

# 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

AN ACT concerning

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

FOR the purpose of prohibiting discrimination based on gender identity with regard to public accommodations, housing, and employment; prohibiting discrimination based on gender identity by certain licensed or regulated persons; 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; providing that an employer is immune from certain liability for certain acts to verify the gender identity of any employee or applicant in response to a certain charge; 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”; making certain conforming changes; and generally relating to discrimination based on sexual orientation and gender identity.

BY renumbering

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

BY adding to

Article – State Government  
Section 20–101(e)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

BY repealing and reenacting, with amendments,

Article – State Government

Section 20–302, 20–304, 20–401, 20–402, 20–501, 20–602, 20–603, 20–605(a)(2),  
20–606(a) through (e), 20–608, 20–702(a), 20–704(a)(2), 20–705,  
20–707(b) and (c), and 20–1103(b)

Annotated Code of Maryland

(2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – State Personnel and Pensions

Section 2–302

Annotated Code of Maryland

(2009 Replacement Volume and 2012 Supplement)

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

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

### **Article – State Government**

20–101.

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

20–302.

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

20–304.

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

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

20-401.

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

20-402.

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

20-501.

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

20-602.

It is the policy of the State, 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:

(1) 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

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

20–603.

This subtitle does not require:

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

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

20–605.

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

(2) an employer from establishing [standards concerning an employee’s dress and grooming, if the standards are directly related to the nature of the employment of the employee] **AND REQUIRING 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 THE EMPLOYER ALLOWS ANY EMPLOYEE TO APPEAR, GROOM, AND DRESS CONSISTENT WITH THE EMPLOYEE’S GENDER IDENTITY;**

20–606.

(a) An employer may not:

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

(i) 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

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

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

(i) 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

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

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

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

(b) An employment agency may not:

(1) fail or refuse to refer for employment or otherwise 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

(2) 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) A labor organization may not:

(1) exclude or expel from its membership, or otherwise 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) limit, segregate, or classify its membership, or classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive the individual of employment opportunities, limit the individual's employment opportunities, or otherwise adversely affect the individual's status as an employee or as an applicant for employment 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

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

(d) An employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, may not discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining 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.

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

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

20-608.

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

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

20–702.

(a) It is the policy of the State:

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

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

20–704.

(a) This subtitle does not apply to:

(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 not more than five rental units, if the owner maintains the dwelling as the owner's principal residence.

20–705.

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

(1) refuse to sell or rent after the making of a bona fide offer, 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) discriminate against any person in the terms, conditions, or privileges of the 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) 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) 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 available; or

(5) for profit, 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 of a particular race, color, religion, sex, disability, marital status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin.

20–707.

(b) (1) A person whose business includes engaging in residential real estate–related transactions may not 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) Paragraph (1) of this subsection does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, disability, marital status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin.

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

(1) 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

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

20–1103.

(b) Whether or not acting under color of law, a person may not, by force or threat of force, 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 item (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 item (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 item (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 item (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 Joint Committee on Fair Practices and State Personnel Oversight.

(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 Joint Committee on Fair Practices and State Personnel Oversight.

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