

# SENATE BILL 516

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CF 7lr0691

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By: **Senators Gladden and Madaleno**

Introduced and read first time: February 2, 2007

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Human Relations – Sexual Orientation and Gender Identity and Expression**  
3 **– Antidiscrimination**

4 FOR the purpose of prohibiting discrimination based on gender identity and  
5 expression with regard to public accommodations, housing, and employment;  
6 prohibiting discrimination based on sexual orientation or gender identity and  
7 expression with regard to the leasing of property for commercial usage or in the  
8 provision of certain services or facilities; making certain remedies and  
9 procedures regarding discrimination applicable to discrimination based on  
10 sexual orientation and gender identity and expression; requiring certain State  
11 personnel actions to be made without regard to gender identity and expression  
12 or sexual orientation; defining the term “gender identity and expression”; and  
13 generally relating to discrimination based on sexual orientation and gender  
14 identity and expression.

15 BY repealing and reenacting, with amendments,  
16 Article 49B – Human Relations Commission  
17 Section 5(a), (b), and (c), 8(a), 8A, 14, 16, 19(a), 20(t), 21(a), 22(a), 23, and 37(a)  
18 Annotated Code of Maryland  
19 (2003 Replacement Volume and 2006 Supplement)

20 BY adding to  
21 Article 49B – Human Relations Commission  
22 Section 15(k) and 20(k-1)  
23 Annotated Code of Maryland  
24 (2003 Replacement Volume and 2006 Supplement)

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
2 Article – State Personnel and Pensions  
3 Section 2–302  
4 Annotated Code of Maryland  
5 (2004 Replacement Volume and 2006 Supplement)

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

8 **Article 49B – Human Relations Commission**

9 5.

10 (a) (1) In this subheading[,] **THE FOLLOWING WORDS HAVE THE**  
11 **MEANINGS INDICATED.**

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

15 (3) [“sexual”] **“SEXUAL** orientation” means the identification of an  
16 individual as to male or female homosexuality, heterosexuality, or bisexuality.

17 (b) It is unlawful for an owner or operator of a place of public accommodation  
18 or an agent or employee of the owner or operator, because of the race, creed, sex, age,  
19 color, national origin, marital status, sexual orientation, **GENDER IDENTITY AND**  
20 **EXPRESSION**, or disability of any person, to refuse, withhold from, or deny to such  
21 person any of the accommodations, advantages, facilities and privileges of such place  
22 of public accommodation.

23 (c) Nothing in this section shall be construed or interpreted to prohibit the  
24 proprietor of any establishment, or the employees of the establishment, from the right  
25 to deny service to any person for failure to conform to the usual and regular  
26 requirements, standards and regulations for the establishment so long as the denial is  
27 not based upon discrimination on the grounds of race, sex, age, color, creed, national  
28 origin, marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or  
29 disability.

30 8.

18 8A.

19 It is an unlawful practice for an owner or operator of commercial property, an  
20 agent or employee of the owner or operator of commercial property, or persons or  
21 businesses licensed or regulated by the State to discriminate against an individual in  
22 the terms, conditions, or privileges of the leasing of property for commercial usage, or  
23 in the provision of services or facilities in connection with the leasing of property for  
24 commercial usage, because of the individual's race, color, religion, sex, age, handicap,  
25 marital status, **SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION**, or  
26 national origin.

27 14.

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

1 15.

2 (K) “GENDER IDENTITY AND EXPRESSION” MEANS A GENDER-RELATED  
3 IDENTITY, APPEARANCE, EXPRESSION, OR BEHAVIOR OF AN INDIVIDUAL  
4 REGARDLESS OF THE INDIVIDUAL’S ASSIGNED SEX AT BIRTH.

5 16.

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

7 (1) To fail or refuse to hire or to discharge any individual, or otherwise  
8 to discriminate against any individual with respect to the individual’s compensation,  
9 terms, conditions, or privileges of employment, because of such individual’s race, color,  
10 religion, sex, age, national origin, marital status, sexual orientation, **GENDER**  
11 **IDENTITY AND EXPRESSION**, genetic information, or disability unrelated in nature  
12 and extent so as to reasonably preclude the performance of the employment, or  
13 because of the individual’s refusal to submit to a genetic test or make available the  
14 results of a genetic test;

15 (2) To limit, segregate, or classify its employees or applicants for  
16 employment in any way which would deprive or tend to deprive any individual of  
17 employment opportunities or otherwise adversely affect the individual’s status as an  
18 employee, because of the individual’s race, color, religion, sex, age, national origin,  
19 marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, genetic  
20 information, or disability unrelated in nature and extent so as to reasonably preclude  
21 the performance of the employment, or because of the individual’s refusal to submit to  
22 a genetic test or make available the results of a genetic test; or

23 (3) To request or require genetic tests or genetic information as a  
24 condition for hiring or determining benefits.

25 (b) It shall be an unlawful employment practice for an employment agency to  
26 fail or refuse to refer for employment, or otherwise to discriminate against, any  
27 individual because of the individual’s race, color, religion, sex, age, national origin,  
28 marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or  
29 disability unrelated in nature and extent so as to reasonably preclude the performance  
30 of the employment, or to classify or refer for employment any individual on the basis of  
31 the individual’s race, color, religion, sex, age, national origin, marital status, sexual  
32 orientation, **GENDER IDENTITY AND EXPRESSION**, or disability unrelated in nature  
33 and extent so as to reasonably preclude the performance of the employment.

15 (d) It shall be an unlawful employment practice for any employer, labor  
16 organization, or joint labor-management committee controlling apprenticeship or  
17 other training or retraining, including on-the-job training programs to discriminate  
18 against any individual because of the individual's race, color, religion, sex, age,  
19 national origin, marital status, sexual orientation, **GENDER IDENTITY AND**  
20 **EXPRESSION**, or disability unrelated in nature or extent so as to reasonably preclude  
21 the performance of the employment in admission to, or employment in, any program  
22 established to provide apprenticeship or other training.

23 (e) It is an unlawful employment practice for an employer, labor  
24 organization, or employment agency to print or cause to be printed or published any  
25 notice or advertisement relating to employment by the employer or membership in or  
26 any classification or referral for employment by the labor organization, or relating to  
27 any classification or referral for employment by the agency, indicating any preference,  
28 limitation, specification, or discrimination, based on race, color, religion, sex, age,  
29 national origin, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or on the  
30 basis of a disability. However, a notice or advertisement may indicate a preference,  
31 limitation, specification, or discrimination based on religion, sex, age, national origin  
32 or disability when religion, sex, age, national origin or disability is a bona fide  
33 occupational qualification for employment.

34 (f) It is an unlawful employment practice for an employer to discriminate  
35 against any of its employees or applicants for employment, for an employment agency  
36 to discriminate against any individual, or for a labor organization to discriminate  
37 against any member thereof or applicant for membership, because the individual has  
38 opposed any practice made an unlawful employment practice by this subtitle or

1 because the individual has made a charge, testified, assisted, or participated in any  
2 manner in an investigation, proceeding, or hearing under this subtitle.

3 (g) Notwithstanding any other provision of this subtitle, (1) it is not an  
4 unlawful employment practice for an employer to hire and employ employees, for an  
5 employment agency to classify, or refer for employment any individual, for a labor  
6 organization to classify its membership or to classify or refer for employment any  
7 individual, or for an employer, labor organization or joint labor-management  
8 committee controlling apprenticeship or other training or retraining programs to  
9 admit or employ any individual in any such program, on the basis of the individual's  
10 religion, national origin or disability in those instances where sex, age, religion,  
11 national origin or disability is a bona fide occupational qualification reasonably  
12 necessary to the normal operation of that particular business or enterprise; (2) it is not  
13 an unlawful employment practice for an employer to establish standards concerning  
14 an employee's dress and grooming if the standards are directly related to the nature of  
15 the employment of the employee; (3) it is not an unlawful employment practice for a  
16 school, college, university, or other educational institution or institution of learning to  
17 hire and employ employees of a particular religion if the school, college, university, or  
18 other educational institution or institution of learning is, in whole or in substantial  
19 part, owned, supported, controlled, or managed by a particular religion or by a  
20 particular religious corporation, association, or society or if the curriculum of the  
21 school, college, university, or other educational institution or institution of learning is  
22 directed toward the propagation of a particular religion; and (4) it is not unlawful for  
23 an employer, employment agency or labor organization to observe the terms of a bona  
24 fide seniority system or any bona fide employee benefit plan such as a retirement,  
25 pension or insurance plan, which is not a subterfuge to evade the purposes of this  
26 subtitle; however, no employee benefit plan shall excuse the failure to hire any  
27 individual.

28 (h) Nothing contained in this subtitle shall be interpreted to require any  
29 employer, employment agency, labor organization, or joint labor-management  
30 committee subject to this subtitle to grant preferential treatment to any individual or  
31 to any group because of the race, color, religion, sex, age, national origin, sexual  
32 orientation, **GENDER IDENTITY AND EXPRESSION**, or disability of the individual or  
33 group on account of an imbalance which may exist with respect to the total number or  
34 percentage of persons of any race, color, religion, sex, age, national origin, sexual  
35 orientation, **GENDER IDENTITY AND EXPRESSION**, or persons with disabilities  
36 employed by any employer, referred or classified for employment by any employment  
37 agency or labor organization, admitted to membership or classified by any labor  
38 agency or labor organization, admitted to membership or classified by any labor  
39 organization, or admitted to, or employed in, any apprenticeship or other training  
40 program, in comparison with the total number or percentage of persons of such race,

1 color, religion, sex, age, national origin, sexual orientation, **GENDER IDENTITY AND**  
2 **EXPRESSION**, or persons with disabilities in any community, State, section, or other  
3 area, or in the available work force in any community, State, section, or other area.

4 (i) An employer shall be immune from liability under this article or under  
5 the common law, arising out of the employer's reasonable acts to verify the sexual  
6 orientation of any employee or applicant taken by the employer in response to a charge  
7 filed against the employer on the basis of sexual orientation.

8 19.

9 (a) It is the policy of the State of Maryland to provide for fair housing  
10 throughout the State of Maryland, to all its citizens, regardless of race, color, religion,  
11 sex, familial status, national origin, marital status, sexual orientation, **GENDER**  
12 **IDENTITY AND EXPRESSION**, or disability; and to that end to prohibit discriminatory  
13 practices with respect to residential housing by any person or group of persons, in  
14 order that the peace, health, safety, prosperity and general welfare of all the  
15 inhabitants of the State may be protected and insured.

16 20.

17 **(K-1) "GENDER IDENTITY AND EXPRESSION" MEANS A GENDER-RELATED**  
18 **IDENTITY, APPEARANCE, EXPRESSION, OR BEHAVIOR OF AN INDIVIDUAL**  
19 **REGARDLESS OF THE INDIVIDUAL'S ASSIGNED SEX AT BIRTH.**

20 (t) "Restrictive covenants" means any specification limiting the transfer,  
21 rental, or lease of any dwelling because of race, color, religion, marital status, sexual  
22 orientation, **GENDER IDENTITY AND EXPRESSION**, sex, familial status, disability, or  
23 national origin.

24 21.

25 (a) This subtitle does not apply to:

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

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

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

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

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

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

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

(2) With respect to discrimination on the basis of sex, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, 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 no more than 5 rental units, if the owner maintains the dwelling as the owner's principal residence.

22.

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

(1) To refuse to sell or rent after the making of a bona fide offer, or to 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 AND EXPRESSION**, or national origin;

(2) To discriminate against any person in the terms, conditions, or privileges of 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 AND EXPRESSION**, or national origin;

(3) To 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 AND EXPRESSION**, or national origin, or an intention to make any preference, limitation, or discrimination;

5 (5) For profit, to induce or attempt to induce any person to sell or rent  
6 any dwelling by representations regarding the entry or prospective entry into the  
7 neighborhood of a person or persons of a particular race, color, religion, sex, disability,  
8 marital status, familial status, sexual orientation, **GENDER IDENTITY AND**  
9 **EXPRESSION**, or national origin;

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

12 (i) The buyer or renter; or

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

18 (i) The person; or

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

21 (8) To refuse to permit, at the expense of the person with a disability,  
22 reasonable modifications of existing premises occupied or to be occupied by the  
23 individual if:

24 (i) The modifications may be necessary to afford the person  
25 with a disability full enjoyment of the dwelling; and

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

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

6 23.

12 (2) Nothing in paragraph (1) of this subsection prohibits a person  
13 engaged in the business of furnishing appraisals of real property to take into  
14 consideration factors other than race, color, religion, national origin, sex, disability,  
15 marital status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or familial  
16 status.

17       (b) It is unlawful, because of race, color, religion, sex, disability, marital  
18 status, familial status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or  
19 national origin, to deny a person access to or membership or participation in a  
20 multiple-listing service, real estate brokers' organization or other service,  
21 organization, or facility relating to the business of selling or renting dwellings, or to  
22 discriminate against a person in the terms or conditions of membership or  
23 participation.

24 37.

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

28 (1) Any person because of race, color, religion, sex, disability, marital  
29 status, familial status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or  
30 national origin and because the person is or has been:

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

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

14 (i) Lawfully aiding or encouraging other persons to participate,  
15 without discrimination on account of race, color, religion, sex, disability, marital  
16 status, familial status, sexual orientation, **GENDER IDENTITY AND EXPRESSION**, or  
17 national origin, in any of the activities, services, organizations, or facilities described  
18 in paragraph (1) of this subsection; or

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

## Article – State Personnel and Pensions

23 2-302.

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

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

- (i) age;
- (ii) ancestry;
- (iii) color;
- (iv) creed;

**(V) GENDER IDENTITY AND EXPRESSION;**

- [(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.

24 (d) The Equal Employment Opportunity Program in Title 5, Subtitle 2 of this  
25 article governs all employees of any unit in the Executive Branch of State government,  
26 including a unit with an independent personnel system.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2007.