



NATIONAL CENTER FOR LESBIAN RIGHTS

State by State Guide to Laws That Prohibit Discrimination Against Transgender People

I. Introduction

Historically, transgender people have faced serious and pervasive discrimination in many aspects of public life, either because their gender identity doesn't match the sex they were assigned at birth, or because they are perceived as failing to conform with stereotypical expectations of sex-appropriate appearance, dress, and behavior. In the past ten years, however, transgender people have been increasingly successful in obtaining legal protections against discrimination at work, at school, in places of public accommodation, and in other areas.

There is still no federal law that prohibits discrimination based on gender identity in employment¹ or public accommodations, although Congress recently enacted protections against hate crimes based on gender identity.² Furthermore, federal laws that prohibit discrimination based on disability expressly exclude conditions related to gender identity.³ While federal courts in the 1970s through the 1990s generally denied sex-discrimination claims brought by transgender people,⁴ in recent years at least three federal circuit courts of appeal – the First, Sixth, and Ninth Circuits – as well as a

¹ The proposed Employment Non-Discrimination Act (ENDA), pending in Congress, would prohibit discrimination in employment based on sexual orientation or gender identity.

² The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (2009), enacted as a rider to the National Defense Authorization Act for 2010 (H.R. 2647), codified at 18 U.S.C.A. § 249.

³ See Rehabilitation Act, 29 U.S.C.A. § 705(20)(F)(i); Americans with Disabilities Act, 42 U.S.C.A. § 12211(b)(1). Both Acts exclude “transsexualism” and “gender identity disorders not resulting from physical impairments” from the list of protected disabilities.

⁴ See, e.g., *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984) (holding that “the words of Title VII do not outlaw discrimination against a person who has a sexual identity disorder, i.e., ... a person born with a female body who believes herself to be a male”); *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659 (9th Cir. 1977) (same); *James v. Ranch Mart Hardware, Inc.*, 881 F. Supp. 478 (D. Kan. 1995) (same).

number of federal district courts have held that transgender or gender non-conforming people are protected under federal sex-discrimination laws such as Title VII.⁵

At the state level, however, fifteen states and the District of Columbia have passed laws that offer explicit protections for transgender people. This publication is a guide to those state laws that expressly prohibit discrimination based on transgender status, gender identity, or gender expression.⁶

II. How Statutes Define Transgender Status

States have used three general approaches to provide protection against discrimination for transgender people:

- In Iowa, Maryland, New Jersey, New Mexico, North Carolina, Rhode Island, Vermont, and the District of Columbia, the non-discrimination statutes explicitly include “gender identity” as a protected characteristic.
- In Colorado, Illinois, Minnesota, Maine, Oregon, Washington the non-discrimination laws prohibit discrimination based on sexual orientation, and include gender identity or expression within the statutory definition of sexual orientation.
- California offers protection to transgender people by including gender identity or expression within the statutory definition of sex for purposes of its non-

⁵ See, e.g., *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000) (reinstating Equal Credit Opportunity Act claim on behalf of transgender plaintiff who alleged that he was denied an opportunity to apply for a loan because he was not dressed in “masculine attire”); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000) (holding that transsexual prisoner could state a claim under Gender Motivated Violence Act, because “[d]iscrimination because one fails to act in the way expected of a man or woman is forbidden” under the proscription of discrimination based on sex); *Smith v. City of Salem, Ohio*, 378 F.3d 566, 94 (6th Cir. 2004) (holding that transsexual city fire department employee stated a valid sex-discrimination claim under either Title VII or the Equal Protection Clause of the Fourteenth Amendment); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005) (holding that transsexual police officer “established that he was a member of a protected class” for purposes of Title VII sex-discrimination claim “by alleging discrimination . . . for his failure to conform to sex stereotypes”). See generally National Center for Lesbian Rights, *Federal Cases Addressing Whether Discrimination on the Basis of Gender Non-Conformity and/or Transgender Status Is a Form of Discrimination Based on Sex*, at http://www.nclrights.org/site/DocServer/Federal_Cases_Addressing_Whether_Discrimination_on_the_Basis_of_Gender_Non-Conformity_and/or_Transgender_Status_Is_a_Form_of_Discrimination_Based_on_Sex.pdf?docID=3661.

⁶ It should be noted that courts and administrative bodies in several states have also interpreted sex and disability anti-discrimination laws to apply to transgender people. See, e.g., *Enriquez v. West Jersey Health Systems*, 342 N.J. Super. 501 (N.J. App. Div. 2001) (concluding that transsexual people are protected by state law prohibitions against sex and disability discrimination); *Lie v. Sky Pub. Corp.*, 15 Mass. L. Rptr. 412 (Mass. Super. Ct. 2002) (holding that a transsexual employee had stated a viable sex discrimination and disability discrimination claim under state law). For a comprehensive discussion of state court and administrative decisions applying sex and disability discrimination to transgender plaintiffs, see National Center for Lesbian Rights, *Cases Recognizing Protection for Transgender People Under State Sex and Disability Discrimination Laws*, at http://www.nclrights.org/site/DocServer/state_cases091004.pdf?docID=1203.

discrimination laws. Hawaii similarly prohibits discrimination based on “sex, including gender identity or expression.”

III. Types of Protections Offered

Protections offered by states vary widely, encompassing a range of situations including working or applying for jobs, renting and buying housing, shopping or eating at businesses that are open to the public, applying for credit credit, and attending school.

A. Employment

Twelve states (California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia prohibit discrimination against transgender people in employment. These laws protect employees and job applicants from harassment, demotion, dismissal, or other unfair employment practices based on the person’s transgender status or gender nonconformity. In some cases, these laws can help ensure that a transgender person can use the restroom consistent with his or her gender while at work. Many employment non-discrimination statutes prohibit employers or potential employers from requesting information about an employee or applicant’s transgender status, and most laws protect against retaliation for opposing discriminatory practices.

Employment non-discrimination statutes often include labor organizations and unions, and three states (California, Vermont and Washington) include expressly include labor practices as a separate category of business activity subject to non-discrimination laws. These laws protect transgender employees who wish to participate in union activities, such as joining organized unions. Effectively, laws against discrimination in union activities ensure that transgender people have equal access to the bargaining power, increased pay, and better benefits that can come with union membership.

B. Public Accommodations

Thirteen states (California, Colorado, Hawaii, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia protect transgender people from discrimination in public accommodations. Although the exact definition of a “public accommodation” varies from state to state, a wide variety of businesses are typically covered by such statutes, including restaurants, hotels, theaters, and retail stores. These private businesses that are open to the public may not discriminate based on a person’s transgender status. Private clubs and religious organizations, however, are often exempt from the reach of public accommodations laws.

C. Housing and Real Estate

Thirteen states (California, Colorado, Hawaii, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington) protect transgender people from discrimination in housing. These laws require that a tenant or homebuyer’s transgender status not be used as a basis for refusing— or offering less favorable terms in – leases, mortgages, homeowner’s insurance, and home sales.

Many housing and real estate non-discrimination statutes prohibit landlords, sellers, and real estate brokers from requesting information about a tenant or homebuyer's transgender status.

D. Credit

Seven states (Illinois, Iowa, Maine, Minnesota, New Mexico, Vermont, and Washington) protect transgender people from discrimination in the extension of credit. This means that lenders may not refuse or offer less favorable terms of credit to a person because of his or her transgender status. These laws help protect transgender consumers in a number of situations, such as purchasing an automobile or procuring store credit ordinarily available to all customers.

E. Schools

Ten states (California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, Oregon, Vermont and Washington) and the District of Columbia have laws specifically prohibiting gender identity discrimination in public schools and, in some cases, private schools that receive state funding. In these states, school officials may not harass, or allow others to harass, a student based on the student's gender identity. In addition to those states, Maryland and North Carolina require that school districts have a policy against harassment and bullying based on a list of characteristics that includes gender identity. Increasingly, schools and school districts have also adopted policies protecting transgender students from discrimination, providing that transgender students be allowed to use restrooms and locker rooms and participate in sports in accordance with their gender identity.⁷

IV. Statutes by State

California

California's non-discrimination laws rely on a definition of "sex" that includes "gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth."⁸ This definition is used by California's Fair Employment and Housing Act (FEHA),⁹ which prohibits discrimination based on gender identity by employers, labor organizations, and apprenticeship training programs.¹⁰ The law provides specifically that, while employers may impose gender-based dress and grooming standards, an employee must be permitted to appear or dress in a manner consistent with the employee's gender identity.¹¹

⁷ See the list of K-12 school districts that have enacted non-discrimination policies that include gender identity and expression compiled by the Transgender Law & Policy Institute, at <http://www.transgenderlaw.org/college/index.htm#schools>.

⁸ Cal. Penal Code § 422.56.

⁹ Cal. Gov't Code § 12926(p).

¹⁰ Cal. Gov't Code § 12940.

¹¹ Cal Gov't Code § 12949.

FEHA also prohibits gender identity discrimination or harassment related to renting or selling housing.¹² California's prohibition of gender identity discrimination in housing extends to public or private land use practices,¹³ real estate listing services,¹⁴ and includes discrimination based on perceived transgender status or association with a transgender person.¹⁵

California's Unruh Civil Rights Act prohibits sex discrimination in public accommodations¹⁶ and defines "sex" to include gender identity.¹⁷ The Act is written broadly and states that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever,"¹⁸ although that broad definition has been narrowed somewhat by the state's courts.¹⁹ The Unruh Act has been held to apply to doctor's offices and hospitals that serve the public,²⁰ which should help protect transgender people from some types of discrimination in accessing health care.

California offers protection against discrimination to transgender and gender nonconforming students who attend a school that receives or benefits from state assistance, or enrolls students who receive financial aid.²¹ The prohibition against discrimination applies to all programs and activities conducted by the school.²² However, the school non-discrimination statute does not apply to schools controlled by religious institutions if application of the law would violate the tenets of that religious institution.²³

¹² Cal. Gov't Code § 12955.

¹³ Cal. Gov't Code § 12955(l).

¹⁴ Cal. Gov't Code § 12955(j).

¹⁵ Cal. Gov't Code § 12955(m).

¹⁶ Cal. Civ. Code § 51(b).

¹⁷ Cal. Civ. Code § 51(e)(4).

¹⁸ Cal. Civ. Code § 51(b).

¹⁹ See, e.g., *Curran v. Mt. Diablo Council of the Boy Scouts of Am.*, 17 Cal.4th 670 (1998) (holding that the Boy Scouts of America is not a "business establishment" for purposes of the Unruh Act, even though the organization engaged in some business transactions with nonmembers on a regular basis); *Doe v. Cal. Lutheran High Sch. Ass'n*, 170 Cal.App.4th 828 (Cal. App. 2009) (private religious high school is not a "business establishment" subject to the Unruh Act).

²⁰ See *North Coast Women's Care Med. Group v. San Diego County Sup. Ct.*, 44 Cal.4th 1145 (2008) (medical group providing services to the public is a "business establishment" under the Unruh Act).

²¹ Cal. Educ. Code §§ 210.7 ("sex" includes gender and gender identity), 220 (prohibiting discrimination in schools), 51500 (prohibiting instruction or school-sponsored activities that "promote[] a discriminatory bias" based on gender identity).

²² Cal. Educ. Code § 220.

²³ Cal. Educ. Code § 221.

Finally, California also prohibits discrimination based on gender identity in all programs or activities that are conducted by state agencies or that receive state funding.²⁴

Colorado

Colorado defines “sexual orientation” to include “gender identity,” and includes both actual and perceived identity.²⁵ Colorado’s non-discrimination statutes provide protection against discrimination in employment,²⁶ labor organizations,²⁷ housing,²⁸ public accommodations,²⁹ and schools.³⁰ Prohibited discrimination in the context of schools includes school enrollment decisions³¹ and harassment of or discrimination against students by school employees and other students.³²

“[A]ny public building . . . or public facility of any kind” constitutes a public accommodation under Colorado law,³³ but places principally used for religious purposes – such as churches, mosques, and synagogues – are exempt.³⁴ Hospitals and clinics are expressly included in the definition of “public accommodation,”³⁵ which may offer protections to transgender people when accessing healthcare. Gender identity discrimination by a place of public accommodation is a crime under Colorado law, punishable by up to one year in jail and a \$300 fine.³⁶

Additional resources: <http://www.transgenderlaw.org/ndlaws/ColoradoFAQ.pdf>

Hawaii

Hawaii provides protection against gender identity discrimination in public accommodations by prohibiting discrimination based on “sex, including gender identity or expression.”³⁷ “Gender identity or expression” is defined broadly by statute to include

²⁴ Cal. Gov’t Code § 11135.

²⁵ Colo. Rev. Stat. Ann. §§ 2-4-401(13.5) (definition for all Colorado statutes), 24-34-401(7.5) (definition for anti-discrimination statutes).

²⁶ Colo. Rev. Stat. Ann. § 24-34-402.

²⁷ Colo. Rev. Stat. Ann. § 24-34-402(c).

²⁸ Colo. Rev. Stat. Ann. § 24-34-502.

²⁹ Colo. Rev. Stat. Ann. § 24-34-601.

³⁰ Colo. Rev. Stat. Ann. §§ 12-59-106(1)(s) (private occupational schools), 22-30.5-104(3) (charter schools), 22-30.5-507(3) (institute charter schools), 22-32-109 (public schools), 22-38-104(1)(d) (pilot schools).

³¹ Colo. Rev. Stat. Ann. § 22-32-109(1)(II)(II).

³² Colo. Rev. Stat. Ann. § 22-32-109(1)(II)(I).

³³ Colo. Rev. Stat. Ann. § 24-34-601(1).

³⁴ Colo. Rev. Stat. Ann. § 24-34-601(1).

³⁵ Colo. Rev. Stat. Ann. § 24-34-601(1).

³⁶ Colo. Rev. Stat. Ann. § 24-34-602(2).

³⁷ Haw. Rev. Stat. § 489-3.

gender-related appearance, expression or self-identity, regardless of whether the appearance, expression, or self-identity is traditionally associated with the person's sex at birth.³⁸ Hawaii's definition of "public accommodation" is fairly typical and includes an illustrative list of businesses traditionally considered public accommodations: hotels, restaurants, retail stores, bars, clubs, theaters, parks and barber shops.³⁹ Like Colorado, the definition specifically includes clinics, hospitals, and offices of healthcare providers.⁴⁰

Hawaii also prohibits gender identity discrimination in real property transactions.⁴¹ However, religious institutions are authorized to discriminate on the basis of gender identity when renting or leasing property used for church purposes and when renting student housing for "religiously affiliated institutions of higher education," when the housing is for students, or on school property.⁴²

Illinois

For purposes of Illinois's non-discrimination statutes, "sexual orientation" includes "actual or perceived . . . gender-related identity, whether or not traditionally associated with the person's designated sex at birth."⁴³ Illinois prohibits gender identity discrimination in employment, public accommodations, real estate transactions, and access to financial credit.⁴⁴ Non-sectarian schools are considered public accommodations under Illinois law.⁴⁵

The employment section of the non-discrimination statute also prohibits anti-transgender discrimination or harassment by labor unions and employment agencies.⁴⁶ However, the law exempts religious institutions from the definition of employers subject to the non-discrimination laws.⁴⁷

Real estate transactions covered by Illinois's anti-discrimination statute include the sale of real property, the rental or lease of housing accommodations, real estate listing services, and loans or financial services related to purchasing, selling, or improving real property.⁴⁸ Real estate brokers, "whether licensed or not" are subject to the non-

³⁸ Haw. Rev. Stat. § 489-2.

³⁹ Haw. Rev. Stat. § 489-2.

⁴⁰ Haw. Rev. Stat. § 489-2.

⁴¹ Haw. Rev. Stat. §§ 515-3 (real property transactions), 515-5 (financial assistance related to real property), 515-6 (restrictive covenants based on gender identity prohibited).

⁴² Haw. Rev. Stat. § 515-4.

⁴³ 775 Ill. Comp. Stat. 5/1-103(O-1).

⁴⁴ 775 Ill. Comp. Stat. 5/1-102.

⁴⁵ 775 Ill. Comp. Stat. 5/5-101(A)(11).

⁴⁶ 775 Ill. Comp. Stat. 5/2-101(D).

⁴⁷ 775 Ill. Comp. Stat. 5/2-101(B)(2).

⁴⁸ 775 Ill. Comp. Stat. 5/3-101.

discrimination statutes, as long as the broker lists, sells, purchases, rents, leases, or exchanges real property.⁴⁹ Many private sales of single family homes, however, are specifically exempt from the real estate non-discrimination statutes.⁵⁰ Owner-occupied residential buildings with four or fewer units are expressly permitted to engage in gender identity discrimination in rental decisions.⁵¹

Iowa

Iowa's Civil Rights Act⁵² offers transgender people protection from discrimination in employment,⁵³ housing,⁵⁴ public accommodations,⁵⁵ financial credit,⁵⁶ and education.⁵⁷ The Act expressly includes protections against discrimination based on "gender identity," defined as the "gender-related identity of a person, regardless of the person's assigned sex at birth."⁵⁸

Iowa's non-discrimination laws apply to employers and to labor unions.⁵⁹ However, they do not apply to businesses that employ four or fewer workers, and do not provide protection for employees who provide personal services or work in the employer's home.⁶⁰

Religious institutions, including education facilities, societies, and incorporations, may use religion, sexual orientation, and gender identity to discriminate in employment or public accommodations "when such qualifications are related to a bona fide religious purpose."⁶¹

Under Iowa's housing anti-discrimination law, a person is protected from discrimination based on the gender identity of any guests he or she may have on the premises as friends, relatives, or visitors.⁶² The housing anti-discrimination laws do not apply to

⁴⁹ 775 Ill. Comp. Stat. 5/3-101.

⁵⁰ 775 Ill. Comp. Stat. 5/3-106(A) (private sale of single family home exempt if owner has interest in less than three single family homes at the time of sale, owner or owner's family member was last occupant, and owner did not advertise an intent to discriminate in the sale of the home).

⁵¹ 775 Ill. Comp. Stat. 5/3-106(H-1).

⁵² Iowa Code Ann. § 216.1 et seq.

⁵³ Iowa Code Ann. § 216.6.

⁵⁴ Iowa Code Ann. § 216.8.

⁵⁵ Iowa Code Ann. § 216.7.

⁵⁶ Iowa Code Ann. § 216.10.

⁵⁷ Iowa Code Ann. § 216.9.

⁵⁸ Iowa Code Ann. § 216.2(10).

⁵⁹ Iowa Code Ann. § 216.6(1)(b).

⁶⁰ Iowa Code Ann. § 216.6(6).

⁶¹ Iowa Code Ann. § 216.6(6) (employment); Iowa Code Ann. § 216.7(2) (public accommodations).

⁶² Iowa Code Ann. § 216.7(1)(d).

owner-occupied buildings with four or fewer units⁶³ and situations where an owner rents rooms in his or her home, if he or she rents four or fewer rooms in the home.⁶⁴

Iowa's statute prohibiting discrimination in education applies to all educational institutions, except that a bona fide religious institution may use religion, sexual orientation, and gender identity as a qualification related to a bona fide religious purpose.⁶⁵

Protections against gender identity discrimination in credit under Iowa law apply to securing life, health, or accident insurance.⁶⁶

Maryland

Maryland requires all school districts to adopt a policy that prohibits harassment and bullying and report incidents of bullying and harassment to the Department of Education.⁶⁷ "Harassment and bullying" is defined as conduct "that creates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities, or performance, or with a student's physical or psychological well-being and is . . . motivated by an actual or a perceived personal characteristic including . . . gender identity."⁶⁸

Maine

In its Human Rights Act, Maine includes "gender identity or expression" in the definition of sexual orientation.⁶⁹ The Human Rights Act prohibits sexual orientation discrimination in employment, housing, public accommodation, credit and education,⁷⁰ while a separate statute prohibits sexual orientation discrimination by businesses that contract with the State to supply goods.⁷¹

In addition to prohibiting employment discrimination, the Act prohibits employers from working with an employment agency that the employer knows or has reason to know discriminates.⁷² Similarly, employment agencies are prohibited from carrying out an

⁶³ Iowa Code Ann. §§ 216.12(1)(b) and (e).

⁶⁴ Iowa Code Ann. § 216.12(1)(c).

⁶⁵ Iowa code Ann. § 216.9(2).

⁶⁶ Iowa Code Ann. § 216.10(1)(c).

⁶⁷ Md. Code Ann. Educ. § 7-424.

⁶⁸ Md. Code. Ann. Educ. § 7-424(a).

⁶⁹ Me. Rev. Stat. Ann. tit. 5, § 4553(9-C).

⁷⁰ Me. Rev. Stat. Ann. tit. 5, §§ 4552, 4602(4).

⁷¹ Me. Rev. Stat. Ann. tit. 5, § 1825-L.

⁷² Me. Rev. Stat. Ann. tit. 5, § 4572(1)(A).

employer's discriminatory preferences.⁷³ Labor organizations are prohibited from gender identity discrimination in membership and apprenticeship programs.⁷⁴

The Act's definition of employer is broad: "Employer" is defined as "any person in the State employing any number of employees, whatever the place of employment of the employees[.]"⁷⁵ The statute's religious exception is narrow, providing that the term "[e]mployer" does not include a religious or fraternal corporation or association, not organized for private profit and in fact not conducted for private profit, with respect to employment of its members of the same religion, sect or fraternity, except for purposes of disability-related discrimination, in which case the corporation or association is considered to be an employer."⁷⁶ This appears to create an exception for discrimination based on religion, which does not extend to disability discrimination. The exception does not appear to address other types of prohibited discrimination.

Maine's housing non-discrimination laws also have narrow exceptions, and apply to all housing-related transactions except "A. The rental of a one-family unit of a 2-family dwelling, one unit of which is occupied by the owner; B. The rental of not more than 4 rooms of a one-family dwelling which is occupied by the owner; or C. The rental of any dwelling owned, controlled or operated for other than a commercial purpose, by a religious corporation to its membership unless such membership is restricted on account of race, color or national origin."⁷⁷ Transgender people in Maine thus may face lawful discrimination when renting a duplex or a room in a home, or when renting from a religious organization.

Maine prohibits gender identity discrimination in many aspects of education, including requiring equal opportunities in athletic programs.⁷⁸ A 2009 decision by the Maine Human Rights Commission held that, under the Human Rights Act, a transgender student must be permitted to use the restroom that is consistent with her gender identity.⁷⁹ Education facilities owned, operated, or controlled by religious entities, however, are specifically exempt from the prohibitions on sexual orientation and gender identity discrimination.⁸⁰

Minnesota

The Minnesota Human Rights Act includes protections against gender identity discrimination by defining sexual orientation to include "having or being perceived as

⁷³ Me. Rev. Stat. Ann. tit. 5, § 4572(1)(B).

⁷⁴ Me. Rev. Stat. Ann. tit. 5, § 4572(1)(C).

⁷⁵ Me. Stat. Rev. Ann. tit. 5, § 4553(4).

⁷⁶ Me. Stat. Rev. Ann. tit. 5, § 4553(4).

⁷⁷ Me. Stat. Rev. Ann. tit. 5, § 4553(6).

⁷⁸ Me. Stat. Rev. Ann. tit. 5, § 4602(4)(B).

⁷⁹ Parent of Minor Student o/b/o Minor Student (Orono) v. School Union 87 (Maine Human Rts. Comm'n, July 1, 2009), available at http://www.maine.gov/mhrc/Investigation/RG/20090629_PAED08-0239.pdf.

⁸⁰ Me. Stat. Rev. Ann. tit. 5, § 4602.

having a self-image or identity not traditionally associated with one's biological maleness or femaleness.”⁸¹ The Act then prohibits sexual orientation discrimination in employment,⁸² including labor organizations,⁸³ real property,⁸⁴ public accommodation,⁸⁵ schools,⁸⁶ and credit.⁸⁷

The employment provisions of the Act are buttressed by a prohibition against requiring an applicant to furnish information regarding sexual orientation, or submit to a physical examination unrelated to concerns about national security⁸⁸ or fitness to perform essential job functions.⁸⁹ The Minnesota Supreme Court has held that despite the Human Rights Act’s prohibition of gender identity discrimination in employment, an employer may impose a rule limiting restroom usage based on biological or anatomical sex, rather than gender identity.⁹⁰

The real estate non-discrimination statutes do not apply to gender identity discrimination in the rental of a room in a home⁹¹ or owner-occupied duplexes.⁹²

The education non-discrimination statute is broad, and prohibits gender identity discrimination in “any manner” that interferes with a student’s “full utilization of or benefit from any educational institution, or the services rendered thereby.”⁹³

In addition to public accommodation and credit anti-discrimination laws, Minnesota specifically enumerates “business discrimination” as unlawful, and thereby prohibits “a person engaged in trade or business or in the provision of a service . . . to intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person’s . . . sexual orientation . . . unless the alleged refusal or discrimination is because of a legitimate business purpose.”⁹⁴

⁸¹ Minn. Stat. Ann. § 363A.03, subd. 44.

⁸² Minn. Stat. Ann. § 363A.08, subd. 2.

⁸³ Minn. Stat. Ann. § 363A.08, subd. 1.

⁸⁴ Minn. Stat. Ann. § 363A.09.

⁸⁵ Minn. Stat. Ann. § 363A.11, subd. 1.

⁸⁶ Minn. Stat. Ann. § 363A.13.

⁸⁷ Minn. Stat. Ann. § 363A.16, subd. 1.

⁸⁸ Minn. Stat. Ann. § 363A.08, subd. 4(1).

⁸⁹ Minn. Stat. Ann. § 363A.20, subd. 8.

⁹⁰ *Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001).

⁹¹ Minn. Stat. Ann. § 363A.21, subd. 1(2).

⁹² Minn. Stat. Ann. § 363A.21, subd. 1(3).

⁹³ Minn. Stat. Ann. § 363A.13, subd. 1.

⁹⁴ Minn. Stat. Ann. § 363A.17.

Minnesota’s Human Rights Act has a number of exemptions for religious groups and private organizations. The non-discrimination statutes do not apply to employment discrimination by religious organizations on the basis of religion or sexual orientation when that religion or sexual orientation constitutes a “bona fide occupational qualification.”⁹⁵ Religious organizations also appear to be exempt from most other provisions of the Act prohibiting gender identity discrimination, at least when engaging in religious activities: Any religious organization, or educational institution operated by a religious organization, may discriminate based on sexual orientation in “education, employment, housing and real property, or use of facilities.”⁹⁶ This exemption does not apply to “secular business activities engaged in by the religious association, . . . the conduct of which is unrelated to the religious and educational purposes for which it is organized.”⁹⁷

The Human Rights Act also exempts from its purview discrimination by nonpublic service organizations – such as scouting organizations or boys’ and girls’ clubs – on the basis of sexual orientation or gender identity when the organization acts either as an employer or as a public accommodation.⁹⁸

New Jersey

New Jersey’s Law Against Discrimination defines gender identity as “having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person’s assigned sex at birth.”⁹⁹ Gender identity discrimination is prohibited in employment, housing, and public accommodations.¹⁰⁰ Transgender youth are protected from harassment or bullying in school based on gender identity.¹⁰¹ Places of public accommodation and educational institutions which reasonably, and therefore permissibly, limit membership to members of one sex are allowed to do so, “provided individuals shall be admitted based on their gender identity or expression.”¹⁰²

Employment discrimination in New Jersey may be allowed under exceptions to the law providing that “it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the

⁹⁵ Minn. Stat. Ann. § 363A.20, subd. 2.

⁹⁶ Minn. Stat. Ann. § 363A.26.

⁹⁷ Minn. Stat. Ann. § 363A.26.

⁹⁸ Minn. Stat. Ann. §§ 363A.20, subd. 3; 363A.24, subd. 1.

⁹⁹ N.J. Stat. Ann. § 10:5-5(rr).

¹⁰⁰ N.J. Stat. Ann. § 10:5-4.

¹⁰¹ N.J. Stat. Ann. § 18A:37-14.

¹⁰² N.J. Stat. Ann. § 10:5-12(f)(1).

tenets of its religion in establishing and utilizing criteria for employment of an employee.”¹⁰³

All contractors and subcontractors performing work for a public contract are prohibited from engaging in gender identity discrimination in New Jersey.¹⁰⁴ If a contractor or subcontractor violates that statute, the contracting public agency may terminate the contract, and money due may be forfeited.¹⁰⁵

The provisions of the New Jersey Law Against Discrimination relating to employment do not apply to individuals who provide domestic services.¹⁰⁶ Similarly, the provisions relating to housing discrimination do not apply in cases where the occupants of a single family residence rent out a single room in the residence.¹⁰⁷

New Jersey’s public accommodation non-discrimination laws do not apply to “distinctly private” clubs or organizations, or to educational facilities maintained by bona fide religious or sectarian institutions.¹⁰⁸ Religious institutions also may discriminate in real estate transactions where such discrimination is intended by the organization to “promote the religious principles for which it is maintained.”¹⁰⁹

New Mexico

The New Mexico Human Rights Act defines gender identity broadly to include “a person’s self-perception, or perception of that person by another, of the person’s identity as a male or female based upon the person’s appearance, behavior or physical characteristics that are in accord with or opposed to the person’s physical anatomy, chromosomal sex or sex at birth.”¹¹⁰ The Act prohibits discrimination based on gender identity in employment,¹¹¹ labor organizations,¹¹² public accommodations,¹¹³ housing,¹¹⁴ and credit, including credit for “acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or real property” and credit for purchase of consumer goods.¹¹⁵

¹⁰³ N.J. Stat. Ann. § 10:5-12.

¹⁰⁴ N.J. Stat. Ann. § 10:2-1.

¹⁰⁵ N.J. Stat. Ann. § 10:2-1.

¹⁰⁶ N.J. Stat. Ann. § 10:5-5(f).

¹⁰⁷ N.J. Stat. Ann. § 10:5-5(u).

¹⁰⁸ N.J. Stat. Ann. § 10:5-5(l).

¹⁰⁹ N.J. Stat. Ann. § 10:5-5(n).

¹¹⁰ N.M. Stat. Ann. § 28-1-2(Q).

¹¹¹ N.M. Stat. Ann. § 28-1-7(A).

¹¹² N.M. Stat. Ann. § 28-1-7(B).

¹¹³ N.M. Stat. Ann. § 28-1-7(F).

¹¹⁴ N.M. Stat. Ann. § 28-1-7(G).

¹¹⁵ N.M. Stat. Ann. § 28-1-7(H).

Owners of single-family homes may discriminate in the sale, lease, sublease, or renting of the single-family home, so long as the owner has an interest in no more than three such single-family homes.¹¹⁶ Owner-occupied buildings with four units or less are also exempt from the New Mexico Human Rights Act.¹¹⁷

Religious institutions may discriminate in admission and real estate decisions in order to promote the organization's religious principles.¹¹⁸ Religious organizations are expressly permitted to discriminate based on sexual orientation and gender identity in employment and renting practices.¹¹⁹ However, the religious organization's other activities may be subject to the laws against sexual orientation and gender identity discrimination.¹²⁰

North Carolina

North Carolina law protects students and school employees from bullying or harassment based on gender identity,¹²¹ and requires school employees to report incidents of harassment or bullying observed by the employee.¹²² School districts in North Carolina are required to adopt policies against bullying and harassment that include gender identity as an impermissible basis for harassing or bullying behavior.¹²³

Oregon

Oregon defines the term "sexual orientation" in all of its statutes as "actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth."¹²⁴ As such, any non-discrimination provisions that provide protection on the basis of sexual orientation also include protection for transgender individuals.

Oregon's Equality Act prohibits gender identity discrimination in employment, including discrimination by labor organizations;¹²⁵ recruitment, selection and promotion of state

¹¹⁶ N.M. Stat. Ann. § 28-1-9(A).

¹¹⁷ N.M. Stat. Ann. § 28-1-9(D).

¹¹⁸ N.M. Stat. Ann. § 28-1-9(B).

¹¹⁹ N.M. Stat. Ann. § 28-1-9(C).

¹²⁰ N.M. Stat. Ann. § 28-1-9(C) ("[T]he provisions of the Human Rights Act with respect to sexual orientation and gender identity shall apply to any other: (1) for-profit activities of a religious or denominational institution or religious organization subject to the provisions of Section 511(a) of the Internal Revenue Code of 1986, as amended; or (2) nonprofit activities of a religious or denominational institution or religious organization subject to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended[.]").

¹²¹ N.C. Gen. Stat. § 115C-407.15(b).

¹²² N.C. Gen. Stat. § 115C-407.15(d).

¹²³ N.C. Gen. Stat. § 115C-407.16.

¹²⁴ Or. Rev. Stat. § 174.100(6).

¹²⁵ Or. Rev. Stat. § 659A.030.

employees;¹²⁶ access to public accommodations;¹²⁷ real estate transactions;¹²⁸ and in public schools.¹²⁹

In addition to these commonly found protections, Oregon also protects transgender people from discrimination in the context of serving as foster parents;¹³⁰ in the provision of care and services in state institutions, including schools and Department of Corrections facilities;¹³¹ when residents or visitors in continuing care retirement communities;¹³² in alcohol and drug abuse diversion programs;¹³³ in adult foster homes;¹³⁴ in community service programs hosted by a community action agency;¹³⁵ in making life settlement contracts;¹³⁶ and with respect to the opportunity to serve on a jury.¹³⁷ Additionally, government bodies in Oregon may not hold meetings in a location that engages in sexual orientation discrimination, including gender identity discrimination.¹³⁸

Oregon's housing non-discrimination laws do not apply to the lease or rental of rooms in owner-occupied single-family residences.¹³⁹

While Oregon has many explicit protections at the state level against sexual orientation discrimination, it forbids political subdivisions from passing or enforcing additional enactments that grant rights or single out individuals on the basis of sexual orientation, including gender identity.¹⁴⁰

Rhode Island

Rhode Island defines "gender identity" as "a person's actual or perceived gender, as well as a person's gender identity, gender-related self image, gender-related

¹²⁶ Or. Rev. Stat. § 240.306(1).

¹²⁷ Or. Rev. Stat. § 659A.403.

¹²⁸ Or. Rev. Stat. § 659A.421 (sale, rental, or lease of property); Or. Rev. Stat. § 93.270 (prohibition against restrictive covenants that discriminate based on gender identity).

¹²⁹ Or. Rev. Stat. § 659.850(2) (publicly funded activities in public elementary and secondary schools and community colleges); Or. Rev. Stat. § 338.125(3) (admission to public charter schools); 339.351(d) (prohibition against bullying or harassment based on gender identity).

¹³⁰ Or. Rev. Stat. § 418.648(10).

¹³¹ Or. Rev. Stat. § 179.750(2).

¹³² Or. Rev. Stat. § 101.115(3).

¹³³ Or. Rev. Stat. § 430.550.

¹³⁴ Or. Rev. Stat. § 443.739(19).

¹³⁵ Or. Rev. Stat. § 458.505(4)(h).

¹³⁶ Or. Rev. Stat. § 744.382(4).

¹³⁷ Or. Rev. Stat. § 10.030(1).

¹³⁸ Or. Rev. Stat. § 192.630(3).

¹³⁹ Or. Rev. Stat. § 659A.421(8).

¹⁴⁰ Or. Rev. Stat. § 659.870(1).

appearance, or gender-related expression, whether or not that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth."¹⁴¹ Gender identity discrimination is prohibited in Rhode Island in public accommodations,¹⁴² employment, including labor organizations¹⁴³ and state employees,¹⁴⁴ and housing.¹⁴⁵

State agencies must administer programs equally, and state facilities may not be used in furtherance of any discriminatory practice.¹⁴⁶ Similarly, educational programs and activities run by state agencies are prohibited from engaging in gender identity discrimination.¹⁴⁷

Employers are prohibited from requesting information pertaining to gender identity, or requiring an employee to furnish a record of gender identity.¹⁴⁸ State agencies, including educational institutions, that provide employment referral or placement services for public or private employees must provide those services in a nondiscriminatory manner.¹⁴⁹ State licensing agencies are also prohibited from engaging in gender identity discrimination, as are all businesses that are licensed or chartered by the state,¹⁵⁰ including the Rhode Island Veterans' Home.¹⁵¹

Religious organizations are not permitted to discriminate in housing by favoring members of the religion, if "membership in the religion is restricted on account of sex, sexual orientation, gender identity or expression, race, color, or national origin or disability."¹⁵² Landlords of owner-occupied buildings with three units or fewer are expressly permitted to discriminate based on "gender identity or expression."¹⁵³

Vermont

For purposes of Vermont's statutory scheme, "gender identity" is expressly defined as "an individual's actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual's gender or gender-identity, regardless of the

¹⁴¹ R.I. Gen. Laws § 11-24-2.1.

¹⁴² R.I. Gen. Laws § 11-24-2.

¹⁴³ R.I. Gen. Laws 1956 § 28-5-7.

¹⁴⁴ R.I. Gen. Laws 1956 § 28-5.1-4(a).

¹⁴⁵ R.I. Gen. Laws 1956 §§ 34-37-4 (housing), 34-37-5.4 (residential real estate transactions).

¹⁴⁶ R.I. Gen. Laws 1956 § 28-5.1-7(a).

¹⁴⁷ R.I. Gen. Laws 1956 § 28-5.1-8.

¹⁴⁸ R.I. Gen. Laws 1956 § 28-5-7(4).

¹⁴⁹ R.I. Gen. Laws 1956 § 28-5.1-9.

¹⁵⁰ R.I. Gen. Laws 1956 § 28-5.1-14.

¹⁵¹ R.I. Gen. Laws 1956 § 30-24-10(c).

¹⁵² R.I. Gen. Laws 1956 § 34-37-4.2(a).

¹⁵³ R.I. Gen. Laws 1956 § 34-37-4.5.

individual's assigned sex at birth.”¹⁵⁴ Vermont provides transgender people protection from discrimination in public accommodations,¹⁵⁵ housing,¹⁵⁶ employment,¹⁵⁷ including labor organizations¹⁵⁸ and public employees,¹⁵⁹ education,¹⁶⁰ insurance,¹⁶¹ and credit.¹⁶²

Vermont's employment non-discrimination statute also contains a provision allowing employers to establish and enforce “reasonable workplace policies to address matters related to employees' gender identity, including permitting an employer to establish a reasonable dress code for the workplace.”¹⁶³

Religious institutions in Vermont are exempt from the employment non-discrimination statutes, and are thus allowed to engage in gender identity discrimination, in order to give preference to persons of the same denomination or if the particular employment action is “calculated by the organization to promote the religious principles for which it is established or maintained.”¹⁶⁴ Religious organizations may also discriminate in favor of members of the religion when selling, renting, or offering for occupancy “dwellings which it owns or operates for other than a commercial purpose,” but only if the preference for members of the religion is stated in the organization's written policies and procedures.¹⁶⁵

Washington

Washington state includes “gender expression and identity” in its definition of sexual orientation in the state's Law Against Discrimination.¹⁶⁶ In that definition, gender identity includes, “having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.”¹⁶⁷ Sexual orientation discrimination, and by

¹⁵⁴ Vt. Stat. Ann. tit. 1, § 144.

¹⁵⁵ Vt. Stat. Ann. tit. 9, § 4502(a).

¹⁵⁶ Vt. Stat. Ann. tit. 9, § 4503.

¹⁵⁷ Vt. Stat. Ann. tit. 21, § 495(a).

¹⁵⁸ Vt. Stat. Ann. tit. 3, §§ 963 (state employee organizations), 1028 (judiciary employee organizations); Vt. Stat. Ann. tit. 21, §§ 495(a), 1621 (union membership), 1726 (municipal employees).

¹⁵⁹ Vt. Stat. Ann. tit. 3, § 961(6) (state employees); 3 Vt. Stat. Ann. § 1026(6) (judiciary employees).

¹⁶⁰ Vt. Stat. Ann. tit. 16, §§ 11, 565.

¹⁶¹ Vt. Stat. Ann. tit. 8, §§ 4724(7)(B) &(C).

¹⁶² Vt. Stat. Ann. tit. 8, § 10403 (credit cards, loans, mortgages, and commercial loans); Vt. Stat. Ann. tit. 9, §§ 2362 (motor vehicle retail installment contracts), 2410 (retail installment contracts), 2488 (agricultural finance leases).

¹⁶³ Vt. Stat. Ann. tit. 21, § 495(g).

¹⁶⁴ Vt. Stat. Ann. tit. 21, § 495(e).

¹⁶⁵ Vt. Stat. Ann. tit. 9, § 4504(5).

¹⁶⁶ Wash. Rev. Code § 49.60.040(26).

¹⁶⁷ Wash. Rev. Code § 49.60.040(26).

extension gender identity discrimination, is prohibited in public accommodation,¹⁶⁸ employment,¹⁶⁹ housing,¹⁷⁰ labor unions,¹⁷¹ insurance,¹⁷² credit.¹⁷³ Gender identity discrimination in schools is also prohibited, as educational institutions are considered public accommodations under Washington law.¹⁷⁴

The housing non-discrimination provisions of Washington law do not apply to homeowners who occupy a single family residence and own fewer than three such residences,¹⁷⁵ or to the renting of shared space.¹⁷⁶

Washington's employment non-discrimination statute is limited by the definition of employer, which includes only those employers who employ eight or more employees, and does not include religious or sectarian organizations.¹⁷⁷

District of Columbia

The District of Columbia's Human Rights Law defines gender identity or expression as "a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth."¹⁷⁸ Discrimination based on actual or perceived gender identity is prohibited in employment,¹⁷⁹ housing,¹⁸⁰ public accommodations,¹⁸¹ education,¹⁸² motor vehicle insurance,¹⁸³ access to government facilities, services, programs or benefits,¹⁸⁴ services for homeless individuals and families,¹⁸⁵ custody proceedings,¹⁸⁶ insurance,¹⁸⁷ and by companies providing electricity.¹⁸⁸

¹⁶⁸ Wash. Rev. Code § 49.60.215.

¹⁶⁹ Wash. Rev. Code § 49.60.180.

¹⁷⁰ Wash. Rev. Code § 49.60.222.

¹⁷¹ Wash. Rev. Code § 49.60.190.

¹⁷² Wash. Rev. Code §§ 48.30-300, 49.60.178 (health insurance).

¹⁷³ Wash. Rev. Code § 49.60.175.

¹⁷⁴ Wash. Rev. Code § 49.60.040(2).

¹⁷⁵ Wash. Rev. Code § 49.60.222(2).

¹⁷⁶ Wash. Rev. Code § 49.60.222(7).

¹⁷⁷ Wash. Rev. Code § 49.60.040(11).

¹⁷⁸ D.C. Code § 2-1401.02(12A).

¹⁷⁹ D.C. Code §§ 2-1402.11, 32-408.

¹⁸⁰ D.C. Code § 2-1402.21.

¹⁸¹ D.C. Code § 2-1402.31.

¹⁸² D.C. Code § 2-1402.41.

¹⁸³ D.C. Code § 2-1402.71.

¹⁸⁴ D.C. Code § 2-1402.73.

¹⁸⁵ D.C. Code § 4-754.21(10).

Schools in the District of Columbia that are affiliated with a religious organization are expressly permitted to discriminate against people or groups “that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief.”¹⁸⁹

The District’s housing non-discrimination laws do not apply to certain transactions, including those involving owner-occupied buildings with four units or less, and the sale or rental of single family homes when the owner owns three or fewer single family homes.¹⁹⁰

¹⁸⁶ D.C. Code § 16-914.

¹⁸⁷ D.C. Code §§ 31-2231-11(c), 31-2231.13(d), 31-1603 (impermissible factors in determination by insurance companies of likelihood that a person will develop AIDS).

¹⁸⁸ D.C. Code § 43-1507.

¹⁸⁹ D.C. Code § 2-1402.41(3).

¹⁹⁰ D.C. Code § 2-1402.24.