

# SENATE BILL 449

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SB 566/09 – JPR

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By: **Senators Madaleno, Raskin, Benson, Conway, Currie, Ferguson, Forehand, Garagiola, Gladden, Jones–Rodwell, Kasemeyer, Kelley, King, Kittleman, Manno, McFadden, Montgomery, Pinsky, Pugh, Ramirez, Robey, Rosapepe, and Young**

Introduced and read first time: January 30, 2013

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Fairness for All Marylanders Act of 2013**

3 FOR the purpose of prohibiting discrimination based on gender identity with regard to  
4 public accommodations, housing, and employment; prohibiting discrimination  
5 based on gender identity by certain licensed or regulated persons; prohibiting  
6 discrimination based on sexual orientation or gender identity with regard to the  
7 leasing of property for commercial usage or in the provision of certain services  
8 or facilities; altering a certain exception for employers that relates to standards  
9 concerning dress and grooming; providing that an employer is immune from  
10 certain liability for certain acts to verify the gender identity of any employee or  
11 applicant in response to a certain charge; making certain remedies and  
12 procedures regarding discrimination applicable to discrimination based on  
13 sexual orientation and gender identity; requiring certain State personnel  
14 actions to be made without regard to gender identity or sexual orientation;  
15 defining the term “gender identity”; making certain conforming changes; and  
16 generally relating to discrimination based on sexual orientation and gender  
17 identity.

18 BY renumbering

19 Article – State Government  
20 Section 20–101(e) and (f), respectively  
21 to be Section 20–101(f) and (g), respectively  
22 Annotated Code of Maryland  
23 (2009 Replacement Volume and 2012 Supplement)

24 BY adding to

25 Article – State Government  
26 Section 20–101(e)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2009 Replacement Volume and 2012 Supplement)

3 BY repealing and reenacting, with amendments,  
4 Article – State Government  
5 Section 20–302, 20–304, 20–401, 20–402, 20–501, 20–602, 20–603, 20–605(a)(2),  
6 20–606(a) through (e), 20–608, 20–702(a), 20–704(a)(2), 20–705,  
7 20–707(b) and (c), and 20–1103(b)  
8 Annotated Code of Maryland  
9 (2009 Replacement Volume and 2012 Supplement)

10 BY repealing and reenacting, with amendments,  
11 Article – State Personnel and Pensions  
12 Section 2–302  
13 Annotated Code of Maryland  
14 (2009 Replacement Volume and 2012 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That Section(s) 20–101(e) and (f), respectively, of Article – State  
17 Government of the Annotated Code of Maryland be renumbered to be Section(s)  
18 20–101(f) and (g), respectively.

19 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
20 read as follows:

21 **Article – State Government**

22 20–101.

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

26 20–302.

27 This subtitle does not prohibit the proprietor or employees of any establishment  
28 from denying service to any person for failure to conform to the usual and regular  
29 requirements, standards, and regulations of the establishment, provided that the  
30 denial is not based on discrimination on the grounds of race, sex, age, color, creed,  
31 national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability.

32 20–304.

33 An owner or operator of a place of public accommodation or an agent or  
34 employee of the owner or operator may not refuse, withhold from, or deny to any  
35 person any of the accommodations, advantages, facilities, or privileges of the place of

1 public accommodation because of the person's race, sex, age, color, creed, national  
2 origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability.

3 20-401.

4 This subtitle does not prohibit any person that is licensed or regulated by the  
5 Department of Labor, Licensing, and Regulation from refusing, withholding from, or  
6 denying accommodations, advantages, facilities, privileges, sales, or services to any  
7 person for failure to conform to the usual and regular requirements, standards, and  
8 regulations of the licensed or regulated person, provided that the denial is not based  
9 on discrimination on the grounds of race, sex, color, creed, national origin, marital  
10 status, sexual orientation, age, **GENDER IDENTITY**, or disability.

11 20-402.

12 A person that is licensed or regulated by a unit in the Department of Labor,  
13 Licensing, and Regulation listed in § 2-108 of the Business Regulation Article may not  
14 refuse, withhold from, or deny any person any of the accommodations, advantages,  
15 facilities, privileges, sales, or services of the licensed or regulated person or  
16 discriminate against any person because of the person's race, sex, creed, color, national  
17 origin, marital status, sexual orientation, age, **GENDER IDENTITY**, or disability.

18 20-501.

19 An owner or operator of commercial property, an agent or employee of the owner  
20 or operator of commercial property, or a person that is licensed or regulated by the  
21 State may not discriminate against an individual in the terms, conditions, or  
22 privileges of the leasing of property for commercial use, or in the provision of services  
23 or facilities in connection with the leasing of property for commercial use, because of  
24 the individual's race, color, religion, sex, age, disability, marital status, **SEXUAL**  
25 **ORIENTATION**, **GENDER IDENTITY**, or national origin.

26 20-602.

27 It is the policy of the State, in the exercise of its police power for the protection  
28 of the public safety, public health, and general welfare, for the maintenance of  
29 business and good government, and for the promotion of the State's trade, commerce,  
30 and manufacturers:

31 (1) to assure all persons equal opportunity in receiving employment  
32 and in all labor management-union relations, regardless of race, color, religion,  
33 ancestry or national origin, sex, age, marital status, sexual orientation, **GENDER**  
34 **IDENTITY**, or disability unrelated in nature and extent so as to reasonably preclude  
35 the performance of the employment; and

1 (2) to that end, to prohibit discrimination in employment by any  
2 person.

3 20–603.

4 This subtitle does not require:

5 (1) an employer, employment agency, labor organization, or joint  
6 labor–management committee subject to this subtitle to grant preferential treatment  
7 to any individual or group on the basis of the race, color, religion, sex, age, national  
8 origin, **GENDER IDENTITY**, sexual orientation, or disability of the individual or group  
9 because an imbalance may exist with respect to the total number or percentage of  
10 individuals of any race, color, religion, sex, age, national origin, **GENDER IDENTITY**,  
11 or sexual orientation or individuals with disabilities employed by the employer,  
12 referred or classified for employment by the employment agency or labor organization,  
13 admitted to membership or classified by the labor organization, or admitted to, or  
14 employed in, any apprenticeship or other training program, compared to the total  
15 number or percentage of individuals of that race, color, religion, sex, age, national  
16 origin, **GENDER IDENTITY**, or sexual orientation or individuals with disabilities in the  
17 State or any community, section, or other area, or in the available work force in the  
18 State or any community, section, or other area; or

19 (2) an employer to reasonably accommodate an employee’s religion or  
20 disability if the accommodation would cause undue hardship on the conduct of the  
21 employer’s business.

22 20–605.

23 (a) Notwithstanding any other provision of this subtitle, this subtitle does  
24 not prohibit:

25 (2) an employer from establishing [standards concerning an  
26 employee’s dress and grooming, if the standards are directly related to the nature of  
27 the employment of the employee] **AND REQUIRING AN EMPLOYEE TO ADHERE TO  
28 REASONABLE WORKPLACE APPEARANCE, GROOMING, AND DRESS STANDARDS  
29 THAT ARE DIRECTLY RELATED TO THE NATURE OF THE EMPLOYMENT OF THE  
30 EMPLOYEE AND THAT ARE NOT PRECLUDED BY ANY PROVISION OF STATE OR  
31 FEDERAL LAW, AS LONG AS THE EMPLOYER ALLOWS ANY EMPLOYEE TO APPEAR,  
32 GROOM, AND DRESS CONSISTENT WITH THE EMPLOYEE’S GENDER IDENTITY;**

33 20–606.

34 (a) An employer may not:

1           (1) fail or refuse to hire, discharge, or otherwise discriminate against  
2 any individual with respect to the individual's compensation, terms, conditions, or  
3 privileges of employment because of:

4           (i) the individual's race, color, religion, sex, age, national origin,  
5 marital status, sexual orientation, **GENDER IDENTITY**, genetic information, or  
6 disability unrelated in nature and extent so as to reasonably preclude the performance  
7 of the employment; or

8           (ii) the individual's refusal to submit to a genetic test or make  
9 available the results of a genetic test;

10          (2) limit, segregate, or classify its employees or applicants for  
11 employment in any way that would deprive or tend to deprive any individual of  
12 employment opportunities or otherwise adversely affect the individual's status as an  
13 employee because of:

14          (i) the individual's race, color, religion, sex, age, national origin,  
15 marital status, sexual orientation, **GENDER IDENTITY**, genetic information, or  
16 disability unrelated in nature and extent so as to reasonably preclude the performance  
17 of the employment; or

18          (ii) the individual's refusal to submit to a genetic test or make  
19 available the results of a genetic test;

20          (3) request or require genetic tests or genetic information as a  
21 condition of hiring or determining benefits; or

22          (4) fail or refuse to make a reasonable accommodation for the known  
23 disability of an otherwise qualified employee.

24          (b) An employment agency may not:

25           (1) fail or refuse to refer for employment or otherwise discriminate  
26 against any individual because of the individual's race, color, religion, sex, age,  
27 national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability  
28 unrelated in nature and extent so as to reasonably preclude the performance of the  
29 employment; or

30           (2) classify or refer for employment any individual on the basis of the  
31 individual's race, color, religion, sex, age, national origin, marital status, sexual  
32 orientation, **GENDER IDENTITY**, or disability unrelated in nature and extent so as to  
33 reasonably preclude the performance of the employment.

34          (c) A labor organization may not:

1 (1) exclude or expel from its membership, or otherwise discriminate  
2 against, any individual because of the individual's race, color, religion, sex, age,  
3 national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability  
4 unrelated in nature and extent so as to reasonably preclude the performance of the  
5 employment;

6 (2) limit, segregate, or classify its membership, or classify or fail or  
7 refuse to refer for employment any individual, in any way that would deprive or tend  
8 to deprive the individual of employment opportunities, limit the individual's  
9 employment opportunities, or otherwise adversely affect the individual's status as an  
10 employee or as an applicant for employment because of the individual's race, color,  
11 religion, sex, age, national origin, marital status, sexual orientation, **GENDER**  
12 **IDENTITY**, or disability unrelated in nature and extent so as to reasonably preclude  
13 the performance of the employment; or

14 (3) cause or attempt to cause an employer to discriminate against an  
15 individual in violation of this section.

16 (d) An employer, labor organization, or joint labor-management committee  
17 controlling apprenticeship or other training or retraining programs, including  
18 on-the-job training programs, may not discriminate against any individual in  
19 admission to, or employment in, any program established to provide apprenticeship or  
20 other training or retraining because of the individual's race, color, religion, sex, age,  
21 national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability  
22 unrelated in nature and extent so as to reasonably preclude the performance of the  
23 employment.

24 (e) (1) Except as provided in paragraph (2) of this subsection, an  
25 employer, labor organization, or employment agency may not print or cause to be  
26 printed or published any notice or advertisement relating to employment by the  
27 employer, membership in or any classification or referral for employment by the labor  
28 organization, or any classification or referral for employment by the employment  
29 agency that indicates any preference, limitation, specification, or discrimination based  
30 on race, color, religion, sex, age, national origin, marital status, sexual orientation,  
31 **GENDER IDENTITY**, or disability.

32 (2) A notice or advertisement may indicate a preference, limitation,  
33 specification, or discrimination based on religion, sex, age, national origin, marital  
34 status, or disability if religion, sex, age, national origin, marital status, or disability is  
35 a bona fide occupational qualification for employment.

36 20-608.

37 An employer shall be immune from liability under this title or under the  
38 common law arising out of reasonable acts taken by the employer to verify the sexual  
39 orientation **OR GENDER IDENTITY** of any employee or applicant in response to a

1 charge filed against the employer on the basis of sexual orientation **OR GENDER**  
2 **IDENTITY**.

3 20–702.

4 (a) It is the policy of the State:

5 (1) to provide for fair housing throughout the State to all, regardless of  
6 race, color, religion, sex, familial status, national origin, marital status, sexual  
7 orientation, **GENDER IDENTITY**, or disability; and

8 (2) to that end, to prohibit discriminatory practices with respect to  
9 residential housing by any person, in order to protect and insure the peace, health,  
10 safety, prosperity, and general welfare of all.

11 20–704.

12 (a) This subtitle does not apply to:

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

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

17 (ii) the rental of any apartment in a dwelling that contains not  
18 more than five rental units, if the owner maintains the dwelling as the owner's  
19 principal residence.

20 20–705.

21 Except as provided in §§ 20–703 and 20–704 of this subtitle, a person may not:

22 (1) refuse to sell or rent after the making of a bona fide offer, refuse to  
23 negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to  
24 any person because of race, color, religion, sex, disability, marital status, familial  
25 status, sexual orientation, **GENDER IDENTITY**, or national origin;

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

31 (3) make, print, or publish, or cause to be made, printed, or published,  
32 any notice, statement, or advertisement with respect to the sale or rental of a dwelling

1 that indicates any preference, limitation, or discrimination based on race, color,  
2 religion, sex, disability, marital status, familial status, sexual orientation, **GENDER**  
3 **IDENTITY**, or national origin, or an intention to make any preference, limitation, or  
4 discrimination;

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

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

13 20–707.

14 (b) (1) A person whose business includes engaging in residential real  
15 estate–related transactions may not discriminate against any person in making  
16 available a transaction, or in the terms or conditions of a transaction, because of race,  
17 color, religion, sex, disability, marital status, familial status, sexual orientation,  
18 **GENDER IDENTITY**, or national origin.

19 (2) Paragraph (1) of this subsection does not prohibit a person engaged  
20 in the business of furnishing appraisals of real property from taking into consideration  
21 factors other than race, color, religion, sex, disability, marital status, familial status,  
22 sexual orientation, **GENDER IDENTITY**, or national origin.

23 (c) A person may not, because of race, color, religion, sex, disability, marital  
24 status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin:

25 (1) deny a person access to, or membership or participation in, a  
26 multiple–listing service, real estate brokers’ organization, or other service,  
27 organization, or facility relating to the business of selling or renting dwellings; or

28 (2) discriminate against a person in the terms or conditions of  
29 membership or participation.

30 20–1103.

31 (b) Whether or not acting under color of law, a person may not, by force or  
32 threat of force, willfully injure, intimidate, interfere with, or attempt to injure,  
33 intimidate, or interfere with:

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

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

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

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

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

15           (ii) affording another person or class of persons the opportunity  
16 or protection to participate in any of the activities, services, organizations, or facilities  
17 described in item (1) of this subsection; or

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

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

25           (ii) participating lawfully in speech or peaceful assembly  
26 opposing any denial of the opportunity to participate in any of the activities, services,  
27 organizations, or facilities described in item (1) of this subsection.

## 28                           **Article – State Personnel and Pensions**

29           2–302.

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

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

4 (i) age;

5 (ii) ancestry;

6 (iii) color;

7 (iv) creed;

8 **(V) GENDER IDENTITY;**

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

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

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

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

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

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

15 **(XII) SEXUAL ORIENTATION.**

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

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

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

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

27 (d) The Equal Employment Opportunity Program in Title 5, Subtitle 2 of this  
28 article governs all employees of any unit in the Executive Branch of State government,  
29 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 Joint  
3 Committee on Fair Practices and State Personnel Oversight.

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 Joint Committee on Fair Practices  
7 and State Personnel Oversight.

8           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2013.