

HOUSE BILL 315

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HB 68/98 - JUD

1999 Regular Session
9lr0422
CF 9lr0082

By: **Delegates Hixson, Barve, Barkley, Billings, Bronrott, Brown, Cane, Carlson, Dembrow, Doory, Franchot, Frush, Goldwater, Bobo, Grosfeld, Hammen, Heller, Howard, Hubbard, Hurson, A. Jones, V. Jones, Kagan, Krysiak, Kopp, Mandel, Menes, McIntosh, Moe, Nathan-Pulliam, Pendergrass, Petzold, Proctor, Rawlings, Shriver, Stern, and Turner**

Introduced and read first time: February 4, 1999
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 23, 1999

CHAPTER _____

1 AN ACT concerning

2 **Antidiscrimination Act**

3 FOR the purpose of prohibiting discrimination based on sexual orientation with
4 regard to public accommodations, housing, and employment; making certain
5 remedies and procedures regarding discrimination applicable to discrimination
6 based on sexual orientation; making certain exemptions from certain provisions
7 of law that prohibit certain discrimination applicable to provisions of this Act
8 regarding discrimination based on sexual orientation; defining "sexual
9 orientation"; making certain technical changes; and generally relating to
10 discrimination on the basis of sexual orientation.

11 BY repealing and reenacting, with amendments,
12 Article 49B - Human Relations Commission
13 Section ~~5(a) and (b)~~ 5, 8(a), 14, 16, 18, 19(a), 20(t), 21(a), 22(a), 23, and 37(a)
14 Annotated Code of Maryland
15 (1998 Replacement Volume)

16 BY adding to
17 Article 49B - Human Relations Commission
18 Section 15(h) and 20(u)
19 Annotated Code of Maryland
20 (1998 Replacement Volume)

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

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

4 5.

5 (A) IN THIS SUBHEADING, "SEXUAL ORIENTATION" MEANS THE
6 IDENTIFICATION OF AN INDIVIDUAL AS TO MALE OR FEMALE HOMOSEXUALITY,
7 HETEROSEXUALITY, OR BISEXUALITY.

8 (B) It is unlawful for an owner or operator of a place of public
9 accommodation or an agent or employee of the owner or operator, because of the race,
10 creed, sex, age, color, national origin, marital status, SEXUAL ORIENTATION, or
11 physical or mental handicap, of any person, to refuse, withhold from, or deny to such
12 person any of the accommodations, advantages, facilities and privileges of such place
13 of public accommodation.

14 (C) Nothing in this section shall be construed or interpreted to prohibit
15 the proprietor of any establishment, or the employees of the establishment, from the
16 right to deny service to any person for failure to conform to the usual and regular
17 requirements, standards and regulations for the establishment so long as the denial
18 is not based upon discrimination on the grounds of race, sex, age, color, creed,
19 national origin, marital status, SEXUAL ORIENTATION, or physical or mental
20 handicap.

21 (D) For the purpose of this subtitle, a place of public accommodation
22 means:

23 (1) Any inn, hotel, motel, or other establishment which provides lodging
24 to transient guests, other than an establishment located within a building which
25 contains not more than five rooms for rent or hire and which is actually occupied by
26 the proprietor of such establishment as the proprietor's residence;

27 (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain,
28 or other facility principally engaged in selling food or alcoholic beverages for
29 consumption on or off the premises, including, but not limited to, any such facility
30 located on the premises of any retail establishment; or any gasoline station;

31 (3) Any motion picture house, theater, concert hall, sports arena,
32 stadium or other place of exhibition or entertainment; and

33 (4) Any establishment which:

34 (i) 1. Is physically located within the premises of any
35 establishment otherwise covered by this section; or

36 2. Within the premises of which is physically located any
37 establishment otherwise covered by this section; and

1 (ii) Which holds itself out as serving patrons of such covered
2 establishment.

3 [(d)] (E) (1) For the purposes of this section, a "place of public
4 accommodation" also means any establishment that:

5 (i) Is operated by a public or private entity;

6 (ii) Is not included in subsection [(c)] (D) of this section; and

7 (iii) Is a retail establishment, whether offering goods, services,
8 entertainment, recreation, or transportation.

9 (2) This section does not require structural changes, modifications, or
10 additions to buildings or vehicles, except as required by this paragraph or as
11 otherwise required by law. In addition, any building constructed, modified or altered
12 in compliance with, or pursuant to a waiver from, the Maryland Building Code for the
13 Handicapped under Article 83B, § 6-102 of the Code shall not be subject to this
14 section.

15 (i) When structural changes, modifications, or the provision of
16 special equipment is necessary to accommodate a handicapped person the
17 accommodation shall be "reasonable".

18 (ii) 1. "Reasonable accommodation" for the purposes of this
19 paragraph means to make a public accommodation suitable for access, use, and
20 patronage by a person without danger to the person's health or safety and without
21 undue hardship or expense to a business or other activity making such an
22 accommodation.

23 2. With respect to a private motor coach transportation
24 carrier, for the purposes of this subsection, "reasonable accommodation" means that
25 any requirement to satisfy the provisions of this article will not exceed a maximum
26 expense of \$2,500 per operating vehicle. However, beginning January 1, 1990, at least
27 10 percent of the total operating fleet of any private motor coach transportation
28 carrier doing business in the State shall comply with the provisions of this article.

29 3. The Human Relations Commission shall make a
30 determination in the first instance whether an accommodation is "reasonable". In
31 making this determination for buildings, the Human Relations Commission may
32 consult with the Department of Housing and Community Development and such
33 others as may be useful as to the cost and feasibility of any structural changes,
34 modifications, additions or the provision of special equipment.

35 [(e)] (F) The provisions of this section shall not apply to a private club or other
36 establishment not in fact open to the public, except to the extent that the facilities of
37 such establishments are made available to the customers or patrons of an
38 establishment within the scope of this section.

1 [(f)] (G) With respect to sex discrimination, this section may not be construed
 2 to apply to those facilities which are uniquely private and personal in nature,
 3 designed to accommodate only a particular sex.

4 [(g)] (H) (1) If the Commission finds that a respondent has engaged in an
 5 unlawful practice under this section, in addition to other relief authorized, the
 6 Commission may seek an order assessing a civil penalty against the respondent:

7 (i) If the respondent has not been adjudged to have committed any
 8 prior discriminatory practice, in an amount not exceeding \$500;

9 (ii) If the respondent has been adjudged to have committed 1 other
 10 discriminatory practice during the 5-year period ending on the date of the filing of
 11 this charge, in an amount not exceeding \$1,000; and

12 (iii) If the respondent has been adjudged to have committed 2 or
 13 more discriminatory practices during the 7-year period ending on the date of the
 14 filing of this charge, in an amount not exceeding \$2,500.

15 (2) If the acts constituting the discriminatory practice are committed by
 16 the same natural person who has been previously adjudged to have committed
 17 discriminatory practices, then the civil penalties set forth in subsections [(g)(1)(ii)
 18 and (iii)] (H)(1)(II) AND (III) may be imposed without regard to the period of time
 19 within which any subsequent discriminatory practice occurred.

20 (3) All civil penalties shall be paid to the General Fund of the State of
 21 Maryland.

22 8.

23 (a) It is unlawful for any person, business, corporation, partnership,
 24 copartnership or association or any other individual, agent, employee, group or firm
 25 which is licensed or regulated by a unit in the Department of Labor, Licensing, and
 26 Regulation as set out in § 2-108 of the Business Regulation Article to refuse, withhold
 27 from, deny or discriminate against any person the accommodations, advantages,
 28 facilities, privileges, sales, or services because of the race, sex, creed, color, national
 29 origin, marital status, SEXUAL ORIENTATION, or physical or mental handicap of any
 30 person. Nothing in this section shall be construed or interpreted to prohibit any
 31 person, business, corporation, partnership, copartnership, association or any other
 32 individual, agent, employee, group or firm which is licensed or regulated by the
 33 Department of Labor, Licensing, and Regulation from the right to refuse, withhold
 34 from, or deny any person for failure to conform to the usual and regular
 35 requirements, standards, and regulations of any person, business, corporation,
 36 partnership, copartnership, or association contemplated by this section so long as the
 37 denial is not based upon discrimination on the grounds of race, sex, color, creed, [or]
 38 national origin, marital status, SEXUAL ORIENTATION, or physical or mental
 39 handicap.

1 14.

2 It is hereby declared to be the policy of the State of Maryland, in the exercise of
3 its police power for the protection of the public safety, public health and general
4 welfare, for the maintenance of business and good government and for the promotion
5 of the State's trade, commerce and manufacturers to assure all persons equal
6 opportunity in receiving employment and in all labor management-union relations
7 regardless of race, color, religion, ancestry or national origin, sex, age, marital status,
8 SEXUAL ORIENTATION, or physical or mental handicap unrelated in nature and
9 extent so as to reasonably preclude the performance of the employment, and to that
10 end to prohibit discrimination in employment by any person, group, labor
11 organization, organization or any employer or his agents.

12 15.

13 For the purposes of this subtitle:

14 (H) "SEXUAL ORIENTATION" MEANS:

15 ~~(H) THE IDENTIFICATION OF AN INDIVIDUAL AS TO MALE OR~~
16 ~~FEMALE HOMOSEXUALITY, HETEROSEXUALITY, OR BISEXUALITY; OR~~

17 ~~(H) HAVING OR BEING PERCEIVED AS HAVING AN IDENTITY,~~
18 ~~EXPRESSION, OR PHYSICAL CHARACTERISTIC NOT TRADITIONALLY ASSOCIATED~~
19 ~~WITH AN INDIVIDUAL'S BIOLOGICAL SEX OR SEX AT BIRTH.~~

20 16.

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

22 (1) To fail or refuse to hire or to discharge any individual, or otherwise to
23 discriminate against any individual with respect to his compensation, terms,
24 conditions, or privileges of employment, because of such individual's race, color,
25 religion, sex, age, national origin, marital status, SEXUAL ORIENTATION, or physical
26 or mental handicap unrelated in nature and extent so as to reasonably preclude the
27 performance of the employment; or

28 (2) To limit, segregate, or classify his employees or applicants for
29 employment in any way which would deprive or tend to deprive any individual of
30 employment opportunities or otherwise adversely affect his status as an employee,
31 because of the individual's race, color, religion, sex, age, national origin, marital
32 status, SEXUAL ORIENTATION, or physical or mental handicap unrelated in nature
33 and extent so as to reasonably preclude the performance of the employment[;].

34 (b) It shall be an unlawful employment practice for an employment agency to
35 fail or refuse to refer for employment, or otherwise to discriminate against, any
36 individual because of his race, color, religion, sex, age, national origin, marital status,
37 SEXUAL ORIENTATION, or physical or mental handicap unrelated in nature and
38 extent so as to reasonably preclude the performance of the employment, or to classify
39 or refer for employment any individual on the basis of his race, color, religion, sex,

1 age, national origin, marital status, SEXUAL ORIENTATION, or physical or mental
2 handicap unrelated in nature and extent so as to reasonably preclude the
3 performance of the employment[;].

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

18 (d) It shall be an unlawful employment practice for any employer, labor
19 organization, or joint labor-management committee controlling apprenticeship or
20 other training or retraining, including on-the-job training programs to discriminate
21 against any individual because of his race, color, religion, sex, age, national origin,
22 marital status, SEXUAL ORIENTATION, or physical or mental handicap unrelated in
23 nature or extent so as to reasonably preclude the performance of the employment in
24 admission to, or employment in, any program established to provide apprenticeship or
25 other training[;].

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

37 (f) It is an unlawful employment practice for an employer to discriminate
38 against any of his employees or applicants for employment, for an employment agency
39 to discriminate against any individual, or for a labor organization to discriminate
40 against any member thereof or applicant for membership, because he has opposed
41 any practice made an unlawful employment practice by this subtitle or because he
42 has made a charge, testified, assisted, or participated in any manner in an
43 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 his religion, national origin or physical or mental qualification in those instances where sex, age, religion, national origin or physical or mental qualification 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; (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, or physical or mental handicap 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, or physically or mentally handicapped persons 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, or physically or mentally handicapped persons in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

42 18.

43 This subtitle shall not apply to:

44 (1) [an] AN employer with respect to the employment of aliens outside of
45 the State[, or to]; OR

1 (2) [a] A religious corporation, association, educational institution or
 2 society with respect to the employment of individuals of a particular religion OR
 3 SEXUAL ORIENTATION to perform work connected with the carrying on by such
 4 corporation, association, educational institution or society of its activities.

5 19.

6 (a) It is the policy of the State of Maryland to provide for fair housing
 7 throughout the State of Maryland, to all its citizens, regardless of race, color, religion,
 8 sex, familial status, national origin, marital status, SEXUAL ORIENTATION, or
 9 handicap; and to that end to prohibit discriminatory practices with respect to
 10 residential housing by any person or group of persons, in order that the peace, health,
 11 safety, prosperity and general welfare of all the inhabitants of the State may be
 12 protected and insured.

13 20.

14 (t) "Restrictive covenants" means any specification limiting the transfer,
 15 rental, or lease of any dwelling because of race, color, religion, marital status, SEXUAL
 16 ORIENTATION, sex, familial status, handicap, or national origin.

17 (U) "SEXUAL ORIENTATION" MEANS:

18 (⊕) ~~THE IDENTIFICATION OF AN INDIVIDUAL AS TO MALE OR~~
 19 ~~FEMALE HOMOSEXUALITY, HETEROSEXUALITY, OR BISEXUALITY; OR~~

20 (⊖) ~~HAVING OR BEING PERCEIVED AS HAVING AN IDENTITY,~~
 21 ~~EXPRESSION, OR PHYSICAL CHARACTERISTIC NOT TRADITIONALLY ASSOCIATED~~
 22 ~~WITH AN INDIVIDUAL'S BIOLOGICAL SEX OR SEX AT BIRTH.~~

23 21.

24 (a) This subtitle does not apply to:

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

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

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

29 2. Agent of any real estate broker, agent, or salesman;

30 3. Person in the business of selling or renting dwellings; or

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

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

1 (2) With respect to discrimination on the basis of [either] sex, SEXUAL
2 ORIENTATION, or marital status:

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

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

8 22.

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

10 (1) To refuse to sell or rent after the making of a bona fide offer, or to
11 refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a
12 dwelling to any person because of race, color, religion, sex, handicap, marital status,
13 familial status, SEXUAL ORIENTATION, or national origin;

14 (2) To discriminate against any person in the terms, conditions, or
15 privileges of sale or rental of a dwelling, or in the provision of services or facilities in
16 connection with the sale or rental of a dwelling, because of race, color, religion, sex,
17 handicap, marital status, familial status, SEXUAL ORIENTATION, or national origin;

18 (3) To make, print, or publish, or cause to be made, printed, or published
19 any notice, statement, or advertisement, with respect to the sale or rental of a
20 dwelling that indicates any preference, limitation, or discrimination based on race,
21 color, religion, sex, handicap, marital status, familial status, SEXUAL ORIENTATION,
22 or national origin, or an intention to make any preference, limitation, or
23 discrimination;

24 (4) To represent to any person because of race, color, religion, sex,
25 handicap, marital status, familial status, SEXUAL ORIENTATION, or national origin
26 that any dwelling is not available for inspection, sale, or rental when the dwelling is
27 in fact available;

28 (5) For profit, to induce or attempt to induce any person to sell or rent
29 any dwelling by representations regarding the entry or prospective entry into the
30 neighborhood of a person or persons of a particular race, color, religion, sex, handicap,
31 marital status, familial status, SEXUAL ORIENTATION, or national origin;

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

34 (i) The buyer or renter; or

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

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

4 (i) The person; or

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

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

10 (i) The modifications may be necessary to afford the handicapped
11 person full enjoyment of the dwelling; and

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

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

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

20 23.

21 (a) (1) It is unlawful for any person or other entity whose business includes
22 engaging in residential real estate related transactions to discriminate against any
23 person in making available a transaction, or in the terms or conditions of a
24 transaction, because of race, color, religion, sex, handicap, marital status, familial
25 status, SEXUAL ORIENTATION, or national origin.

26 (2) Nothing in paragraph (1) of this subsection prohibits a person
27 engaged in the business of furnishing appraisals of real property to take into
28 consideration factors other than race, color, religion, national origin, sex, handicap,
29 marital status, SEXUAL ORIENTATION, or familial status.

30 (b) It is unlawful, because of race, color, religion, sex, handicap, marital
31 status, familial status, SEXUAL ORIENTATION, or national origin, to deny a person
32 access to or membership or participation in a multiple-listing service, real estate
33 brokers' organization or other service, organization, or facility relating to the business
34 of selling or renting dwellings, or to discriminate against a person in the terms or
35 conditions of membership or participation.

1 37.

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

5 (1) Any person because of race, color, religion, sex, handicap, marital
6 status, familial status, SEXUAL ORIENTATION, or national origin and because the
7 person is or has been:

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

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

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

15 (i) Participating without discrimination on account of race, color,
16 religion, sex, handicap, marital status, familial status, SEXUAL ORIENTATION, or
17 national origin in any of the activities, services, organizations, or facilities described
18 in paragraph (1) of this subsection; or

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

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

24 (i) Lawfully aiding or encouraging other persons to participate,
25 without discrimination on account of race, color, religion, sex, handicap, marital
26 status, familial status, SEXUAL ORIENTATION, or national origin, in any of the
27 activities, services, organizations, or facilities described in paragraph (1) of this
28 subsection; or

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

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 1999.

