

SENATE BILL 976

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8lr3456

By: **Senators Madaleno, Gladden, and Raskin**

Introduced and read first time: March 3, 2008

Assigned to: Rules

A BILL ENTITLED

AN ACT concerning

Human Relations – Sexual Orientation and Gender Identity – Antidiscrimination

FOR the purpose of prohibiting discrimination based on gender identity with regard to public accommodations, housing, and employment; prohibiting discrimination based on sexual orientation or gender identity with regard to the leasing of property for commercial usage or in the provision of certain services or facilities; altering a certain exception for employers that relates to standards concerning dress and grooming; making certain remedies and procedures regarding discrimination applicable to discrimination based on sexual orientation and gender identity; requiring certain State personnel actions to be made without regard to gender identity or sexual orientation; defining the term “gender identity”; and generally relating to discrimination based on sexual orientation and gender identity.

BY repealing and reenacting, with amendments,
Article 49B – Human Relations Commission
Section 5(a), (b), and (c), 8(a), 8A, 14, 16, 19(a), 20(t), 21(a), 22(a), 23, and 37(a)
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY adding to
Article 49B – Human Relations Commission
Section 15(k) and 20(k-1)
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 2-302
Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2004 Replacement Volume and 2007 Supplement)

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

Article 49B – Human Relations Commission

5.

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

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

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

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

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

8.

(a) It is unlawful for any person, business, corporation, partnership, copartnership or association or any other individual, agent, employee, group or firm which is licensed or regulated by a unit in the Department of Labor, Licensing, and Regulation as set out in § 2-108 of the Business Regulation Article to refuse, withhold from, deny or discriminate against any person the accommodations, advantages, facilities, privileges, sales, or services because of the race, sex, creed, color, national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability of any person. Nothing in this section shall be construed or interpreted to prohibit any person, business, corporation, partnership, copartnership, association or any other individual, agent, employee, group or firm which is licensed or regulated by the Department of Labor, Licensing, and Regulation from the right to refuse, withhold from, or deny any person for failure to conform to the usual and regular requirements,

standards, and regulations of any person, business, corporation, partnership, copartnership, or association contemplated by this section so long as the denial is not based upon discrimination on the grounds of race, sex, color, creed, national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability.

8A.

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

14.

It is hereby declared to be the policy of the State of Maryland, in the exercise of its police power for the protection of the public safety, public health and general welfare, for the maintenance of business and good government and for the promotion of the State's trade, commerce and manufacturers to assure all persons equal opportunity in receiving employment and in all labor management-union relations regardless of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, **GENDER IDENTITY**, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, and to that end to prohibit discrimination in employment by any person, group, labor organization, organization or any employer or his agents.

15.

For the purposes of this title:

(K) "GENDER IDENTITY" MEANS A GENDER-RELATED IDENTITY, APPEARANCE, EXPRESSION, OR BEHAVIOR OF AN INDIVIDUAL REGARDLESS OF THE INDIVIDUAL'S ASSIGNED SEX AT BIRTH.

16.

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

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

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

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

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

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

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

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

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

(g) Notwithstanding any other provision of this subtitle[,]:

(1) It is not an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of the individual's religion, national origin or disability in those instances where sex, age, religion, national origin or disability is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(2) [it is not an unlawful employment practice for an employer to establish standards concerning an employee's dress and grooming if the standards are directly related to the nature of the employment of the employee] **IT IS NOT UNLAWFUL FOR AN EMPLOYER TO ESTABLISH AND REQUIRE AN EMPLOYEE TO ADHERE TO REASONABLE WORKPLACE APPEARANCE, GROOMING, AND DRESS STANDARDS THAT ARE DIRECTLY RELATED TO THE NATURE OF THE EMPLOYMENT OF THE EMPLOYEE AND THAT ARE NOT PRECLUDED BY ANY PROVISION OF STATE OR FEDERAL LAW, AS LONG AS AN EMPLOYER ALLOWS ANY EMPLOYEE TO APPEAR, GROOM, AND DRESS CONSISTENT WITH THE EMPLOYEE'S GENDER IDENTITY; AND**

(3) It is not an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university, or other educational institution or institution of learning is, in whole or in substantial part,

owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion; and

(4) It is not unlawful for an employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this subtitle; however, no employee benefit plan shall excuse the failure to hire any individual.

(h) Nothing contained in this subtitle shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subtitle to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, age, national origin, sexual orientation, **GENDER IDENTITY**, or disability of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, age, national origin, sexual orientation, **GENDER IDENTITY**, or persons with disabilities employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, age, national origin, sexual orientation, **GENDER IDENTITY**, or persons with disabilities in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

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

19.

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

20.

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

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

21.

(a) This subtitle does not apply to:

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

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

1. Real estate broker, agent, or salesman;
2. Agent of any real estate broker, agent, or salesman;
3. Person in the business of selling or renting dwellings;

or

4. Agent of a person in the business of selling or renting dwellings; or

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

(2) With respect to discrimination on the basis of sex, sexual orientation, **GENDER IDENTITY**, or marital status:

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

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

22.

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

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

dwelling to any person because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin;

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin;

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, marital status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin, or an intention to make any preference, limitation, or discrimination;

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

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

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

(i) The buyer or renter; or

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

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

(i) The person; or

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

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

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

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

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

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

23.

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

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

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

37.

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

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

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

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

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

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

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

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

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

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

Article – State Personnel and Pensions

2–302.

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

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

(i) age;

(ii) ancestry;

(iii) color;

(iv) creed;

(V) GENDER IDENTITY;

[(v)] **(VI)** marital status;

[(vi)] **(VII)** mental or physical disability;

[(vii)] **(VIII)** national origin;

[(viii)] **(IX)** race;

[(ix)] **(X)** religious affiliation, belief, or opinion; [or]

[(x)] **(XI)** sex; **OR**

(XII) SEXUAL ORIENTATION.

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

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

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

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

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

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

(2) The head of a personnel system in the Legislative and Judicial branches may report periodically on equal employment opportunity programs and

policies in effect in that personnel system to the Legislative Joint Committee on Fair Practices.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.