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**By: Delegates Grosfeld and Marriott**

Introduced and read first time: January 25, 1996

Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Employment Discrimination - Gender Identity - Compensatory Damages**

3 FOR the purpose of prohibiting discrimination in employment based on gender identity;  
4 making certain remedies and procedures regarding employment discrimination  
5 applicable to discrimination based on gender identity; defining "gender identity";  
6 authorizing compensatory damages to be awarded in certain actions; making certain  
7 technical changes; and generally relating to discrimination on the basis of gender  
8 identity.

9 BY repealing and reenacting, with amendments,  
10 Article 49B - Human Relations Commission  
11 Section 14 and 16  
12 Annotated Code of Maryland  
13 (1994 Replacement Volume and 1995 Supplement)

14 BY adding to  
15 Article 49B - Human Relations Commission  
16 Section 15(h) and 16A  
17 Annotated Code of Maryland  
18 (1994 Replacement Volume and 1995 Supplement)

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

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

22 14.

23 It is hereby declared to be the policy of the State of Maryland, in the exercise of its  
24 police power for the protection of the public safety, public health and general welfare, for  
25 the maintenance of business and good government and for the promotion of the State's  
26 trade, commerce and manufacturers to assure all persons equal opportunity in receiving  
27 employment and in all labor management-union relations regardless of race, color,  
28 religion, ancestry or national origin, sex, age, marital status, GENDERIDENTITY, or  
29 physical or mental handicap unrelated in nature and extent so as to reasonably preclude  
30 the performance of the employment, and to that end to prohibit discrimination in

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1 employment by any person, group, labor organization, organization or any employer or his  
2 agents.

3 15.

4 For the purposes of this subtitle:

5 (H) "GENDER IDENTITY" MEANS HAVING OR BEING PERCEIVED AS HAVING A  
6 SELF-IMAGE, EXPRESSION, OR IDENTITY NOT TRADITIONALLY ASSOCIATED WITH  
7 ONE'S SEX AT BIRTH.

8 16.

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

10 (1) To fail or refuse to hire or to discharge any individual, or otherwise to  
11 discriminate against any individual with respect to [his] THE INDIVIDUAL'S  
12 compensation, terms, conditions, or privileges of employment, because of [such] THE  
13 individual's race, color, religion, sex, age, national origin, marital status, GENDER  
14 IDENTITY, or physical or mental handicap unrelated in nature and extent so as to  
15 reasonably preclude the performance of the employment; or

16 (2) To limit, segregate, or classify [his] THE EMPLOYER'S employees or  
17 applicants for employment in any way which would deprive or tend to deprive any  
18 individual of employment opportunities or otherwise adversely affect [his] THE  
19 INDIVIDUAL'S status as an employee, because of the individual's race, color, religion, sex,  
20 age, national origin, marital status, GENDER IDENTITY, or physical or mental handicap  
21 unrelated in nature and extent so as to reasonably preclude the performance of the  
22 employment[;].

23 (b) It shall be an unlawful employment practice for an employment agency to fail  
24 or refuse to refer for employment, or otherwise to discriminate against, any individual  
25 because of [his] THE INDIVIDUAL'S race, color, religion, sex, age, national origin,  
26 marital status, GENDER IDENTITY, or physical or mental handicap unrelated in nature  
27 and extent so as to reasonably preclude the performance of the employment, or to classify  
28 or refer for employment any individual on the basis of [his] THE INDIVIDUAL'S race,  
29 color, religion, sex, age, national origin, marital status, GENDER IDENTITY, or physical or  
30 mental handicap unrelated in nature and extent so as to reasonably preclude the  
31 performance of the employment[;].

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

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1 employment; or (3) to cause or attempt to cause an employer to discriminate against an  
2 individual in violation of this section[;].

3 (d) It shall be an unlawful employment practice for any employer, labor  
4 organization, or joint labor-management committee controlling apprenticeship or other  
5 training or retraining, including on-the-job training programs to discriminate against any  
6 individual because of [his] THE INDIVIDUAL'S race, color, religion, sex, age, national  
7 origin, marital status, GENDER IDENTITY, or physical or mental handicapunrelated in  
8 nature or extent so as to reasonably preclude the performance of the employment in  
9 admission to, or employment in, any program established to provide apprenticeship or  
10 other training[;].

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

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

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

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

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

24 16A.

25 (A) THIS SECTION DOES NOT APPLY TO AN EMPLOYMENT PRACTICE THAT IS  
26 UNLAWFUL BECAUSE OF ITS DISPARATE IMPACT.

27 (B) IN ADDITION TO ANY OTHER REMEDIES UNDER THIS ARTICLE,  
28 COMPENSATORY DAMAGES MAY BE AWARDED IN AN ACTION AGAINST A  
29 RESPONDENT THAT ENGAGED IN, OR IS ENGAGING IN, AN INTENTIONAL UNLAWFUL  
30 EMPLOYMENT PRACTICE.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 1996.