
HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 36

AN ACT TO AMEND TITLES 6, 9, 18, 19, 25 AND 29 OF THE DELAWARE CODE RELATING TO DISCRIMINATION EMPLOYMENT, PUBLIC WORKS CONTRACTING, HOUSING, EQUAL ACCOMMODATIONS AND THE INSURANCE BUSINESS.

WHEREAS, this Act is intended to ensure equal rights and not to provide for any preferential treatment whatsoever; and

WHEREAS, according to Opinions of the Attorney General of Delaware, this Act will not legalize or permit same sex marriages in Delaware; and

WHEREAS, Delaware law, at 13 Del. C. §101, specifically prohibits marriages between persons of the same gender and does not recognize such marriages as valid even if they are valid in jurisdictions where they occur; and

WHEREAS, there are no existing federal laws that prohibit discrimination based upon sexual orientation; and

WHEREAS, there are no existing State laws in Delaware that prohibit discrimination based upon sexual orientation; and

WHEREAS, religious organizations, including those that receive Grant-in-Aid funds, are exempt in their employment practices from the provisions of this Act; and

WHEREAS, this Act does not create hiring preferences or quotas; and

WHEREAS, this Act does not prohibit the firing or discipline of someone who is gay or lesbian for reasons related to job performance; and

WHEREAS, this Act will not permit inappropriate dress or behavior in the workplace; and

WHEREAS, this Act does not modify Delaware's existing right to work laws; and

WHEREAS, this Act does not require employers to provide domestic partner benefits; and

WHEREAS, this Act will not affect tenant selection decisions in properties that are owner-occupied and contain no more than four rental units; and

WHEREAS, this Act does not apply to tourist houses with fewer than ten rental units; and

WHEREAS, this Act does not mandate the inclusion of sexual orientation in any instructional setting; and
WHEREAS, it is the purpose and intent of the General Assembly in enacting this Act, to clearly state as a matter of the public policy of the State of Delaware:

(1) That the implementation of the statutory changes herein set forth do not change, overturn, or modify the underlying laws and opinions that render as truthful fact the above "WHEREAS" clauses; and

(2) That any act, action, or right established or available within any other state of the United States which, if given full faith and credit within the State of Delaware, would render one of the above "WHEREAS" clauses inaccurate or untruthful, is declared to contravene the announced public policy of the State of Delaware;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4501, Title 6, Delaware Code, by inserting the words ", sexual orientation" after the word "handicap" wherever it appears in this Section.

Section 2. Amend § 4502, Title 6, Delaware Code, by re-designating current subsection "(13)" as subsection "(14)" and adding a new subsection, designated as § 4502(13), to read as follows:

"(13) 'Sexual orientation' exclusively means heterosexual, bisexual, or homosexual orientation, whether real or perceived."

Section 3. Amend § 4503, Title 6, Delaware Code, by inserting the words ", sexual orientation" after the word "handicap".

Section 4. Amend § 4504, Title 6, Delaware Code, by inserting the words ", sexual orientation" after the word "handicap" wherever it appears in this Section.

Section 5. Amend § 4601, Title 6, Delaware Code, by inserting the words ", sexual orientation" after the word "age".

Section 6. Amend § 4602, Title 6, Delaware Code, by re-designating current subsections "(22), (23) and (24)" as subsections "(23), (24) and (25)" respectively, and adding a new subsection, designated as § 4602(22), to read as follows:

"(22) 'Sexual orientation' exclusively means heterosexual, bisexual, or homosexual orientation, whether real or perceived."

Section 7. Amend § 4603, Title 6, Delaware Code, by inserting the words ", sexual orientation" after the word "age" wherever it appears in this Section.

Section 8. Amend § 4604, Title 6, Delaware Code, by inserting the words ", sexual orientation" after the word "age" wherever it appears in this Section.

Section 9. Amend § 4605, Title 6, Delaware Code, by inserting the words ", sexual orientation" after the word "age".

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Section 10. Amend the first sentence of subsection (c), § 4607, Title 6, Delaware Code, by inserting the words "; sexual orientation" after the word "age".

Section 11. Amend § 4619, Title 6, Delaware Code, by inserting the words "; sexual orientation" after the word "sex", wherever it appears in this Section.

Section 12. Amend § 1183(a)(1), Title 9, Delaware Code, by inserting the words "; or sex or sexual orientation" after the word "affiliations".

Section 13. Amend § 2304, Title 18, Delaware Code, subsection (22) by inserting the words "; sexual orientation" after the word "religion" wherever it appears.

Section 14. Amend § 2304, Title 18, Delaware Code, subsection (22) by redesigning current subsections "(b), (c), (d), (e), (f), (g), (h), (i), (j), and (k)" as subsections "(c), (d), (e), (f), (g), (h), (i), (j), (k) and (l)" respectively and adding a new subsection (b):

"(b) 'Sexual orientation' exclusively means heterosexual, bisexual, or homosexual orientation, whether real or perceived."

Section 15. Amend § 710, Title 19, Delaware Code, to add a new subsection to read as follows:

"'Sexual orientation' exclusively means heterosexual, bisexual, or homosexual orientation, whether real or perceived."

Section 16. Amend § 710(3), Title 19, Delaware Code, by adding the following sentence at the end of the subsection:

"The term 'employer' with respect to discriminatory practices based upon sexual orientation does not include religious corporations, associations or societies whether or not supported, in whole or in part, by government appropriations, except where the duties of the employment or employment opportunity pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under § 511(a) of the Internal Revenue Code of 1986."

Section 17 Amend § 711, Title 19, Delaware Code, to insert the words "; sexual orientation," between the words "sex" and "or national origin" whenever they appear therein.

Section 18. Amend § 718(b), Title 19, Delaware Code, to insert the words "; sexual orientation," between the words "sex" and "or national origin."

Section 19. Amend § 711, Title 19, Delaware Code, by adding a new Section to read as follows:
"Nothing in this subchapter shall be interpreted to require employers to offer health, welfare, pension or other benefits to persons associated with employees on the basis as such benefits are afforded to the spouses of married employees."

Section 20. Amend § 5141, Title 25, Delaware Code, by re-designating current subsections "(25), (26) and (27)" as subsections "(26), (27) and (28)", respectively, and adding a new subsection, designated as § 5141(25), to read as follows:

"(25) 'Sexual orientation' exclusively means heterosexual, bisexual, or homosexual orientation, whether real or perceived."

Section 21. Amend § 5116, Title 25, Delaware Code, by inserting the words ", sexual orientation," after the word "sex," wherever it appears in this section.

Section 22. Amend § 5953, Title 29, Delaware Code, by inserting the words ", sexual orientation, sex" after the word "affiliations."

Section 23. Amend § 6962(d)(7), Title 29, Delaware Code, by inserting the words ", sexual orientation" after the word "sex" wherever it appears in that subsection.

Section 24. The inclusion in this Act of the words "sexual orientation" is intended to ensure equal rights and not to endorse or confer legislative approval of any unlawful conduct.

Section 25. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 26. Amend Chapter 45, Title 6, Delaware Code, by adding thereto the following:

"§ 4513. Criminal Jurisdiction.
Superior Court shall have exclusive original jurisdiction over all criminal violations of this Chapter."

Section 27. Amend Chapter 46, Title 6, Delaware Code, by adding thereto the following:

"§ 4620. Criminal Jurisdiction.
Superior Court shall have exclusive original jurisdiction over all criminal violations of this Chapter."

Section 28. Amend Subchapter II, Chapter 7, Title 19, Delaware Code, by adding thereto the following:

"§ 719. Criminal Jurisdiction.
Superior Court shall have exclusive original jurisdiction over all criminal violations of this subchapter."
Section 29. For any section of this Act relating to discrimination in employment, the protection afforded to a person based on
the sexual orientation of the person does not extend to employment situations in which sexual orientation is advocated and in which
minors are present.

Section 30. A non-prevailing party, without its consent, may not be ordered to institute hiring plans, hiring goals, or hiring
targets for future hiring based on sexual orientation.

Section 31. Nothing in this Act inhibits the right of an employer to have a dress code.

Section 32. The provisions of this Act do not lessen or invalidate the force and effect of any other provisions of the Delaware
Code or of the employment-at-will doctrine.

SYNOPSIS

This Act prohibits discrimination against persons on the basis of sexual orientation in housing, employment, public works
contracting, public accommodations, and insurance and grants Superior Court exclusive criminal jurisdiction over violations of
equal accommodations, fair housing and employment discrimination and deletes the addition to the Recorder of Deeds' duties.

This Act also clarifies that religious groups, whether or not supported by government funding, are exempt in certain
circumstances from the ban on sexual orientation discrimination.

This Act provides that in employment situations, the protection afforded to a person based on the sexual orientation of the
person does not extend to situations in which sexual orientation is advocated and in which minors are present.

Pursuant to this Act, a non-prevailing party, without its consent, may not be ordered to institute hiring plans, hiring goals,
or hiring targets for future hiring based on sexual orientation. This Act also reiterates the right of an employer to have a dress
code.

In a case in Massachusetts, the Massachusetts Supreme Court removed a prohibition against same sex marriages in that
State based in part on the existence in State law of an act similar to this Act. This Act therefore clarifies that its provisions do not
partially or fully invalidate any other Code provisions, specifically, but not limited to, provisions relating to marriage, adoption,
and the teaching of human sexuality in public schools. For the same reason, this Act also clarifies that its provisions do not
partially or fully invalidate any other code provisions relating employment-at-will in Delaware or the employment-at-will doctrine.

Finally, and perhaps most importantly, the WHEREAS clauses of this Act set forth the clear intent of the General
Assembly in enacting this Act.