities described in paragraph (1) of this subsection; or

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

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

14 (i) Lawfully aiding or encouraging other persons to participate,
15 without discrimination on account of race, color, religion, sex, disability, marital
16 status, familial status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or
17 national origin, in any of the activities, services, organizations, or facilities described
18 in paragraph (1) of this subsection; or

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

22 **Article – State Personnel and Pensions**

23 2–302.

24 (a) The State recognizes and honors the value and dignity of every person
25 and understands the importance of providing employees and applicants for
26 employment with a fair opportunity to pursue their careers in an environment free of
27 discrimination or harassment prohibited by law.

28 (b) (1) Except as provided in paragraph (2) of this subsection or by other
29 law, all personnel actions concerning a State employee or applicant for employment in
30 State government shall be made without regard to:

- 1 (i) age;
- 2 (ii) ancestry;
- 3 (iii) color;
- 4 (iv) creed;
- 5 **(V) GENDER IDENTITY AND EXPRESSION;**
- 6 [(v)] **(VI)** marital status;
- 7 [(vi)] **(VII)** mental or physical disability;
- 8 [(vii)] **(VIII)** national origin;
- 9 [(viii)] **(IX)** race;
- 10 [(ix)] **(X)** religious affiliation, belief, or opinion; [or]
- 11 [(x)] **(XI)** sex; **OR**
- 12 **(XII) SEXUAL ORIENTATION.**

13 (2) A personnel action may be taken with regard to age, sex, or
14 disability to the extent that age, sex, or physical or mental qualification is required by
15 law or is a bona fide occupational qualification.

16 (c) (1) Each State employee is expected to assume personal responsibility
17 and leadership in ensuring fair employment practices and equal employment
18 opportunity in Maryland State government.

19 (2) Employment discrimination and harassment by State managers,
20 supervisors, or other employees is prohibited.

21 (3) A State employee who violates this subtitle is subject to
22 disciplinary action by the employee's appointing authority, including the termination
23 of State employment.

24 (d) The Equal Employment Opportunity Program in Title 5, Subtitle 2 of this
25 article governs all employees of any unit in the Executive Branch of State government,
26 including a unit with an independent personnel system.

1 (e) (1) At least annually, the Secretary shall report on the Equal
2 Employment Opportunity Program established in § 5-202 of this article to the
3 Legislative Joint Committee on Fair Practices.

4 (2) The head of a personnel system in the Legislative and Judicial
5 branches may report periodically on equal employment opportunity programs and
6 policies in effect in that personnel system to the Legislative Joint Committee on Fair
7 Practices.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2007.