



**Testimony for the Senate Judicial Proceedings Committee
SB 212 – Fairness for All Marylanders Act of 2014
February 4, 2014
SUPPORT**

The ACLU of Maryland strongly supports SB 212 as providing long overdue protection from discrimination based on gender identity to Maryland residents. It should receive a favorable report from this committee.

The state's current antidiscrimination law prohibits discrimination based upon race, color, religion, sex, age, national origin, marital status, sexual orientation, or disability, but provides no protection for gender identity discrimination, leaving transgender individuals vulnerable to discrimination in all areas of civic life. This bill closes the loophole. Because it simply adds a new prohibited basis for discrimination to existing law, it still exempts employers with less than 15 employees, employers that are religious institutions, and owners of an owner-occupied dwelling and of apartment buildings with less than six units.

The perverse effect of the loophole in current law is to leave those who most need the protection from gender based discrimination without it. No one suffers more than those who appear most visibly to depart from the conventions of gender. Discrimination against transgender individuals can be brutal and is pervasive. The ACLU of Maryland receives calls from victims of such discrimination regularly and from all regions of the State. The discrimination can involve loss of a job, the refusal to provide services, the infliction of humiliating treatment, and abuse. Without the protection of the law, victims of such acts have little recourse and those bad actors have no incentive to change policies, enforce existing policies, or change their behavior.

SB 212 seeks to address these harms by adding gender identity as a new prohibited basis of discrimination under existing anti-discrimination statutes. In so doing, the bill retains the structure of existing anti-discrimination law, and the many explicit and implicit exemptions from anti-discrimination provisions that grant individuals and religious institutions a license to discriminate in certain contexts.

Thus, for example, Maryland's law prohibiting discrimination by "public accommodations" has an exceptionally narrow definition of which businesses are covered. It does not apply to all businesses, programs, or facilities to which the public has access, but only to establishments that "provide lodging to transient guests," facilities "principally engaged in selling food or alcoholic beverages," "place[s] of exhibition or entertainment," "retail establishments" that "offer[] goods, services, entertainment, recreation, or transportation," *Md. Code, State Gov.* § 20-301, or persons or entities licensed or regulated by the Department of Labor, Licensing, or Regulation. *Id.* § 20-402. The law does not cover "private club[s]," and does not apply to hotels or rooming houses that have five rooms or less if the proprietor lives on the premises. *Id.* § 20-303. This narrow definition of public accommodations, which stands in contrast to those of many other states, e.g., "all business establishments of every kind whatsoever," *Cal. Civil Code* § 51(b), excludes, among other things, all private schools, including parochial schools, according to the State Commission on Civil Rights.

The law prohibiting employment discrimination does not apply to small businesses with less than fifteen employees, *id.* § 20-601(d)(2), and does not apply to "a religious corporation, association,

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educational institution, or society with respect to the employment of individuals of a particular religion or sexual orientation to perform work connected with the activities of the religious entity.” *Id.* § 20-604(2).

The law prohibiting housing discrimination does not apply to the sale or rental of a single family dwelling, as long as the owner does not use the services of a real estate agent or rental agent, *Id.* § 20-704(a)(1), nor does it prohibit landlords from discriminating based on sex, sexual orientation, or gender identity if the building contains fewer than six dwelling units and the owner resides on the premises. *Id.* § 20-704(a)(2).

The provisions of state law (unchanged by this bill) are thus *less* expansive in their protections against discrimination than are the similar provisions of, for example, Baltimore County’s anti-discrimination law. The latter applies to religious employers other than religious schools, Balt. Co. Code, § 29-2-204(b), and applies to all private employers, regardless of size. *Id.* 29-2-201(c)(1)(i). In addition, Baltimore County’s antidiscrimination law applies to a much broader set of public accommodations, including any “place that holds itself out as inviting the public to use its goods and services.” *Id.* § 29-2-301(1). Finally, the housing discrimination provisions in the county code apply even to owner occupied dwellings as long as they have more than one rental unit. *Id.* § 29-2-104(b). In other words, Baltimore County’s antidiscrimination law (which also protects against discrimination based on gender identity) applies to a broader range of individuals, employers, and businesses than does state law.

By passing SB 212, Maryland will be joining a growing trend around the country. Sixteen states and 156 cities and counties have laws that protect transgender individuals, including California, Colorado, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Vermont and Washington, as well as the District of Columbia. These laws cover 45% of the U.S. population. Here in Maryland, Baltimore City has prohibited discrimination based on gender identity or expression since 2002, and Montgomery County since 2007. Most recently, Howard County passed similar antidiscrimination legislation in 2011, and Baltimore County did so in 2012.

Corporate America has also been a leader in protecting their transgender employees. Today 285 of the Fortune 500 companies include protections for transgender employees in their nondiscrimination policies. Only three did so in 2000. These companies span all industries and include DuPont, Walgreens, and Coca Cola. Along with these Fortune 500 companies, 3,000 other companies, universities and labor unions prohibit this form of discrimination. Maryland companies that have a non-discrimination policy that covers gender identity include Goucher College, John Hopkins University, Sodexo Inc., and the University of Baltimore. The existence of such policies in so many cities and companies nationwide, and in Maryland, demonstrates that there is no public policy justification for excluding transgender individuals from the protection of Maryland’s anti-discrimination law.

We decided as a society nearly half a century ago that discrimination based upon gender and gender stereotyping is no longer acceptable. SB 212 ensures that decision is completely fulfilled. SB 212 should receive a favorable report.