



SPONSOR: Rep. Oberle & Rep. Ulbrich & Rep. Schwartzkopf & Sen. Henry;
Reps. DiPinto, Hudson, George, Gilligan, Keeley, McWilliams,
Schooley, Viola; Sens. Bunting, McDowell, Sokola

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.

- 1 WHEREAS, this Act is intended to ensure equal rights and not to provide for any preferential treatment whatsoever; and
- 2 WHEREAS, according to Opinions of the Attorney General of Delaware, this Act will not legalize or permit same sex
- 3 marriages in Delaware; and
- 4 WHEREAS, Delaware law, at 13 Del. C. §101, specifically prohibits marriages between persons of the same gender and does
- 5 not recognize such marriages as valid even if they are valid in jurisdictions where they occur; and
- 6 WHEREAS, there are no existing federal laws that prohibit discrimination based upon sexual orientation; and
- 7 WHEREAS, there are no existing State laws in Delaware that prohibit discrimination based upon sexual orientation; and
- 8 WHEREAS, religious organizations, including those that receive Grant-in-Aid funds, are exempt in their employment practices
- 9 from the provisions of this Act; and
- 10 WHEREAS, this Act does not create hiring preferences or quotas; and
- 11 WHEREAS, this Act does not prohibit the firing or discipline of someone who is gay or lesbian for reasons related to job
- 12 performance; and
- 13 WHEREAS, this Act will not permit inappropriate dress or behavior in the workplace; and
- 14 WHEREAS, this Act does not modify Delaware's existing right to work laws; and
- 15 WHEREAS, this Act does not require employers to provide domestic partner benefits; and
- 16 WHEREAS, this Act will not affect tenant selection decisions in properties that are owner-occupied and contain no more than
- 17 four rental units; and
- 18 WHEREAS, this Act does not apply to tourist houses with fewer than ten rental units; and
- 19 WHEREAS, this Act does not mandate the inclusion of sexual orientation in any instructional setting; and

20 WHEREAS, it is the purpose and intent of the General Assembly in enacting this Act, to clearly state as a matter of the public
21 policy of the State of Delaware:

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

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

27 NOW, THEREFORE:

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

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

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

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

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

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

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

39 Section 6. Amend § 4602, Title 6, Delaware Code, by re-designating current subsections "(22), (23) and (24)" as subsections
40 "(23), (24) and (25)", respectively, and adding a new subsection, designated as § 4602(22), to read as follows:

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

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

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

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

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

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

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

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

56 Section 14. Amend § 2304, Title 18, Delaware Code, subsection (22) by redesignating current subsections "(b), (c), (d), (e),
57 (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
58 (b):

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

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

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

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

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

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

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

74 Section 19. Amend § 711, Title 19, Delaware Code, by adding a new Section to read as follows:

75 " Nothing in this subchapter shall be interpreted to require employers to offer health, welfare, pension or other
76 benefits to persons associated with employees on the basis as such benefits are afforded to the spouses of married
77 employees."

78 Section 20. Amend § 5141, Title 25, Delaware Code, by re-designating current subsections "(25), (26) and (27)" as subsections
79 "(26), (27) and (28)", respectively, and adding a new subsection, designated as § 5141(25), to read as follows:

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

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

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

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

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

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

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

94 "§ 4513. Criminal Jurisdiction.

95 Superior Court shall have exclusive original jurisdiction over all criminal violations of this Chapter."

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

97 "§ 4620. Criminal Jurisdiction.

98 Superior Court shall have exclusive original jurisdiction over all criminal violations of this Chapter."

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

100 "§ 719. Criminal Jurisdiction.

101 Superior Court shall have exclusive original jurisdiction over all criminal violations of this subchapter."

102 Section 29. For any section of this Act relating to discrimination in employment, the protection afforded to a person based on
103 the sexual orientation of the person does not extend to employment situations in which sexual orientation is advocated and in which
104 minors are present.

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

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

108 Section 32. The provisions of this Act do not lessen or invalidate the force and effect of any other provisions of the Delaware
109 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.