

SENATE BILL 138

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1999 Regular Session
9lr0082
CF 9lr0422

By: **The President (Administration) and Senators Hoffman, Hollinger,
Kelley, Lawlah, and Ruben**

Introduced and read first time: January 22, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Human Relations Commission - Jurisdiction - Sexual Orientation**

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; defining "sexual orientation"; making certain
7 technical changes; and generally relating to discrimination on the basis of
8 sexual orientation.

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

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

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 5.

23 (a) It is unlawful for an owner or operator of a place of public accommodation
24 or an agent or employee of the owner or operator, because of the race, creed, sex, age,
25 color, national origin, marital status, SEXUAL ORIENTATION, or physical or mental
26 handicap, of any person, to refuse, withhold from, or deny to such person any of the

1 accommodations, advantages, facilities and privileges of such place of public
2 accommodation.

3 (b) Nothing in this section shall be construed or interpreted to prohibit the
4 proprietor of any establishment, or the employees of the establishment, from the right
5 to deny service to any person for failure to conform to the usual and regular
6 requirements, standards and regulations for the establishment so long as the denial
7 is not based upon discrimination on the grounds of race, sex, age, color, creed,
8 national origin, marital status, SEXUAL ORIENTATION, or physical or mental
9 handicap.

10 8.

11 (a) It is unlawful for any person, business, corporation, partnership,
12 copartnership or association or any other individual, agent, employee, group or firm
13 which is licensed or regulated by a unit in the Department of Labor, Licensing, and
14 Regulation as set out in § 2-108 of the Business Regulation Article to refuse, withhold
15 from, deny or discriminate against any person the accommodations, advantages,
16 facilities, privileges, sales, or services because of the race, sex, creed, color, national
17 origin, marital status, SEXUAL ORIENTATION, or physical or mental handicap of any
18 person. Nothing in this section shall be construed or interpreted to prohibit any
19 person, business, corporation, partnership, copartnership, association or any other
20 individual, agent, employee, group or firm which is licensed or regulated by the
21 Department of Labor, Licensing, and Regulation from the right to refuse, withhold
22 from, or deny any person for failure to conform to the usual and regular
23 requirements, standards, and regulations of any person, business, corporation,
24 partnership, copartnership, or association contemplated by this section so long as the
25 denial is not based upon discrimination on the grounds of race, sex, color, creed, or
26 national origin, marital status, SEXUAL ORIENTATION, or physical or mental
27 handicap.

28 14.

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

39 15.

40 For the purposes of this subtitle:

41 (H) "THE TERM SEXUAL ORIENTATION" MEANS:

1 (1) THE IDENTIFICATION OF AN INDIVIDUAL AS TO MALE OR FEMALE
2 HOMOSEXUALITY, HETEROSEXUALITY, BISEXUALITY; OR

3 (2) HAVING OR BEING PERCEIVED AS HAVING AN IDENTITY,
4 EXPRESSION, OR PHYSICAL CHARACTERISTICS NOT TRADITIONALLY ASSOCIATED
5 WITH ONE'S BIOLOGICAL SEX OR SEX AT BIRTH.

6 16.

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

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

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

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

29 (c) It shall be an unlawful employment practice for a labor organization: (1) to
30 exclude or to expel from its membership, or otherwise to discriminate against, any
31 individual because of his race, color, religion, sex, age, national origin, marital status,
32 SEXUAL ORIENTATION, or physical or mental handicap unrelated in nature and
33 extent so as to reasonably preclude the performance of the employment; (2) to limit,
34 segregate or classify its membership, or to classify or fail or refuse to refer for
35 employment any individual, in any way which would deprive or tend to deprive any
36 individual of employment opportunities, or would limit such employment
37 opportunities or otherwise adversely affect his status as an employee or as an
38 applicant for employment, because of such individual's race, color, religion, sex, age,
39 national origin, marital status, SEXUAL ORIENTATION, or physical or mental
40 handicap unrelated in nature and extent so as to reasonably preclude the
41 performance of the employment; or (3) to cause or attempt to cause an employer to
42 discriminate against an individual in violation of this section[;].

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

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

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

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

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

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

24 19.

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

32 20.

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

36 (U) "SEXUAL ORIENTATION" MEANS:

37 (1) THE IDENTIFICATION OF AN INDIVIDUAL AS TO MALE OR FEMALE
38 HOMOSEXUALITY, HETEROSEXUALITY, BISEXUALITY; OR

39 (2) HAVING OR BEING PERCEIVED AS HAVING AN IDENTITY,
40 EXPRESSION, OR PHYSICAL CHARACTERISTICS NOT TRADITIONALLY ASSOCIATED
41 WITH ONE'S BIOLOGICAL SEX OR SEX AT BIRTH.

1 22.

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

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

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

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

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

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

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

27 (i) The buyer or renter; or

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

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

33 (i) The person; or

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

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

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

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

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

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

14 23.

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

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

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

30 37.

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

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

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

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

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

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

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

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

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

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

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