Interim Report of the Special Commission to Study Sexual Orientation Discrimination in Maryland

December 15, 2000

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MEMO

TO: Governor Parris N. Glendening

FROM: Geoffrey L. Greif, Chairperson
Special Commission to Study Sexual Orientation Discrimination in Maryland

DATE: December 15, 2000

RE: Interim Report

Thank you for convening the Special Commission to Study Sexual Orientation Discrimination in Maryland. We are pleased to submit this interim report as requested by your Executive Order.

The great foundation stone of American freedom is the belief that, as long as individuals and governments do not interfere unreasonably with the personal freedom of others, all may essentially live as they choose. However, history has taught us as a nation that personal freedom is not so absolute an idea as to be a license to arbitrarily discriminate against other Americans. Nor is it an entitlement to permit the infliction of social disability upon any one person or group. America was envisioned by its founders as a social covenant in which all should not only be free, but also live free from prejudice and personal oppression. Surely this is also the ideal to which our great State has aspired.

Your summons to this Commission was to ask whether all residents of Maryland are able to live their lives free from the painful burden of personal, arbitrary discrimination. Our pained response to you, and to our fellow citizens is, "Not yet." While much progress has been made in many obvious ways, nevertheless, a great many individuals continue to live in fear, some literally in fear of their lives, an outrageous state of affairs in our time.

Particularly to be found in this category, are individuals whose sexual orientation differs from the presumed majority. These individuals pay taxes, participate in our democracy and add to the richness of our culture. Yet, the Commission was disturbed to find that they are regularly victimized on the

basis of who they are rather than on what they do. We believe that this is contrary to all that America stands for.

We have held hearings around the State and have heard testimony from teenagers, middle-aged and older adults whose lives have been afflicted with pain and suffering. Some testimony brought to us, especially by young people, troubled us deeply as we heard of incidents that involved threats as well as incidents of violence and violation and, even more troubling, indifference by the authorities responsible for responding to such incidents. We have also heard from others who have been denied or dismissed from employment for which they were eminently qualified, and those who were evicted from, or denied access to, homes and apartments in which they might have lived. While some Maryland jurisdictions have forthrightly ended this form of discrimination, our State as a whole remains under what many of us view as a shameful shadow of accepted prejudice.

We recognize and respect that some have objections to certain sexual orientations, whether based on personal, religious or philosophical convictions. They told us of their concerns about having to employ or rent to people whose sexual orientations are presumably different from theirs. We, nonetheless, believe that freedom for all is a greater and more attainable social aspiration than the claimed right to suppress any minority, especially one that is law-abiding and respectful of the rights of others.

We also came to feel as a Commission that to grant individuals, businesses and organizations that function in the 21st century a continued entitlement to engage in discrimination against people on the basis of sexual orientation, flies in the face of the evolving direction of American life. In a world where the choice of businesses where to locate or relocate might be contingent upon whether a given state treats all its citizens with equity, Maryland's economic well-being is also at risk.

For all these reasons, it is our considered judgment that it is time for Maryland's leaders to move in the direction of removing a source of great harm, as documented in this report, by passing legislation to disallow discrimination based on sexual orientation.

THE SPECIAL COMMISSION TO STUDY SEXUAL ORIENTATION DISCRIMINATION IN MARYLAND

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MEMBERS OF THE SPECIAL COMMISSION TO STUDY SEXUAL ORIENTATION DISCRIMINATION IN MARYLAND

Geoffrey L. Greif, D.S.W., Chairperson

Senator Timothy R. Ferguson, Member, Senate Judicial Proceedings Committee (Senate appointee)

Senator Nathaniel Exum, Member, Senate Finance Committee (Senate appointee)

Delegate Samuel I. Rosenberg, Member, House Appropriations Committee (House appointee)

Delegate Sheila E. Hixson, Chairman, House Ways and Means Committee (House appointee)

Henry Ford, Executive Director, Maryland Commission on Human Relations

Raymond Skinner, Secretary, Department of Housing and Community Development

Dr. Georges Benjamin, Secretary, Department of Health and Mental Hygiene

Jack Schwartz, Esquire, Assistant Attorney General

Shannon E. Avery

Christopher J. Gallant, Jr.

William Z. Goldstein

Ann Gordon

Stuart Harvey

Rabbi Mark G. Loeb

Fred D. Mason, Jr.

Kenneth B. Morgen, Ph.D.

Nancy J. Meyer

Melinda Sadler

Mark F. Scurti

Councilman Peter A. Shapiro, Prince George's County Council

Carlton R. Smith

Tineke B. Tan

THE SPECIAL COMMISSION TO STUDY SEXUAL ORIENTATION DISCRIMINATION IN MARYLAND

INTERIM REPORT

I. BACKGROUND

Governor Parris N. Glendening established the Special Commission to Study Sexual Orientation Discrimination in Maryland ("Commission") by Executive Order (01.01.2000.19) on September 26, 2000.[1] Noting that State law does not prohibit discrimination in employment, housing and public accommodations based on an individual's sexual orientation, Governor Glendening charged the Commission with:

- Examining the characteristics, coverage and exclusion of existing laws that prohibit discrimination in employment, housing and public accommodations based on sexual orientation;

- Gathering information on the number of complaints filed alleging discrimination under laws currently banning discrimination based on sexual orientation, the number of lawsuits brought under these laws, the potential liability on employers and other organizations charged with discrimination and the impact sexual orientation discrimination complaints have on the workload of the agency responsible for enforcing anti-discrimination laws;

- Soliciting input from the business community, non-profit organizations, religious groups, advocacy groups, government entities and Maryland citizens on the most effective and efficient methods for eliminating discrimination in employment, housing and public accommodations based on sexual orientation; and

- Developing recommendations to eliminate sexual orientation discrimination in employment, housing and public accommodations in both the public and private sector, including legislative proposals for

[1] Governor Glendening subsequently issued a second Executive Order (01.01.2000.22) on October 19, 2000 which added two additional members to the Special Commission. See Attachment 1 for the text of the Executive Orders.

introduction during the 2001 Session of the Maryland General Assembly as well as any proposals for executive action that the Commission deems important.

In completing its charge, Governor Glendening further advised the Commission to hold public hearings across the State to gather comment and allow individuals the opportunity to share their views with the Commission. Governor Glendening requested that the Commission submit an interim report on or before December 15, 2000. A final report is due on or before July 1, 2001.

The Commission consists of 23 members, including the Executive Director of the Maryland Commission on Human Relations, the Secretary of Health and Mental Hygiene, the Secretary of Housing and Community Development, and a representative from the Attorney General's Office. The membership also includes representatives from the Senate and the House of Delegates and individuals from labor, local government, the business community, the religious community, the health care community and advocacy groups. Governor Glendening appointed Dr. Geoffrey L. Greif as Chair of the Commission.[2]

II. THE WORK OF THE COMMISSION

A. Meeting and Public Hearing Schedule

The Commission held two meetings, two work sessions and five hearings between November 1, 2000, and December 13, 2000. All meetings and public hearings were open to the public. The schedule follows:

DATE	LOCATION
Tuesday, November 1, 2000 2:00 – 5:00 P.M. Initial Meeting	Room 150 Lowe House Office Building Annapolis, Maryland
Wednesday, November 8, 2000 7:00 - 9:00 P.M. Public Hearing	University of Maryland School of Social Work Baltimore, Maryland

[2] See page i for a complete list of the members of the Commission.

Tuesday, November 14, 2000 7:00 – 9:00 P.M. Public Hearing	Salisbury State University Salisbury, Maryland
Tuesday, November 21, 2000 7:00 - 9:00 P.M. Public Hearing	N. Hagerstown High School Hagerstown, Maryland
Tuesday, November 28, 2000 7:00 - 9:00 P.M. Public Hearing	Southern Maryland Electric Company Hughesville, Maryland
Thursday, November 30, 2000 5:00 - 7:00 P.M. Work Session	University of Maryland School of Social Work Baltimore, Maryland
Tuesday, December 5, 2000 6:00 - 9:00 P.M. Work Session/Public Hearing	Student Union Building University of Maryland College Park, Maryland
Wednesday, December 13, 2000 2:00 - 5:00 P.M. Final Meeting in 2000	Room 140 Lowe House Office Building Annapolis, Maryland

B. Initial Meeting

The Commission held its first meeting on November 1, 2000. The Chair began the meeting by discussing the charge of the Commission. The members on the Commission then introduced themselves. Following the introductions, the members heard presentations from: (1) Susan Polling and Stephanie Weldon from the United States General Accounting Office; (2) Glendora Hughes, General Counsel to the Maryland Commission on Human Relations; and (3) representatives from three local human relations commissions – Montgomery County, Howard County and Baltimore City.[3]

[3] Prince George's County's anti-discrimination law also includes sexual orientation as a covered basis. Due to the time frame allocated to the Special Commission for its initial meeting, Prince George's County was not contacted to provide testimony.

United States General Accounting Office

Susan Polling and Stephanie Weldon discussed two reports published by the United States General Accounting Office ("GAO"): *Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions* (October 23, 1997) and *Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions Since 1997* (April 28, 2000).[4] According to the GAO, eleven states and the District of Columbia currently have laws banning discrimination in employment based on an individual's sexual orientation. They are California, Connecticut, Hawaii, Massachusetts, Minnesota, New Hampshire, New Jersey, Nevada, Rhode Island, Vermont and Wisconsin. The GAO found that the law applies to public and private employment, employment agencies and labor organizations in all eleven states and the District of Columbia. The GAO also found that all states exempt religious organizations and that California, Hawaii, Massachusetts, Minnesota, Nevada, New Hampshire, Rhode Island, Vermont and Wisconsin also exempt certain nonprofit organizations.[5] However, the states vary in the size of the employer covered under the law. For example, Massachusetts requires an employer to have six or more employees to be covered under the law, while New Jersey requires only that the employer have one employee.

The GAO also reviewed the number of complaints filed in each state alleging sexual orientation discrimination since enactment of each statute. In 1997, the GAO found that:

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[4] The United States General Accounting Office ("GAO") prepared these reports at the request of United States Senator James M. Jeffords, Chairman, Committee on Labor and Human Resources, sponsor of S. 869, the Employment Non-Discrimination Act of 1997 and S. 1276, the Employment Non-Discrimination Act of 1999. Senator Jeffords requested that the GAO study the laws in the states that prohibit discrimination in employment based on sexual orientation and gather information on the number of complaints filed in each state. Consequently, the GAO reports focus only on employment discrimination based on sexual orientation and do not include information on housing or public accommodation discrimination. See Attachment 2 for the text of the GAO reports.

[5] The GAO notes that these exemptions vary from state to state. Some exempt only fraternal or social organizations while others exempt any nonprofit social, fraternal or charitable organizations. The District of Columbia's exemption applies only to political organizations that give preference based on an individual's political persuasion.

> the states' data showed that relatively few complaints of discrimination in employment on the basis of sexual orientation were filed annually, whether measured in absolute numbers or as a percentage of all employment discrimination complaints. Also, our analyses of the data obtained from the states generally did not show any trend in the number of these complaints over time, nor was there evidence of large number of these complaints immediately after the implementation of the sexual orientation statutes.[6]

In addition, the GAO found that the number of complaints filed in court has been small.[7] In its 2000 report, the GAO concluded that, "[w]hile there has been some variations over time, both the number and the percentage of such complaints as a portion of overall complaints of employment discrimination filed may still be characterized as relatively small."[8] The GAO also found that the number of lawsuits brought under these statutes remained relatively small.[9]

Maryland Commission on Human Relations

Glendora Hughes presented: 1) the legislative history of bills introduced to prohibit sexual orientation discrimination in employment, housing and public accommodations; 2) the current anti-discrimination law (Article 49B) in Maryland;

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[6] Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions (GAO/OGC-98-7R, October 23, 1997), at 10.

[7] The GAO noted that it could not conclude definitively that the volume of litigation in the states is small. However, the GAO concluded that given the relatively few complaints that have been filed in each state, it seems probable that there have also been relatively few lawsuits given the fact that in a number of those states, a suit cannot be filed unless a complaint is filed first. For additional information see GAO/OGC-98-7R, October 23, 1997, at 14-15.

[8] Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions Since 1997 (GAO/OGC-00-27R, April 28, 2000), at 5. For the percentage of sexual orientation discrimination complaints filed as a portion of overall complaints of employment discrimination, see Attachment 2.

[9] GAO/OGC-00-27R, April 28, 2000, at 5.

and 3) other state laws that prohibit sexual orientation discrimination in housing and public accommodations.

- **Legislative History**

In 1976, Delegate Alverda "Bert" Booth of Baltimore County sponsored the first bill to amend Article 49B of the Annotated Code of Maryland to prohibit sexual orientation discrimination in employment, housing and public accommodations. The legislation failed in committee. Delegate Booth reintroduced similar legislation in 1977 and 1978. Again, both bills failed in committee.

In 1992, the Maryland Commission on Human Relations introduced the first departmental bill to amend Article 49B to include sexual orientation. The bill failed. In 1994, the Commission reintroduced the bill. The House Judiciary Committee reported the bill unfavorable. In 1995 and 1996, the Commission again introduced legislation to amend 49B to include sexual orientation as a covered basis. The House Commerce and Governmental Matters Committee reported both bills unfavorable. In 1997 and 1998, Delegate Sheila Hixson introduced similar legislation. The House Judiciary Committee again voted the bills unfavorable.

In 1999, Governor Glendening included the bill as part of his administration package (Senate Bill 138). Delegate Hixson introduced the same bill (House Bill 315). For the first time, the House Judiciary Committee voted the bill favorable with amendments. The bill passed the House of Delegates, but the Senate Judicial Proceedings Committee failed to bring the bill to a vote. In 2000, Delegate Hixson reintroduced House Bill 315, as amended (House Bill 47). The House Judiciary Committee failed to bring the bill to a vote.

- **Anti-Discrimination Law in Maryland – Article 49B**

Article 49B prohibits discrimination in employment, housing and public accommodations based on an individual's race, religion, creed, sex, age, color, familial status (housing), national origin, marital status and physical or mental disability. The law does not prohibit discrimination based on sexual orientation. The Maryland Commission on Human Relations administers and enforces Article 49B.

Like other states, Maryland law also provides specific exemptions in its anti-discrimination law. With regard to employment, employers with less than 15

employees are exempt from the law. In addition, religious organizations are also exempt from the law.[10] The law specifically allows an employer to establish dress and grooming standards directly related to the nature of the employment. With regard to housing, the most common exemption is the "Mrs. Murphy" exemption. This exemption, contained in § 21 of Article 49B, provides that, with respect to discrimination on the basis of sex or marital status, the rental of rooms in any dwelling is exempt from the law if the owner maintains the dwelling as the owner's principal residence. In addition, the rental of any apartment in a dwelling that contains no more than five rental units is also exempt under the law if the owner maintains the dwelling as the owner's principal residence.[11] With regard to public accommodations, § 5(e) of Article 49B exempts private clubs or other establishments not in fact open to the public.

- **Other States' Laws That Prohibit Discrimination Based on Sexual Orientation**

Ms. Hughes also discussed other states' anti-discrimination laws as they relate to housing and public accommodations. The District of Columbia and the following states prohibit discrimination in public accommodations based on an individual's sexual orientation: Connecticut, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont and Wisconsin.

The District of Columbia and the following states prohibit discrimination in housing based on an individual's sexual orientation: California, Connecticut, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont and Wisconsin. One common exemption is that the laws do not apply to the rental of rooms within single family dwellings or within multi-family units in which the individual renting or leasing the room also resides. This exemption is in California, Connecticut, Massachusetts, Minnesota, New Hampshire, New Jersey, Vermont and the District of Columbia.[12]

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[10] Section 18 of Article 49B provides that the law prohibiting discrimination does not apply to "a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities." In 1999, the House Judiciary Committee amended House Bill 315 to include sexual orientation as part of this exemption.

[11] In 1999, the House Judiciary Committee amended this section to include sexual orientation.

[12] This exclusion varies from state to state. For example, Connecticut limits this exclusion for multi-family dwellings to four units or less and Minnesota limits it to two units or less.

Local Human Relations Commissions

- **Montgomery County**

Odessa M. Shannon, Executive Director for the Montgomery County Human Relations Commission ("HRC"), began the discussion for the panel. According to Ms. Shannon, Montgomery County receives an average of three hundred discrimination complaints per year. In 1984, Montgomery County amended its anti-discrimination law to include sexual orientation. Since 1984, the HRC has received forty-six sexual orientation discrimination complaints. Of the forty-six sexual orientation complaints, forty-two alleged employment discrimination, two alleged public accommodation discrimination and two alleged housing discrimination. Ms. Shannon testified that when Montgomery County first amended its law to include sexual orientation, the HRC received approximately one to three cases per year. The HRC now receives approximately five to six cases per year. As of October 31, 2000, the HRC has received five sexual orientation discrimination complaints this calendar year.

- **Howard County**

According to Rufus Clanzy, Administrator for the Howard County Human Rights Commission ("HRC"), Howard County amended its anti-discrimination law to include sexual orientation in 1975. Since that time, twenty-seven complaints alleging sexual orientation discrimination have been filed. Of the twenty-seven sexual orientation complaints, twenty-six alleged employment discrimination and one alleged public accommodation discrimination. Mr. Clanzy also testified that he has seen an increase in sexual orientation discrimination complaints. In the early years following the law's enactment, HRC received none or only one sexual orientation discrimination complaint per year. Recently, the number of complaints has increased. In 1996, the HRC received three sexual orientation discrimination complaints; in 1997, it received five sexual orientation discrimination complaints; in 1998, it received three complaints; and in 1999, it received four complaints. As of August 14, 2000, the HRC has received one complaint this calendar year.

- **Baltimore City**

Walter Shook, Supervisor of Investigations for the Baltimore Community Relations Commission ("CRC"), reported that Baltimore City amended its anti-

discrimination law in 1988 to include sexual orientation. The CRC began receiving sexual orientation discrimination complaints in July 1989. Between July 1989 and November 1, 2000, the CRC has received 1,628 discrimination cases, 139 of which alleged discrimination based on sexual orientation (about 8.5%). Mr. Shook stated that the majority of these cases concern employment discrimination. In addition, he stated that half of the 139 cases alleging sexual orientation discrimination also alleged other bases for discrimination, such as race or sex. Consequently, Mr. Shook stated that the inclusion of sexual orientation in Baltimore City's law only increased the CRC's total caseload by about 4.25%. Mr. Shook also stated that he receives calls from residents of Baltimore County alleging sexual orientation discrimination who become very upset when he tells them that he cannot assist them because Baltimore County's anti-discrimination law does not include sexual orientation as a covered basis.

Following the presentations, the Commission discussed the format for the public hearings. The Commission decided to accept anonymous testimony. The Commission reasoned that many individuals would not provide testimony for fear of repercussions from their employers or the community at-large unless their confidentiality could be maintained.

C. Public Hearings

The Commission convened five public hearings in the months of November and December. Each hearing lasted approximately two and a half hours. The Commission heard from 113 individuals on whether the law should be amended to include sexual orientation as a covered basis.[13] The Chair allowed each individual between three and four minutes in which to provide his/her testimony. Commission members were permitted to ask the witnesses questions. The Chair also encouraged individuals to submit a written copy of their testimony to the Commission. The Commission also received written testimony from individuals who were unable to attend the public hearings.[14]

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[13] The Commission would like to note that ten of the 113 individuals addressed the Commission at more than one public hearing. These individuals represented views from both sides of the discussion.

[14] The testimony contained in this report only represents a portion of the testimony received by the Commission.

Testimony Favoring Amending Article 49B To Include Sexual Orientation

Of the 113 individuals who testified at the public hearing, eighty-seven supported amending State law to include sexual orientation. Not only did the Commission hear from individuals who had been discriminated against in employment, housing and public accommodations, but it also heard from individuals who expressed their view that discrimination in any form should not be tolerated in Maryland.

A woman from Sharpsburg testified that while she is heterosexual, she supports amending State law to prohibit discrimination based on an individual's sexual orientation and that Maryland should provide all Marylanders with equal opportunity and protection under the law. A man testified at the hearing in College Park that he works in the Maryland Higher Education System as an advocate for gay, lesbian, bisexual and transgender students. Because of the non-discrimination policy on the campus in College Park, he feels connected to the community. He also stated that he comfortably resides in Prince George's County in part because of its anti-discrimination law. He told the Commission that he urges Maryland to follow the example of its counties and universities that cover sexual orientation in their anti-discrimination laws and policies.

The Presbytery of Baltimore, Presbyterian Church stated in its written testimony that "regardless of the theological conclusions about homosexual behavior, its civil status should be without question—persons should not be subject to discrimination in their civil life because of their sexual orientation." It further stated that:

> [w]e believe that it is a false claim to call upon the name of religion to entitle a person to discriminate in the civil world, whether on the basis of gender, race, disability, or sexual orientation. It is troubling that this seems so obvious in regard to race, gender and disability, but is still argued in regard to sexual orientation.

The Commission heard the following additional testimony concerning specific incidents of discrimination in employment, housing and public accommodations.

- *Employment Discrimination*

The majority of the testimony received during the public hearings concerned employment discrimination. While some individuals experienced blatant discrimination, others experienced more subtle forms of discrimination due to their sexual orientation. Regardless, individuals who suffered discrimination experienced economic hardship and loss, diminishment of self-esteem, threats, fear of harm and physical and mental stress as a result of the adverse treatment in employment.

At the Baltimore City hearing, the Commission heard from a man who testified that his employer fired him because he was gay. He stated that a large financial services company in Cumberland hired him to develop a full service investment brokerage firm. He ran the firm as its president for approximately four years. One day the Chairman of the Board of the parent company called him into the Chairman's office and fired him, saying that the company did not accept his gay lifestyle. Upon termination, the witness consulted an attorney who told him that he had no legal recourse against his employer. According to the witness, the employer also "smeared" his name to clients causing him to have difficulties retaining future clients.. As a result, the witness remained unemployed for eighteen months, sold his home, spent his savings (including retirement account funds), accumulated credit card debt, and eventually moved from the area. Although he eventually started his own business, he testified that he is still "cleaning up the financial mess" from the termination.

An attorney from Ocean City testified at the Salisbury hearing on behalf of a former client, a gay, white male in his twenties who worked in a Salisbury restaurant. While on the job, other employees referred to him as "fag," "homo" and "queer." On one occasion, co-workers painted the words "Don't use this bathroom - Queer with AIDS here" on the bathroom wall (the client did not have AIDS nor HIV). The client eventually left his job for fear that the actions would escalate and he would be harmed. The attorney testified that he later met with the client's manager who stated that there was nothing wrong with the client's work product but thought that his departure was certainly for the best.

A man from Towson testified at the Baltimore City hearing that, while working as an attorney in a Pasadena law firm, the owners of the firm told him that he should look for work elsewhere. A week after the incident, when the man confided in the office manager that he was to leave, the office manager told him

that it was like the movie "Philadelphia," inferring that he was fired because of his sexual orientation.

A man from Hagerstown testified that a law firm fired him when it discovered his sexual orientation. The witness accepted an offer of employment as an administrator for a regional law firm in Hagerstown. For several months prior to his employment with the firm, he volunteered at the law firm to learn its operations. During this period, the managing attorney expressed satisfaction with his work. Two weeks prior to beginning paid employment with the firm, the managing partner learned of the witness' sexual orientation and informed him that his "sexual preference" would not be tolerated and that he should not show up for work. The discrimination caused him to deplete his savings and retirement funds. He also filed for unemployment. In addition, the discrimination ruined his self-esteem and strained his relationship with family and friends.

A representative from Johns Hopkins Hospital testified at the Hagerstown hearing. He said that the hospital has an anti-discrimination policy that includes sexual orientation. The policy has provided the hospital with a well-rounded workforce. Johns Hopkins Hospital's policy went into effect in 1988. Since that time, he stated that he is unaware of any allegations of sexual orientation discrimination being filed against the hospital. He attributed this to the positive effect the policy has in promoting tolerant behavior.

A Baltimore County teacher, who identified herself as a lesbian, submitted anonymous testimony at the College Park hearing. She said that she worked hard every day to create a safe and supportive environment for her students in which to learn. In contrast, this teacher reported that she remained closeted at work for fear that her work environment would become unbearable. She stated that even though she remained closeted at work, she had been harassed. She stated that someone had written the word "Dyke" on her door at work, that students used homophobic language in her classroom, and that students would call her a "lezzie." She concluded that enacting an anti-discrimination law inclusive of sexual orientation would begin to create a safe environment for her.

A woman testified at the Baltimore City hearing that she received unequal compensation at her workplace. She stated that her employer hired her at a salary lower than other employees, and that she learned of the salary disparity shortly after she disclosed her lesbianism. She further stated that she did not receive the same bonuses or access to promotions as her non-gay co-workers. A closeted gay man who worked with this woman told her that while he appreciated her openness

about her sexual orientation, he would never disclose his own because he knew it would inhibit his ability to move up in the company. This woman eventually left the company for a lower-paying position due to the unequal treatment.

The Chair of the Montgomery County Human Relations Commission also addressed the Commission at the hearing in College Park. He testified that he lost his job as a partner in a law firm in Bethesda when his law partner found out that he was gay. He stated that the shock and hurt lasted for years and greatly affected his family. The action taken against him prompted him to seek a position with the Montgomery County Human Relations Commission. He stated that Montgomery County is a wonderful place to live, work and raise a family, in part because Montgomery County bans sexual orientation discrimination. The enactment of its law did not result in problems for business. In fact, he stated that Montgomery County has contributed greatly to the economic well-being of the entire State.

- *Housing Discrimination*

From the testimony received, the Commission learned that many individuals, including those individuals who do not support amending State law to include sexual orientation, view housing as fundamental to the ability of an individual to live in society as a productive member. However, it is apparent that many individuals believe that they have been victims of discrimination because of their sexual orientation.

At the Baltimore City hearing, an individual testified that his landlord evicted him from his apartment when the landlord discovered his sexual orientation. He stressed that it is legal in 20 Maryland counties to refuse to rent or see to an individual solely because of real or perceived sexual orientation. He asserted that an individual's financial ability to pay, not sexual orientation, should determine whether someone is denied housing or is evicted from rental housing. He also stated that he believed that businesses that currently discriminate on the basis of sexual orientation would not do so if Maryland amended its law to include sexual orientation as a covered basis.

Another witness in Baltimore, a physician, testified that he was evicted from his apartment when it was discovered that he was gay. The witness was in his first year of a three-year residency training program at a local hospital in Baltimore County. He received on-campus housing as part of his compensation. He requested and received a two bedroom unit. After the hospital discovered that he lived with his same-sex partner, the hospital asked him to vacate the apartment.

The hospital stated that only married residents could occupy these apartments. When the witness protested that unmarried heterosexuals lived in the same apartments, the hospital did not take any action to investigate it. When he pressed the situation, the hospital threatened to terminate him from the residency program for "lying" about his domestic situation.

At the Salisbury hearing, an Ocean City attorney reported that he represented clients who experienced discrimination in housing because of their sexual orientation. These clients rented a house in Ocean City, Maryland during the winter season. They came to him after they had received an eviction notice. According to the attorney, they paid their rent on time and behaved properly. The attorney told the Commission that he was surprised that they had received an eviction notice during the winter season given how slow the real estate market is in the winter. When he called the landlord to discuss the matter, the landlord told him that he knew who the tenants were and that he did not want them staying in anything that he owned.

A woman at the Hughesville hearing spoke generally about housing issues, stating that she felt the State encouraged discrimination because only a few jurisdictions protected gays and lesbians. She stated that protection from discrimination should not be an accident of geography. In order to provide consistent protection throughout the State, she believes Maryland should include sexual orientation in its anti-discrimination laws.

The Commission also received and reviewed statements from individuals who testified before the General Assembly in the past in support of this legislation. In 1999, an attorney from Takoma Park testified to an incident that occurred to two men when their landlord learned of their sexual orientation. The landlord accosted one of the men in the hallway, hitting him over the head with a beer bottle and called him a faggot. The men feared the landlord would evict them and, under law, it would have been legal for the landlord to do so. In 1994, the same attorney told the General Assembly of two men who applied to rent a single family house. The agent accepted their application, but the owner of the home rejected the men, stating "I want a family." In 1999, a Baltimore woman testified that she rented her apartment and lived in fear that her landlord would learn of her lesbianism and evict her. "This is of special concern when you realize that my landlord must occasionally enter my personal living space in order to make repairs on the property."

- *Public Accommodation Discrimination*

Maryland law uses the traditional definition of "public accommodation."[15] Under this definition, "public accommodation" includes restaurants, motels, retail establishments, and other entities that are open to the public. Within the short period of time in which the Commission solicited testimony from the public, the Commission heard numerous instances in which a person experienced adverse treatment in a place of public accommodation due to both real or perceived sexual orientation.

By far, the most common reports of public accommodation discrimination presented to the Commission involved adverse treatment in a private business that offers services to the general public. There have been eight cases alleging sexual orientation discrimination in public accommodations in Baltimore City since it enacted its local law in 1988. These numbers are consistent with the number of public accommodations complaints filed each year on other protected bases, including race and sex. In two of those cases, the Baltimore City Community Relations Commission ("CRC") dismissed the complaints because it ruled that the business had legitimate, non-discriminatory reasons for taking the action it did against the patron. The fact that the CRC recognized that non-discriminatory reasons could motivate the action taken by the public accommodation allays concerns regarding the inability of human relations agencies to make such factual determinations.

A Baltimore City resident reported that he experienced discrimination at a restaurant he had frequented for at least 23 years. One evening, the owner of the restaurant blocked his access by saying, "Can't come in, contagious." The resident further stated that the owner became belligerent and accused the man of causing trouble. Another Baltimore City man experienced discrimination when a bar he had patronized for several years denied him access. The bar recently changed ownership, and the new owner called the complainant "queer" as he put him out. When the man tried to return the next day, the owner's son told him, "We don't want your kind here."

Public accommodation discrimination is not limited to Baltimore City; indeed, the Commission heard testimony from across the State on this issue. A Salisbury man testified that he and his partner experienced anti-gay harassment while dining in a restaurant. A Wicomico County woman told the Commission that

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[15] See Section 5(c) of Article 49B of the Annotated Code of Maryland.

she cannot go out to a restaurant without harassment. A Port Republic woman gave the Commission unique insight into businesses that actively discriminate against customers who are perceived to be gay or lesbian, even when it is against their financial interest to do so. This woman, who worked at a car dealership, offered testimony about how her company treated consumers perceived to be gay or lesbian. According to the witness, the company's unofficial policy regarding the provision of service to customers thought to be gay or lesbian was to "blow them off the lot," meaning that these customers received bad or no customer service. She further stated that it was common for her co-workers to refer to these customers as "fags, queers and AIDS carriers." This witness reported her fear about how these customers would be treated in her absence.

- *The Testimony Concerning Transgender Individuals*

The Commission received testimony from organizations, including local chapters of Parents, Families, and Friends of Lesbians and Gays, Free State Justice, the National Gay and Lesbian Task Force and the Human Rights Campaign, as well as individuals concerning discrimination against transgenders.[16] The majority of the speakers focused on employment-related discrimination, but a number of individuals discussed the discriminatory behavior they faced in public accommodations. The Commission heard conflicting testimony as to whether current Maryland statutes protected this community.[17] While not explicitly part of the Commission's charge, the Commission spent considerable time discussing potential recommendations in relation to the transgender community. We will continue to study this issue and report on it in greater depth in the final report.

Testimony Opposing Amending Article 49B To Include Sexual Orientation

Of the 113 individuals who testified at the public hearings, twenty-six opposed amending State law. For the most part, the testimony did not specifically address employment, housing or public accommodation discrimination. Rather, it focused on the morality of homosexual behavior. The main argument set forth by

[16] "Transgender" is an umbrella term used to describe visibly gender variant people who have gender identities, expressions or behaviors not traditionally associated with their birth sex.

[17] The Commission learned that the Connecticut Commission on Human Rights and Opportunities ruled recently that their state laws prohibiting sex discrimination included transgender people within those protections. To date, Minnesota is the only state that covers transgender individuals in their anti-discrimination law.

these witnesses is that homosexuality violates their religious beliefs. Consequently, they stated that amending the law would force them to choose between following their religious beliefs and complying with the law. In addition, witnesses argued that it would: 1) bestow "special rights" on gays, lesbians and bisexuals; 2) cause a "floodgate of litigation" which would have a negative impact on small businesses; 3) disrupt local autonomy; and 4) interfere with private business.

The Wilmington Diocese testified at the hearing in Salisbury that "[t]he teaching of the Catholic Church and societal tradition does not accept homosexuality as a legitimate lifestyle. The sexual act should be reserved for the union of a man and woman within the context of marriage." The Wilmington Diocese also stated that legislation that would prohibit discrimination based on an individual's sexual orientation "significantly and wrongfully encroaches of (sic) the first-amendment, free-exercise rights of religious institutions and of persons whose actions are driven by their religious beliefs."

At the Hagerstown hearing, a man testified that he always believed that non-government organizations should have full control over their organizations and businesses. Legislation that interferes with this control bothers him. He also stated that he is a Christian and he sees his rights slipping away. He does not want his children growing up in this atmosphere. He also stated that unfair hiring and firing by employers occurs every day for many reasons, and that employers will find a way if they want to get rid of someone.

Another individual submitted written testimony to the Commission stating that gays and lesbians are already afforded the same rights as the decent people in the country and that this movement is nothing more than an attempt to gain "special privileges." He does not want the public to accept the "homosexual lifestyle."

At the Salisbury hearing, a woman stated that an individual's sexual orientation or activity is not a sufficient reason to treat that individual differently from other citizens. She believes that legislation to prohibit discrimination based on sexual orientation would treat individuals differently. She also believes that individuals should be treated equally regardless of who they are, but they should not always be legally protected for what they do. She also stated that each county should decide to prohibit discrimination based on sexual orientation. Since Wicomico County has not enacted an ordinance addressing sexual orientation discrimination, she does not believe that it is needed.

Another woman set forth a similar argument at the hearing in Hughesville. She testified that since neither Charles County nor any other Southern Maryland county has addressed the issue of anti-discrimination protections, it would be unfair for the State to impose legislation on them. She also added that, if she wanted to rent a house on her property, this legislation would compel her to rent to individuals whose lifestyle her conscience does not permit her to facilitate.

At the Hagerstown hearing, a man testified that he owned rental property in Hagerstown. In his opinion, State law should not provide "special rights" to gay and lesbians.[18] Another man testified that homosexuality is a sin under God's law. He stated that a landlord should be able to discriminate against gays and lesbians and that the State should not grant protection to individuals who break God's law.

The Commission also heard from a representative from the Family Protection Lobby.[19] He stated that in the early years, gay activists focused on privacy and that homosexuals just wanted to be left alone. By demanding special protection in housing, employment and public accommodations, it became clear to him that it is no longer a privacy issue but a public issue. He said that the purpose of this legislation is to eliminate the structure of marriage and family. He stated that the Commission has the difficult, if not impossible task, of protecting the rights of the "straight" community or satisfying the demands of the "sexual freedom" proponents. He said legislation will not eliminate the hurt felt by many who testified at the hearings. Courts should not tell businesses they must hire or retain an individual because of his/her perceived or chosen "orientation" or habits. He requested that the Commission not recommend legislation.

The Maryland Chamber of Commerce also submitted written testimony. The Chamber stated that the current statutory scheme encourages litigation and makes employers reticent to act as quickly as they might otherwise to discipline or terminate an employee for fear that the employee will bring a complaint against them. The Chamber also expressed its concern that disgruntled employees could

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[18] During his testimony, he stated that, in the past, he had rented to a gay couple. However, when asked if he tried to evict them or wanted to evict them after he discovered that they were gay, he replied "no."

[19] His testimony stated that he felt the structure of hearings such as those held by the Commission does much to polarize factions and does little to bring about honest and fruitful discussions.

misuse the anti-discrimination laws as a "sword" when faced with any adverse employment action against them. Regardless of whether a discrimination charge has merit, the employer still has the burden of defending the charge, while the employee assumes no risk or expense in filing the charge. The Chamber requested that Maryland law not be used as a personnel manual. The Chamber stated that many companies have implemented policies that address sexual orientation and that this trend is likely to continue as employers work to create an environment free from harassment.

III. FINDINGS OF THE COMMISSION

Based on testimony at the public hearings and the information gathered by the Commission, the Commission found that discrimination based on an individual's sexual orientation occurs in Maryland.

The Commission recognizes that certain individuals and religious organizations oppose amending State anti-discrimination law to include sexual orientation because they believe that homosexuality is a sin. However, the Commission also heard testimony from several religious organizations that support amending State law. Therefore, the Commission emphasizes that testimony against amending State law based on religious belief is not indicative of society's religious beliefs as a whole. In addition, the Commission will be proposing legislation that will amend the exemption contained in § 18 of Article 49B to include sexual orientation. Section 18 provides that "[t]his subtitle shall not apply to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities." No similar civil rights statute that provides protection from discrimination on the basis of sexual orientation has ever been struck down by a court as violating the constitutional guarantee of freedom of religion.

Individuals also expressed concern that amending the law to include sexual orientation would unleash a "floodgate of litigation," causing a negative impact on small businesses.[20] It is important to note that, while opponents advanced this

[20] Individuals who offered testimony concerning the impact amending the law would have on small businesses did so as a secondary argument to their religious beliefs. The Commission did not receive any testimony from any individual who raised this argument as his/her primary argument for opposing amending the law to include sexual orientation as a covered basis.

argument during the public hearings, the Commission did not receive any evidence to demonstrate that amending the law would result in a "floodgate of litigation." Rather, the Commission received testimony to the contrary. As stated previously in this report, the United States General Accounting Office ("GAO") found that in those states with laws prohibiting discrimination in employment on the basis of sexual orientation, few formal complaints alleging such discrimination have been filed.[21] In addition, the percentage of complaints alleging sexual orientation discrimination has remained relatively constant over the years.

The experiences of Montgomery County, Howard County and Baltimore City further supports the GAO's finding that amending the law to include sexual orientation would not result in a "floodgate of litigation." For example, since Montgomery County amended its statute in 1984, it has received 42 cases alleging sexual orientation discrimination in employment. Baltimore City has received 139 complaints alleging sexual orientation discrimination since 1989, the majority of which have been employment discrimination complaints. Likewise, since the enactment of its statute in 1975, Howard County has received 26 cases alleging sexual orientation discrimination in employment. While each county testified that they have seen an increase in sexual orientation complaints, the numbers are still relatively low. Over the last five years, Howard County has received anywhere from one to five complaints (1996 – three; 1997 – five; 1998 – three; 1999 – four; and 2000 – one). Prior to 1996, Howard County had received between zero and two sexual orientation discrimination complaints each year.

Some individuals argued that the small number of complaints filed under the existing local statutes indicates that sexual orientation discrimination is not a problem in Maryland and should not be covered. The Commission opines that discrimination is a problem in Maryland and that the small number of complaints should not be used to demonstrate that discrimination based on an individual's sexual orientation does not occur. Rather, the Commission believes that the small number of complaints filed demonstrates that individuals and businesses follow the law. The Commission bases this opinion on the findings of the GAO, the experience in the jurisdictions with anti-discrimination laws that include sexual orientation, and the testimony received during the hearings.

For example, Johns Hopkins Hospital stated during a hearing that, since it extended its anti-discrimination policy to include sexual orientation, it has not

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[21] Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions Since 1997 (GAO/OGC-00-27R, April 28, 2000), at 5-9.

received any sexual orientation complaints. The American Civil Liberties Union of Maryland's ("ACLU") testimony corroborates this finding. Over the last three years, the ACLU received a total of twenty-four complaints of sexual orientation discrimination. Seven of these complaints were from jurisdictions with laws prohibiting sexual orientation discrimination, and seventeen were from jurisdictions without protection.

In addition, there are other protected classes where few complaints are filed. According to the Maryland Commission on Human Relations, it receives only six to ten complaints alleging discrimination based on marital status each year. This small number of complaints does not obviate the need to prohibit discrimination based on marital status. The Commission asserts that the State has an obligation to protect every resident equally. A small number of filings should not negate the seriousness that the act of discrimination can have on an individual's life.

In addition to Johns Hopkins Hospital, the Commission heard testimony from businesses and labor organizations that have adopted non-discrimination policies inclusive of sexual orientation.[22] These businesses support amending State anti-discrimination law to include sexual orientation. For example, the Service Employees International Union, AFL-CIO, District 1199E-DC, testified that it prohibits discrimination on the basis of sexual orientation in its by-laws.[23] According to its testimony, this inclusion has not hampered its ability to organize new workers into the Union.

In response to the statement that each county, not the State, should decide whether to enact laws to prohibit discrimination based on sexual orientation, the Commission notes that 48.5% of Marylanders live in jurisdictions that have enacted local laws: Prince George's County, Baltimore City, Montgomery County, and Howard County. While the Commission respects local autonomy, the Commission believes that all Marylanders deserve protection from discrimination.

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[22] Businesses that testified in favor of amending State law include the Center for Poverty Solutions, Thorough Cleaning Service, Inc., the Y.A.N.A. Project, and the Service Employees International Union AFL-CIO District 1199E-DC. In addition, according to the Human Rights Campaign Foundation, as of August 2000, 1,708 companies, colleges and universities, state and local governments and federal agencies have non-discrimination polices that include sexual orientation. Of the employers with non-discrimination policies that include sexual orientation, 255 are Fortune 500 companies.

[23] SEIU District 1199E-DC represents 6,000 health care workers in both Maryland and Washington, D.C.

It is fundamentally unfair for individuals to be unprotected from discrimination solely because they have chosen to live on the Eastern Shore, or their employer is located in Western Maryland.

IV. RECOMMENDATIONS OF THE COMMISSION

The Commission recommends that legislation be introduced to amend Article 49B to prohibit discrimination in employment, housing and public accommodations based on sexual orientation. The Commission recommends that this legislation add sexual orientation to the exemptions that currently exist in Article 49B. These exemptions are the "Ms. Murphy" exemption found in § 21 of Article 49B, and the religious exemption found in § 18 of Article 49B.[24]

[24] In 1999, the House of Delegates amended House Bill 315 to include sexual orientation to these exemptions. The exemption contained in Section 21 provides that, with respect to discrimination on the basis of sex or marital status, the rental of rooms in any dwelling is exempt from the law if the owner maintains the dwelling as the owner's principal residence. In addition, the rental of any apartment in a dwelling that contains no more than five rental units is also exempted under the law if the owner maintains the dwelling as the owner's principal residence. The current exemption for religious organizations with respect to employment is contained in Section 18 and provides that "[t]his subtitle shall not apply to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities."

ATTACHMENT 1

The State of Maryland

Executive Department

EXECUTIVE ORDER

01.01.2000.19

Special Commission to Study Sexual Orientation Discrimination in Maryland

WHEREAS, The general health and economic well-being of the State is best served by ensuring the fair and equal rights of all of its citizens;

WHEREAS, State law currently prohibits discrimination in employment, housing and public accommodations on the basis of an individual's race, color, gender, age, religion, martial status, national origin or disability, but, with the exception of State employment, State law does not currently prohibit discrimination based on an individual's sexual orientation;

WHEREAS, Discrimination in employment, housing and public accommodations on the basis of an individual's sexual orientation is prohibited in four local jurisdictions, representing 48.5 % of Maryland's population: Baltimore City, Montgomery County, Howard County and Prince George's County;

WHEREAS, Consequently, except for those individuals who are in Baltimore City, Montgomery County, Howard County or Prince George's County, gay, lesbian and bisexual Marylanders have no recourse under current State law if an employer fires them or refuses to hire them, a restaurant refuses to serve them or a landlord refuses to rent to them because of their sexual orientation;

WHEREAS, Without any legal recourse, discrimination remains the harsh reality for many gay, lesbian and bisexual Marylanders, and as a result, they may suffer personal hardships such as economic loss, physical and emotional stress and illness, and the State suffers a grievous harm;

WHEREAS, Discrimination in employment, housing and public accommodations strikes at fundamental American values -- the right of individuals to do their job, to utilize public services and to live where they choose in privacy free from intimidation, threats, harassment and discrimination; and

WHEREAS, Other states such as California, Connecticut, Hawaii, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, Rhode Island, Vermont and Wisconsin and the District of Columbia have enacted laws banning discrimination based on sexual orientation.

NOW, THEREFORE, I, PARRIS N. GLENDENING, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Established. There is a Special Commission to Study Sexual Orientation Discrimination in Maryland.

B. Membership and Procedures.

(1) The Commission shall consist of 21 members, including:

(a) The Executive Director of the Maryland Commission on Human Relations;

(b) The Secretary of Health and Mental Hygiene, or the Secretary's designee;

(c) The Secretary of the Department of Housing and Community Development, or the Secretary's designee;

(d) The Attorney General, or the Attorney General's designee;

(e) Two members of the Senate appointed by the President of the Senate;

(f) Two members of the House of Delegates appointed by the Speaker of the House; and

(g) Up to 13 individuals, appointed by the Governor, with relevant experience, who may include representatives of advocacy organizations, religious groups, the business community, labor organizations and members of the general public.

(2) Members shall serve at the pleasure of the Governor.

(3) The Governor shall designate the chairperson of the Commission.

(4). The members of the Commission may not receive compensation for their services. Members may be reimbursed for their reasonable expenses incurred in the performance of their duties, in accordance with the State Standard Travel Regulations and as provided in the State Budget.

(5) Staffing for the Commission shall be provided by the Maryland Commission on Human Relations and the Governor's Office.

C. Duties of the Commission.

(1) The Commission shall:

(a) Examine the characteristics, coverage and exclusion of existing laws that prohibit discrimination in employment, housing and public accommodations based on sexual orientation;

(b) Gather information on the number of complaints filed alleging discrimination under laws currently banning discrimination based on sexual orientation, the number of lawsuits brought under these laws, the potential liability on employers and other persons or organizations charged with discrimination and the impact sexual orientation discrimination complaints have on the workload of the agency responsible for enforcing anti-discrimination laws;

(c) Solicit input from the business community, non-profit organizations, religious groups, advocacy groups, government entities and Maryland citizens on the most effective and efficient methods for eliminating discrimination in employment, housing and public accommodations based on sexual orientation;

(d) Develop recommendations to eliminate sexual orientation discrimination in employment, housing and public accommodations in both the public and private sector, including legislative proposals for introduction during the 2001 Session of the Maryland General Assembly as well as any proposals for executive action that the Commission deems appropriate; and

(e) Perform any other tasks that the Commission deems appropriate in examining sexual orientation discrimination in employment, housing and public accommodations.

(2) In completing its charge, the Commission shall hold public meetings to gather comment and allow individuals the opportunity to share their views with the Commission.

D. Reporting Requirements. The Commission shall prepare and submit an interim report with its recommendations to the Governor on or before December 15, 2000, and a final report with any additional recommendations by July 1, 2001.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 26th Day of September, 2000.

Parris N. Glendening
Governor

ATTEST:

John T. Willis
Secretary of State

The State of Maryland

Executive Department

EXECUTIVE ORDER

01.01.2000.22

Special Commission to Study Sexual Orientation Discrimination in Maryland

(Amends 01.01.2000.19)

WHEREAS, The Special Commission to Study Sexual Orientation Discrimination in Maryland was established by Executive Order 01.01.2000.19 to focus on discrimination in employment, housing and public accommodations based on an individual's sexual orientation; and

WHEREAS, It is in the interest of the Commission that the membership be expanded to provide for additional participation from interested individuals in the community.

NOW, THEREFORE, I, PARRIS N. GLENDENING, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Established. There is a Special Commission to Study Sexual Orientation Discrimination in Maryland.

B. Membership and Procedures.

(1) The Commission shall consist of [21] 23 members, including:

(a) The Executive Director of the Maryland Commission on Human Relations;

(b) The Secretary of Health and Mental Hygiene, or the Secretary's designee;

(c) The Secretary of the Department of Housing and Community Development, or the Secretary's designee;

(d) The Attorney General, or the Attorney General's designee;

(e) Two members of the Senate appointed by the President of the Senate;

(f) Two members of the House of Delegates appointed by the Speaker of the House; and

(g) Up to [13] 15 individuals, appointed by the Governor, with relevant experience, who may include representatives of advocacy organizations, religious groups, the business community, labor organizations and members of the general public.

(2) Members shall serve at the pleasure of the Governor.

(3) The Governor shall designate the chairperson of the Commission.

(4) The members of the Commission may not receive compensation for their services. Members may be reimbursed for their reasonable expenses incurred in the performance of their duties, in accordance with the State Standard Travel Regulations and as provided in the State Budget.

(5) Staffing for the Commission shall be provided by the Maryland Commission on Human Relations and the Governor's Office.

C. Duties of the Commission.

(1) The Commission shall:

(a) Examine the characteristics, coverage and exclusion of existing laws that prohibit discrimination in employment, housing and public accommodations based on sexual orientation;

(b) Gather information on the number of complaints filed alleging discrimination under laws currently banning discrimination based on sexual orientation, the number of lawsuits brought under these laws, the potential liability on employers and other persons or organizations charged with discrimination and the impact sexual orientation discrimination complaints have on the workload of the agency responsible for enforcing anti-discrimination laws;

(c) Solicit input from the business community, non-profit organizations, religious groups, advocacy groups, government entities and Maryland citizens on the most effective and efficient

methods for eliminating discrimination in employment, housing and public accommodations based on sexual orientation;

(d) Develop recommendations to eliminate sexual orientation discrimination in employment, housing and public accommodations in both the public and private sector, including legislative proposals for introduction during the 2001 Session of the Maryland General Assembly as well as any proposals for executive action that the Commission deems appropriate; and

(e) Perform any other tasks that the Commission deems appropriate in examining sexual orientation discrimination in employment, housing and public accommodations.

(2) In completing its charge, the Commission shall hold public meetings to gather comment and allow individuals the opportunity to share their views with the Commission.

D. Reporting Requirements. The Commission shall prepare and submit an interim report with its recommendations to the Governor on or before December 15, 2000, and a final report with any additional recommendations by July 1, 2001.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 19th Day of October, 2000.

Parris N. Glendening
Governor

ATTEST:

John T. Willis
Secretary of State

ATTACHMENT 2

GAO
United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-277688

October 23, 1997

The Honorable James M. Jeffords
Chairman, Committee on Labor and Human Resources
United States Senate

Subject: Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions

Dear Mr. Chairman:

Three federal statutes—title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Age Discrimination in Employment Act—together make it unlawful for an employer to discriminate against an employee on the basis of characteristics such as race, color, religion, sex, national origin, disability, and age. Eleven states and the District of Columbia[1] have enacted laws that prohibit discrimination in employment on the basis of sexual orientation.[2] As a principal sponsor of S. 869, the Employment Non-Discrimination Act of 1997 (ENDA), a bill that would make such discrimination a violation of federal law, you asked us to study these states' laws and report on the states' experiences with enforcing them. Specifically, you asked us to (1) examine the characteristics, coverage, and exclusions of the laws, including how they compare with provisions of ENDA, and (2) gather information concerning the number of complaints filed with the states.

To respond to your request, we reviewed ENDA and the laws in the 12 states as well as reports of decisions in court cases brought under those laws. We reviewed the literature for studies or surveys involving protection against

[1]Except where otherwise specified, we use the word "state" throughout this correspondence to refer to the District of Columbia as well as to the 11 states.

[2]A referendum on the ballot for the November election in the state of Washington would, if enacted, create a thirteenth state law prohibiting employment discrimination on the basis of sexual orientation.

discrimination in employment on the basis of sexual orientation. To get information about each state's enforcement experience, we contacted the office in the state charged with enforcing the prohibition against discrimination in employment. Specifically, we collected readily available data from each state on the numbers of employment discrimination complaints filed, and the proportion of those complaints involving sexual orientation, for recent fiscal years. All data are as reported by the state agency; we did not verify these data. We conducted our review between July and October 1997 in accordance with generally accepted government auditing standards.

In summary, although the state laws differ in some respects, they generally share a number of features with one another and with ENDA. For example, almost all states and ENDA define "sexual orientation" to mean homosexuality, heterosexuality, and bisexuality, and provide that the term includes both actual and perceived sexual orientation. All the state laws and ENDA cover employees in both the public and private sectors and, except for one state, exempt religious organizations; many of the states and ENDA exempt some nonprofit organizations as well. All the state laws and ENDA vest an administrative agency with at least partial enforcement authority; typically, the courts play a role also. All of the state laws and ENDA also provide for protection of employees against retaliation. Finally, these laws and ENDA establish a range of remedies for unlawful discrimination, which may include civil penalties imposed on the employer and back pay awards and punitive damages for the employee.

For those states where the law has taken effect (two states' statutes are not yet in operation), relatively few formal complaints of employment discrimination on the basis of sexual orientation have been filed, either in absolute numbers or as a percentage of all employment discrimination complaints in the state. Moreover, the state statistics generally do not show any trend in the volume of employment discrimination cases based on sexual orientation over the periods we examined. We also found no indication that these laws have generated a significant amount of litigation.

SIGNIFICANT FEATURES OF STATE LAWS PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION

ENDA and most state laws that protect against employment discrimination on the basis of sexual orientation do so in ways that differ in detail but that generally address the same basic issues. ENDA and the states, with one exception, have a definition of "sexual orientation" that establishes the general scope of protection. The state laws and ENDA also contain features that fall

generally within one of three categories: coverage, enforcement and evidence, and remedies. The coverage category includes whether employers below a certain size are exempt and whether certain kinds of organizations, such as religious groups or nonprofit entities, are covered. (Table I.1 compares coverage under ENDA and the various state laws.) In the category of enforcement and evidence, the laws cover such matters as the powers of the state enforcement agency and whether the complainant can bring suit without first having given the agency the opportunity to resolve the complaint. (Table I.2 compares selected provisions of state laws and ENDA related to enforcement and evidence.) Finally, the remedies that may be available under the various state laws or ENDA may include awards of back pay or other compensation for the victim of discrimination. (Table I.3 compares remedies under state laws and ENDA.)

Regarding the state laws and ENDA, the information in this letter is an overview. The laws are complex and are interwoven with other state nondiscrimination laws. We discussed some of their features with state officials and have noted some exceptions and conditions, but we have not attempted to describe either the laws or ENDA exhaustively. Moreover, although ENDA and the state laws apply to both private and public sector employers, this letter focuses on the application of these provisions to employers in the private sector.

Definitions of "Sexual Orientation"

The definition of sexual orientation in the laws establishes the basis for the protection they provide. In the 11 states that have definitions,[3] all but one provide in some form that sexual orientation means heterosexuality, homosexuality, or bisexuality.[4] Except for Vermont and the District of Columbia, all the definitions include people who, whether or not they actually fall within one of those three categories, are perceived by others to be in that category or are identified with that category. An effect of this is to prohibit

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[3]California does not have such a definition, but California law has one element in common with the definitions in other states: It makes discrimination on the basis of sexual orientation unlawful, regardless of whether the sexual orientation is actual or perceived.

[4]Minnesota defines sexual orientation in part as involving an "emotional, physical, or sexual attachment to another person without regard to the sex of that person," or a "self-image or identity not traditionally associated with biological maleness or femaleness."

discrimination not only against an employee who is homosexual, for example, but also against an employee who the employer wrongly believes is homosexual.

Two of the state laws (Massachusetts and Minnesota) explicitly say, in connection with the definition of sexual orientation, that the protection of the law does not extend to pedophiles. Some state laws that do not have an explicit limitation of that kind have provisions that may have the same effect; they provide, for example, that the state prohibition against employment discrimination on the basis of sexual orientation does not protect conduct that is otherwise unlawful under state law. In addition, some state laws provide that the definition describes the status of certain persons but does not constitute legislative approval of that status.

ENDA uses the same terminology–heterosexuality, homosexuality, bisexuality–in its definition as do most of the state laws and, like most of those laws, bars discrimination on the basis of either real or perceived sexual orientation. In addition, ENDA bars discrimination on the basis of not only the sexual orientation of the employee but also the sexual orientation of anyone with whom the employee has associated or is believed to have associated. (Table I.4 lists the definitions of sexual orientation in ENDA and the state laws.)

Coverage

Size of Employer

Under the state laws, as is also the case under the existing federal laws and ENDA, the size of the employer is a factor in determining coverage. State nondiscrimination laws set a minimum number of employees, and employers with fewer employees than this threshold are not covered. Generally, the state laws set the minimum lower, and thus cover more small businesses, than their federal counterparts. Seven states include, in effect, all employers regardless of size. In the other five states, the minimum number of employees that triggers coverage ranges from as few as three to as many as six. ENDA would cover employers with 15 or more employees, as do title VII of the Civil Rights Act and the Americans With Disabilities Act.

Nature of Employers' Business or Activity

The nature of the work is a factor in determining coverage in all states. Various types of organizations may be expressly subject to the law or exempt on the basis of the nature of their business or activities. All 12 states cover not

only private employers but also the state itself, its agencies, and its political subdivisions. ENDA also would cover private and public employers; its public coverage includes the federal government[5] and the states.

An exemption for religious organizations exists in all the states. Although the state exemptions vary, they generally permit religious organizations to give preference to those of the same religion, or to people whose employment is in accord with the tenets of their religions. ENDA would also generally exempt religious organizations. Under ENDA, employment by a religious organization would be covered only if the duties of the employee's position pertain solely to an activity of the organization that generates business taxable income unrelated to its religious activities. In addition, the exemption in ENDA for employers with fewer than 15 employees would apply to religious organizations that might otherwise be covered.

Most states have an exemption for nonprofit organizations, although the scope of the exemption varies among the states. The corresponding provision in ENDA exempts any "bona fide private membership club (other than a labor organization)" that is exempt from federal income taxation. However, the exemption in ENDA for employers with fewer than 15 employees (and the exclusion of uncompensated volunteers, discussed in the following section) would likely result in the exemption of additional small nonprofit organizations.

ENDA exempts the military with respect to members of the armed forces. (Civilian employees of the military departments would be covered.) This provision has no counterpart in state laws.[6]

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[5]ENDA would cover federal employees generally, including employees of the Congress and presidential appointees. With respect to public sector employees, the enforcement procedures and remedies under ENDA vary depending on the type of employer and employee. In this letter, the references to ENDA, unless otherwise noted, describe its application to employees in the private sector.

[6]Connecticut law exempts the conduct and administration of a Reserve Officers Training Corps (ROTC) program at an institution of higher education. However, the ROTC program, as the Connecticut statute acknowledges, is conducted under authority of federal law. It is therefore not clear that state law could have any effect on the ROTC program even without the exemption.

Other Conditions

Certain kinds of work and certain classes of workers are exempt from coverage under the state laws. Although only one state law explicitly exempts volunteers from coverage under the sexual orientation protection, a number of the state laws have the effect of doing so, for example by defining "employee" to include only those who receive compensation. ENDA explicitly exempts uncompensated volunteers.

Another exemption based on the nature of the work exists in the states which exempt domestic workers from protection. ENDA does not have the same specific exemption, but, in many instances, the 15-employee minimum set by ENDA would presumably have much the same effect: A person who employs as many as 14 domestic workers would be exempt from coverage under ENDA.

In some states, the nondiscrimination law does not apply when there is a close family relationship between the employer and the employee. The definition of such a relationship differs among the states, but typically the laws exempt people employed by a parent, a spouse, or a child. ENDA has no corresponding provision, but here, too, the 15-employee minimum would have the same effect as these state exemptions on small family businesses.

Enforcement and Evidence

Enforcement Mechanisms

Procedures for filing and pursuing complaints and for enforcement of the law vary among the state laws, but certain basic elements are common to all or most of the laws. All the state laws designate an agency or department to handle complaints of discrimination[7] but the agencies' roles differ. Some states make an administrative agency the only forum for seeking relief; private lawsuits for employment discrimination are not authorized. Other states let the employee choose between a complaint to the administrative agency or a lawsuit. A third group of states requires that the complainant first seek relief from the administrative agency and wait either for a specified period or until the agency reaches a decision before bringing suit; if the issue is not resolved

[7]Generally this authority is vested in a state labor or human rights commission or department. In Vermont, however, the Attorney General enforces the law in the private sector.

at the agency level, the agency generally issues a "right-to-sue" letter to the complainant.

ENDA provides that the enforcement procedure would be the same as that now followed for complaints of employment discrimination prohibited by title VII of the Civil Rights Act of 1964. That procedure has been described as "elaborate and intricate," but it is most analogous to those state procedures under which the complainant must bring the complaint to an administrative agency before being allowed to sue. In general, under ENDA, complaints of discrimination in the private sector or against the states would go to the Equal Employment Opportunity Commission (EEOC). However, if the complaint is from a state that prohibits the same kind of discrimination alleged and that has a state agency that EEOC has determined can adequately address the issue, EEOC will defer to the state. EEOC's role, if it takes the case, is to investigate and attempt to negotiate a conciliation agreement. A complainant may go to court if EEOC dismisses the charge, does not itself choose to initiate an enforcement action in court, or fails to achieve a conciliation agreement acceptable to the complainant.

Protection of Complainant

All states prohibit retaliation against individuals who file complaints or help in investigations; most states also specifically prohibit using coercion against such people. ENDA also expressly prohibits both retaliation and coercion.

Disparate Impact

A claim of civil rights violation because of disparate impact is one in which the employer's practice is neutral on its face–that is, it does not explicitly distinguish between employees based on prohibited classifications like sex or race–but statistical evidence shows that the practice has that effect. For example, the Supreme Court found disparate impact when a state corrections agency adopted height and weight standards for prison guards that were shown to have the effect of excluding 40 percent of women but only 1 percent of men.

The existence of disparate impact is said to establish a prima facie case of discrimination. This does not prove unlawful discrimination; it simply means that the employee has met the initial burden of proof to show that discrimination may exist and that the burden now shifts to the employer to show that the practice complained of is not unlawfully discriminatory. For example, under title VII of the Civil Rights Act of 1964, even if the complainant establishes disparate impact, there is no violation if the employer shows that

the challenged practice is job-related for the position and is consistent with business necessity.

Most state laws are silent concerning disparate impact, in effect leaving it to the courts to determine how to deal with disparate impact claims. Two states explicitly authorize the use of disparate impact evidence. ENDA provides that evidence of disparate impact of a business practice on sexual orientation does not establish a prima facie violation of title VII of the Civil Rights Act.

Collection of Statistics

ENDA prohibits EEOC from collecting statistics on sexual orientation from employers or from compelling the collection of such statistics. This provision generally has no counterpart in the state laws.

Remedies

Back Pay

Back pay is one among a range of remedies that may be available to victims of discrimination.[8] All the states authorize back pay awards. However, the procedure for this and other remedies differs among the states depending on how their programs are structured. In 10 states, the enforcement agency can order back pay and other remedies. In the other two, it is the courts that are empowered to order remedies for the victims of discrimination. ENDA follows the latter pattern: EEOC cannot order remedies but can bring suit itself, on behalf of the victim and others, and can ask the court to order back pay.

Punitive Damages

Eight states expressly authorize punitive damages. Under ENDA, the victim of intentional employment discrimination on the basis of sexual orientation could

[8]Other remedies that may be available are hiring or reinstatement; actual damages sustained (the states vary on whether damages for pain and suffering may be awarded); and "front pay," which is reimbursement of an employee for losses caused by an unjustifiable discharge or denial of promotion when the employee cannot be reinstated or promoted immediately because no opening is available.

recover punitive damages if the defendant acted with malice or with reckless indifference to the complainant's rights.

Civil Penalties

The state laws are mixed regarding their use of authority to impose civil penalties against an employer who violates a nondiscrimination statute. Six authorize civil penalties, ranging from $1,000 to $100,000; the other six do not authorize such penalties. ENDA does not provide for civil penalties.

Attorneys' Fees

State officials in all but two states told us that their laws permit the recovery of attorneys' fees. Of those two, one prohibits the award of attorneys' fees; the other state's law is not yet in effect and is silent on this point. ENDA authorizes a reasonable attorney's fee to be awarded to the prevailing party (unless the prevailing party is the United States).

Preferential Treatment

Five states expressly prohibit the use of quotas or other preferential treatment as remedies for sexual orientation discrimination; only one expressly authorizes preferential treatment under certain circumstances, subject to the approval of the enforcement agency. Six other states are silent concerning these remedies.

Under ENDA, employers may not adopt or implement quotas, or give preferential treatment to individuals, on the basis of sexual orientation, nor may EEOC enter into consent decrees that provide for quotas or preferential treatment. This is an exception to the general provision of ENDA that the same procedures and remedies applicable to a violation of title VII of the Civil Rights Act of 1964 are applicable to claims under ENDA; the Civil Rights Act, under certain conditions, permits employers voluntarily to adopt race- or gender-based preferences.

Other Features of State Law and ENDA

ENDA and some of the state laws provide that the prohibition of discrimination on the basis of sexual orientation does not apply to the provision of benefits for an employee's partner. The effect of this provision is to maintain neutrality with respect to partner benefits: It is left to other statutes or to the courts to determine whether or not such benefits are authorized or required.

At least two features of ENDA have no counterpart in the state statutes: ENDA explicitly permits a covered employer to enforce "rules regarding nonprivate sexual conduct, if the rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation." This permits employers to adopt rules of conduct for the work place; as long as the rules apply to all employees uniformly, they will not be considered to be unlawfully discriminatory. Another unique feature of ENDA is a section providing that the law would not affect any veterans' preference in employment granted under federal, state, local, or territorial law.

RELATIVELY FEW COMPLAINTS HAVE FOLLOWED ENACTMENT OF STATE SEXUAL ORIENTATION PROTECTION LAWS

We found that, in those states with a law making it illegal to discriminate in employment on the basis of sexual orientation, relatively few complaints of such discrimination have been made. The statistics do not show any trend in the number of complaints over time. The number of court cases brought under those laws has also been small.

Few Complaints of Sexual Orientation Discrimination in Employment Filed

In the 12 states that have enacted statutes prohibiting discrimination in employment on the basis of sexual orientation, 10 are in effect. (The laws in Maine and New Hampshire have not yet been implemented.) The earliest, in the District of Columbia, took effect in 1977. Seven others were implemented between 1982 and 1993. The most recent to take effect was Rhode Island's, in 1995.

Overall, the states' data showed that relatively few complaints of discrimination in employment on the basis of sexual orientation were filed annually, whether measured in absolute numbers or as a percentage of all employment discrimination complaints. Also, our analyses of the data obtained from the states generally did not show any trends in the number of these complaints over time, nor was there evidence of large numbers of complaints immediately after the implementation of the sexual orientation statutes.

Detailed information on the state laws' effective dates and numbers of complaints by fiscal year for the 10 states with complaint experience is shown in table 1. The latest fiscal years for which complete data were available are shown for each state.

Table 1: Data on States' Experience With Sexual Orientation Employment Discrimination Complaints

Fiscal year	Total employment discrimination cases	Sexual orientation employment discrimination cases[a]	Sexual orientation cases as a percentage of total employment discrimination cases
California[b] (law effective 1993)			
1993	13,362	159	1.2
1994	15,730	159	1.0
1995	16,206	161	1.0
1996	17,164	173	1.0
Connecticut[c] (law effective 1991)			
1993	2,035	20	1.0
1994	2,404	32	1.3
1995	2,668	23	0.9
1996	2,262	44	1.9
1997	2,355	41	1.7
District of Columbia (law effective 1977)			
1992	214	7	3.3
1993	304	9	3.0
1994	344	3	0.9
1995	337	8	2.4
1996	230	7	3.0
Hawaii (law effective 1991)			
1992	555	12	2.2
1993	364	6	1.6

1994	367	13	3.5
1995	396	15	3.8
1996	415	11	2.7
Massachusetts[d] (law effective 1989)			
1990	3,232	37	1.1
1991	3,496	71	2.0
1992	3,225	62	1.9
1993	4,372	115	2.6
1994	4,592	121	2.6
1995	5,144	124	2.4
1996	4,990	132	2.6
Minnesota (law effective 1993)			
1995	886	34	3.8
1996	980	24	2.4
New Jersey (law effective 1992)			
1992	2,712	17	0.6
1993	2,159	20	0.9
1994	1,919	25	1.3
1995	2,127	30	1.4
1996	1,277	20	1.6
1997[e]	1,650	30	1.8
Rhode Island (law effective 1995)			
1995	[f]	[f]	[f]
1996	317	2	0.6
1997	449	14	3.1
Vermont (law effective 1991)			

1993	139	4	2.9
1994	136	5	3.7
1995	152	2	1.3
1996	129	2	1.6
1997	115	6	5.2
Wisconsin (law effective 1982)			
1996[g]	3,653	43	1.2
1997	5,209	54	1.0

[a]Generally, a complainant can allege other bases–sex, race, or religion, for example–in a complaint that also alleges employment discrimination on the basis of sexual orientation. In this table, a case is counted as a sexual orientation case whether or not other bases are also alleged in the same complaint.

[b]Data on the number of employment discrimination cases filed are from the Department of Fair Employment and Housing, which keeps records on the basis of the state's July-June fiscal year. Data on the number of sexual orientation cases are from the Department of Labor Standards Enforcement, which keeps records on a calendar-year basis.

[c]Connecticut did not have data on the number of employment sexual orientation cases, but estimated that approximately 90 percent of the total sexual orientation cases involved employment.

[d]Massachusetts did not have data on the number of employment sexual orientation cases, but estimated conservatively that 85 percent of the total sexual orientation cases involved employment.

[e]New Jersey officials had not compiled actual numbers for fiscal year 1997 but estimated that 1,650 employment discrimination cases would be filed.

[f]The law was in effect for only 5 weeks in fiscal year 1995, and no cases were recorded during that time.

[g]Data were not readily available for earlier fiscal years.

As shown in table 1, the states' percentages of employment discrimination complaints on the basis of sexual orientation relative to the total number of employment discrimination cases generally ranged from approximately 1 percent to 3 percent a year. Only in certain years in the District of Columbia, Hawaii, Minnesota, Rhode Island, and Vermont did cases of discrimination in employment on the basis of sexual orientation exceed 3 percent of total employment discrimination cases. In compiling the multiyear averages of the states with data for more than 2 years, we noted that, on average, the percentage of total employment discrimination cases that involved sexual orientation as the basis for the claimed discrimination ranged from about 1.0 percent in California during 4 fiscal years to about 2.8 percent in Vermont during 5 fiscal years.

We examined the state data to determine whether any trends in the numbers and percentages of sexual orientation employment discrimination complaints filed were evident. We found that only in New Jersey was any trend apparent. In that state, the data showed that the percentage of sexual orientation cases, as a proportion of total employment discrimination cases, had increased slightly every fiscal year, from 0.6 percent of cases in 1992 to 1.6 percent of the cases in 1996. New Jersey officials believe that for fiscal year 1997 this percentage may increase to 1.8 percent if the estimate on the total number of employment discrimination cases holds true. At the same time, the actual number of sexual orientation cases increased in every fiscal year since 1992, except 1995. Even with the increases in New Jersey, the percentage remains consistent with the relatively low level we found in all the states.

In looking at the data for California, complaints of employment discrimination on the basis of sexual orientation were 1.0 percent of total employment discrimination complaints filed during the period 1994 through 1996, a decrease from 1.2 percent in 1992. Data for 1997 were not yet complete. As shown for the other states that provided more than 2 years of information, no trends were evident.

Little Evidence of Litigation Under State Laws on Sexual Orientation

In a search of standard sources for the 12 states, we found few decisions by the courts under the states' laws prohibiting discrimination in employment on the basis of sexual orientation. Of those decisions, a number involved only procedural issues, such as whether a complainant must first take the complaint to an administrative agency before bringing suit or how the applicable statute of limitations operates.

It is not possible to conclude definitively that, because we found few substantive decisions arising under these laws, the volume of litigation in the states is small, but that seems likely. Lawsuits may have been brought that did not result in reported decisions and that we were therefore unable to identify.[9] However, considering that, as discussed, relatively few complaints have been filed and that in a number of the states a suit is not permitted unless a complaint has first been filed, it seems probable that there have also been relatively few lawsuits.

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If you have any questions about this letter, please contact me on (202) 512-8203. Major contributors included Larry Horinko, Assistant Director, and Susan A. Poling, Assistant General Counsel.

Sincerely yours,

Barry R. Bedrick
Associate General Counsel

Enclosure

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[9]For example, a case may be settled by the parties before reaching the decision stage, or the court, without written explanation, may grant an injunction sought by the employee against some practice of the employer; in either situation, because there is no decision, the case would not appear in the databases we used.

SPECIFIC ELEMENTS OF ENDA AND STATE STATUTES

Table I.1: Comparison of Selected Coverage Features of ENDA and State Statutes

	S. 869, Employment Non-Discrimination Act of 1997 (ENDA)/State employment nondiscrimination statutes												
Feature	ENDA	Calif.	Conn.	Hawaii	Maine	Mass.	Minn.	N.H.	N.J.	R.I.	Vt.	Wis.	D.C.
Minimum no. of employees for coverage	15	5	3	1	1	6	1	6	1	4	1	1	1
Public and private sector employers[a]	Covered	Covered	Covered	Covered	Covered	Covered	Covered	Covered	Covered	Covered	Covered	Covered	Covered
Religious organizations[b]	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt
Nonprofit organizations[c]	Exempt	Exempt	Covered	Exempt	Exempt	Exempt	Exempt	Exempt	Covered	Exempt	Exempt	Exempt	Covered[d]
Armed forces	Exempt	Law silent	ROTC program[e] exempt	Law silent	Law silent	Law silent	Law silent	Law silent	Law silent	Law silent	Law silent	Law silent	Law silent

[a]"Public sector," with reference to ENDA, means the federal and state governments; ENDA covers both. With reference to the states, it means the government of each state.

[b]Although, as this indicates, all state laws and ENDA have a religious exemption, the scope of these exemptions varies; for example, one version exempts religious associations, without qualification; another provides that a religious organization may select employees in a manner "calculated by such organization promote" its religious principles.

[c]The scope of these exemptions in the states and in ENDA varies. One version is limited to fraternal or social organizations hiring one of their members; another exempts any nonprofit social, fraternal, charitable, or educational organization.

[4]This exemption applies only to political organizations giving preference to people "of the same . . . political persuasion."

[5]The Reserve Officers' Training Corps program at colleges and universities is created by federal law.

ENCLOSURE

Table I. 2: Comparison of Selected Enforcement and Evidence Features of ENDA and State Statutes

	S. 869, Employment Non-Discrimination Act of 1997 (ENDA)/State employment nondiscrimination statutes												
Feature	ENDA	Calif.	Conn.	Hawaii	Maine	Mass.	Minn.	N.H.	N.J.	R.I.	Vt.	Wis.	D.C.
Agency may investigate	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Agency may order compliance	No[a]	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Complainant may sue in court[b]	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Collection of sexual orientation statistics prohibited	Yes	Law silent	Law silent	Law silent	Law silent	No[c]	Law silent	Law silent	Law silent	Law silent	Law silent	Law silent	Law silent
Disparate impact evidence prohibited[d]	Yes	Law silent	Law silent	Law silent	Law silent	Law silent	No	Law silent	Law silent	No	Law silent	Law silent	Law silent
Retaliation against complainant prohibited	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

[a]If the Equal Employment Opportunity Commission finds reasonable cause to believe that the charge of discrimination is true, it can either permit the complainant to bring a private cause of action or can bring suit itself.

[b]States in which the complainant has to file first with the state enforcement agency are listed as "Yes" if the complainant can later file a lawsuit in court.

[c]Collection of statistics is authorized when ordered by the state enforcement agency.

[d]"Disparate impact" refers to statistical evidence that an apparently neutral policy of the employer has the effect of discriminating against employees. In some states where the law is silent, courts have interpreted state law to permit disparate impact analysis.

Table 1.3: Comparison of Selected Remedy Features of ENDA and State Statutes

	S. 869, Employment Non-Discrimination Act of 1997 (ENDA)/State employment nondiscrimination statutes												
Feature	ENDA	Calif.	Conn.	Hawaii	Maine	Mass.	Minn.	N.H.	N.J.	R.I.	Vt.	Wis.	D.C.
Civil penalties[a] authorized	No	No	No	No	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes
Back pay awards authorized[b]	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Punitive damages[c] authorized	Yes	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Attorneys' fees authorized	Yes	Yes	No	Yes	Law silent	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Quotas or preferential treatment expressly prohibited	Yes	Yes	Yes	Law silent	Law silent	Yes	Yes	Law silent	Yes	Law silent	Law silent	Law silent	No[d]

[a]Fines assessed against a violator, payable to the government.

[b]In some states, these awards can be made by the agency or department administering the law; in others and under ENDA, they can only be made by the courts. The length of time for which back pay can be awarded is limited under some laws.

[c]Payments to the victim, intended to punish the violator.

[d]Must be approved by the enforcement agency.

Table I.4 Definitions of Sexual Orientation in ENDA and State Statutes

Bill/state law	Definition
ENDA	"Homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived."
California	No definition, but the law applies specifically to both "actual or perceived" sexual orientation.
Connecticut	"Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference," but excluding "any behavior which constitutes a violation" of state criminal laws regarding offenses such as sexual assault, rape, and prostitution.
Hawaii	"Having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified with any one or more of these preferences," provided that sexual orientation "shall not be construed to protect conduct otherwise proscribed by law."
Maine	"Having a preference for heterosexuality, homosexuality, or bisexuality, having a history of that preference or being identified with that preference."
Massachusetts	"Having an orientation for or being identified as having an orientation for heterosexuality, bisexuality, or homosexuality," but not including persons "whose sexual orientation involves minor children as the sex object."
Minnesota	"Having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness," but not including "a physical or sexual attachment to children by an adult."

New Hampshire	"Having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality," provided that the definition "is intended to describe the status of persons and does not render lawful any conduct prohibited by the [state's] criminal laws" or "confer legislative approval of such status."
New Jersey	"Affectional or sexual orientation means male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation."[a]
Rhode Island	"Having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality," provided that the definition "is intended to describe the status of persons and does not render lawful any conduct prohibited by the [state's] criminal laws" or "confer legislative approval of such status."
Vermont	"Female or male homosexuality, heterosexuality, or bisexuality," provided that the law "shall not be construed to protect conduct otherwise proscribed by law."
Wisconsin	"Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference, or being identified with such a preference.
District of Columbia	"Male or female homosexuality, heterosexuality and bisexuality, by preference or practice."

[a]New Jersey defines heterosexuality, homosexuality, and bisexuality as "affectional, emotional or physical attraction or behavior which is primarily directed towards persons of," respectively, the other gender, the same gender, or both genders.

[b]Connecticut's law also provides that nothing in it condones homosexuality or bisexuality; authorizes promotion of either, or requires the teaching of either, as acceptable lifestyles; authorizes the recognition or right of same-sex marriages; or establishes sexual orientation as a "specific and separate cultural classification."

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April 28, 2000

The Honorable James M. Jeffords
Chairman, Committee on Health, Education, Labor and Pensions
United States Senate

Subject: Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions Since 1997

Dear Mr. Chairman:

Three federal statutes—Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Age Discrimination in Employment Act—together make it unlawful for an employer to discriminate against an employee on the basis of characteristics such as race, color, religion, sex, national origin, disability, and age; these laws do not cover discrimination based on sexual orientation. In 1997, we reported to you our findings regarding the experience of 11 states and the District of Columbia[1] with statutes prohibiting discrimination in employment on the basis of sexual orientation.[2]

As a principal sponsor of S. 1276, the Employment Non-Discrimination Act of 1999 (ENDA-99), a bill that would prohibit employment discrimination on the basis of sexual orientation, you asked, in a March 7 letter, that we update our earlier report. Specifically, you asked that we report on (1) characteristics, coverage, and exclusions of any new state laws and (2) the enforcement experience of the states since our earlier report.

To respond to your request, we looked for changes in state statutes or new state statutes since 1997. To get information about states' experience, we spoke with

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[1] The states were California, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont, and Wisconsin. In the following discussion, "state" includes the District of Columbia.

[2] Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions, (GAO/OGC-98-7R, Oct. 23, 1997).

officials charged with enforcing the state laws governing employment discrimination. Specifically, we collected readily available data from each state on the numbers of employment discrimination complaints filed, and the proportion of those complaints involving sexual orientation, for fiscal years since our earlier report. All data are as reported by the state agency; we did not independently verify them. We also asked state officials to identify any significant litigation of which they were aware; and we searched electronic databases for court decisions addressing state laws that prohibit employment discrimination on the basis of sexual orientation. To update that portion of our earlier report that discussed pending federal legislation, we compared ENDA-99 to its counterpart in the 105th Congress, S. 869 (ENDA-97).

SUMMARY

Twelve states currently have laws that prohibit discrimination in employment on the basis of sexual orientation.[3] The content of these laws varies, but they share many significant features. Eleven of the states were on the list in our earlier report, but Maine is no longer included—a 1998 referendum repealed that part of Maine's law that made it unlawful to discriminate in employment on the basis of sexual orientation[4]—and we have added Nevada, where a law barring employment discrimination on the basis of sexual orientation took effect on October 1, 1999.[5]

Formal complaints of employment discrimination based on sexual orientation continue to be filed in the states that permit them. However, as was the case in 1997, we found that these complaints are a relatively small proportion of all employment discrimination complaints in those states. We also found, as before, no indication that these laws have generated a significant amount of litigation.

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[3]California, Connecticut, Hawaii, Massachusetts, Minnesota, New Hampshire, New Jersey, Nevada, Rhode Island, Vermont, Wisconsin, and the District of Columbia. Since our earlier report, a presidential directive has expanded equal employment opportunity protections in the federal government to include sexual orientation. Executive Order 13087, May 28, 1998.

[4] It is possible that coverage in Maine will be restored. The Governor has signed into law a statute that would protect against discrimination on the basis of sexual orientation in employment, housing, public accommodations and credit. However, by its terms, this law will not take effect unless of majority of those voting in the state's general election in November endorse it.

[5] In the discussion below, we compare Nevada's new law to those of the other states, but significant information on enforcement does not yet exist. Like the laws in the other 11 states, Nevada's law shares a number of features with ENDA-99.

STATE LAWS AND ENDA-99 SHARE FEATURES

State laws that protect against employment discrimination on the basis of sexual orientation differ in some respects, but generally address the same issues and share a number of features with one another and with ENDA-99. In our earlier report, we discussed in detail the significant features that are common to state laws barring employment anti-discrimination statutes on the basis of sexual orientation and to ENDA-97.[6] The significant features shared by these laws, and how ENDA-99 compares, may be summarized as follows:

- State statutes define the term "sexual orientation" as heterosexual, homosexual, or bisexual, and generally include both actual and perceived sexual orientation.

  - ENDA-99's coverage is similar; in addition, it would bar discrimination based on the sexual orientation of anyone with whom the employee has or is believed to have associated.

- Coverage provided by the state statutes is not universal: whether an employer is subject to the law depends on the number of workers employed and the nature of the work. Concerning the latter point, all the state laws cover both private and public employment; all exempt religious organizations; most exempt nonprofit organizations.

  - ENDA-99 generally applies to employers with 15 or more employees. Civilian federal employees, including the Congress, the White House, and the Executive Office of the President, are covered. ENDA-99 exempts religious organizations to the extent they are engaged in religious activities,[7] as well as tax-exempt private membership clubs (other than labor organizations).

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[6] See GAO/OGC-98-7R, Oct. 23, 1997. Except for Maine, where voters repealed the sexual orientation provision, the state laws analyzed in our 1997 report have not changed. ENDA-99 differs from its predecessor, ENDA-97, in two noteworthy respects: ENDA-99's description of discriminatory conduct proscribed now tracks Title VII of the Civil Rights Act of 1964; in addition, ENDA-99 excludes imposition of affirmative action as a remedy. See the enclosure for a summary comparison of ENDA-97 and ENDA-99.

[7] The exemption would not be available where an employee's duties for a religious organization pertain solely to an activity that generates "business taxable income" unrelated to the organization's religious activities.

- The state laws designate a state agency to handle discrimination complaints, but differ concerning the circumstances under which complainants may seek judicial enforcement.

  - ENDA-99 provides that the enforcement procedure would be the same as that now followed for complaints of employment discrimination under Title VII of the Civil Rights Act of 1964. That procedure is analogous to those state procedures under which the complainant must bring the complaint to an administrative agency before being allowed to sue.[8]

- State laws protect complainants and witnesses from retaliation.

  - ENDA-99's provisions are comparable.

- All state statutes provide a range of remedies, which can include back pay awards, punitive damages, or civil penalties.

  - ENDA-99's range of remedies does not include civil penalties.

- States are split on the use of quotas or preferential treatment: five of the state statutes prohibit quotas or preferential treatment; two permit preferential treatment; five are silent.

  - ENDA-99 prohibits employers from adopting or implementing quotas, or from giving preferential treatment to individuals on the basis of sexual orientation and provides explicitly that affirmative action may not be imposed. This is an exception to the general provision of ENDA-99 that the same procedures and remedies applicable to a violation of Title VII of the Civil Rights Act of 1964 are applicable to claims under ENDA-99. The Civil Rights Act, under certain conditions, permits employers to voluntarily adopt race- or gender-based preferences.

Nevada Law Similar to Other States' Laws and to ENDA-99

Nevada's statute, which took effect on October 1, 1999, is similar in substance to the other states' laws barring employment discrimination on the basis of sexual orientation:

- Sexual orientation is defined as having, or being perceived to have, an orientation for heterosexuality, homosexuality, or bisexuality.

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[8] For more information, see GAO/OGC-98-7R, at 7.

- The law applies to private and state employers with 15 or more employees, employment agencies, and labor organizations. Exempted are out-of-state employees, religious organizations,[9] Indian tribes, and tax-exempt private membership clubs.

- Employees may file a complaint concerning unlawful employment practices with Nevada's Equal Rights Commission and, after an unfavorable decision, may seek court relief. A complainant is entitled to file suit once administrative remedies have been exhausted, and to have a trial *de novo*. (This means in effect that the court will proceed as if there had been no administrative proceeding.)

- Discrimination against anyone for filing a complaint, appearing as a witness, or assisting in an investigation is explicitly prohibited.

- The enforcement agency has authority only to assess back pay and seek the reemployment of the complainant. It cannot assess penalties, or award punitive damages or attorney's fees.

- Preferential treatment as a remedy for correcting imbalance in the percentage of persons employed who belong to a protected group appears to be permitted but is not required.

NO SUBSTANTIAL INCREASE IN COMPLAINTS OF EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION SINCE 1997

In 1997, we reported that, in those states with statutes making it illegal to discriminate in employment on the basis of sexual orientation, relatively few formal complaints or lawsuits alleging such discrimination had been filed. Subsequent data provided by the states show that complaints of employment discrimination based on sexual orientation continue to be filed in the states. While there has been some variation over time, both the number and the percentage of such complaints as a portion of overall complaints of employment discrimination filed may still be characterized as relatively small. We also found no indication of a substantial amount of litigation since 1997; the number of lawsuits brought under these laws remains small.

Few Complaints of Sexual Orientation Discrimination in Employment Filed

Of the 12 state statutes prohibiting discrimination in employment on the basis of sexual orientation, 3 have been in effect for over 10 years. The earliest, in the District

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[9] A religious organization is not exempt if the employee is performing work not connected with the employer's religious activities. This provision is similar to those in ENDA-99 and in some of the other states' laws.

of Columbia, was enacted 23 years ago. Seven laws date from between 1991 and 1995. The most recent is Nevada's, which took effect in October 1999.

Overall, the states' data show that relatively few complaints of discrimination in employment on the basis of sexual orientation have been filed each year, whether measured in absolute numbers or as a percentage of all employment discrimination complaints. The data do not reveal any obvious growth trend in the number of complaints, nor is there evidence of large numbers of complaints filed immediately after a sexual orientation protection statute takes effect.

For example, in California, 159 complaints of sexual orientation discrimination (1.2 percent of all employment discrimination complaints) were filed in 1993, the year California's statute became effective. In 1999, 154 complaints were filed (0.8 percent of all employment discrimination complaints). Nevada has had one complaint filed since its law took effect 6 months ago.

Similarly, 12 complaints of sexual orientation discrimination were filed in Hawaii in 1992, the year after its anti-discrimination statute took effect. This was 2.2 percent of its overall employment discrimination complaints. In 1998, the most recent year for which statistics are available, six complaints were filed, representing 1.1 percent of the state's overall discrimination complaints.

Since 1997, New Jersey has seen a decline in the number of complaints filed based on sexual orientation discrimination in employment. There were 35 such complaints in 1997 as compared to 21 complaints in 1999. However, the total number of employment discrimination complaints filed during the same period also decreased, from 1,580 complaints in 1997 to 1,202 complaints in 1999. As a result, the percentage of complaints based on sexual orientation discrimination remained constant.

Detailed information on numbers and percentages of complaints filed in the states by fiscal year is shown in table 1. The latest years for which complete data were available are shown for each state.

Table 1: Data on States' Experience With Sexual Orientation Employment Discrimination Complaints

Fiscal year	Total employment discrimination complaints	Sexual orientation employment discrimination complaints	Sexual orientation complaints as a percentage of total employment discrimination complaints
California (law effective 1993)			
1993	13,362	159	1.2
1994	15,730	159	1.0
1995	16,206	161	1.0
1996	17,164	173	1.0
1997	18,752	151	0.8
1998	18,892	127	0.7
1999	18,644	154	0.8
Connecticut* (law effective 1991)			
1993	2,035	20	1.0
1994	2,404	32	1.3
1995	2,668	23	0.9
1996	2,262	44	1.9
1997	2,355	41	1.7
1998	2,107	48	2.2
1999	2,100	28	1.3
District of Columbia (law effective 1977)			
1992	214	7	3.3
1993	304	9	3.0
1994	344	3	0.9
1995	337	8	2.4
1996	230	7	3.0
1997	277	6	2.1
1998	295	°	
Hawaii (law effective 1991)			
1992	555	12	2.2
1993	364	6	1.6
1994	367	13	3.5
1995	396	15	3.8
1996	415	11	2.7
1997	483	10	2.0
1998	537	6	1.1

Massachusetts (law effective 1989)[c]			
1990	3,232	43[d]	1.3
1991	3,496	83	2.3
1992	3,225	73	2.2
1993	4,372	135	3.0
1994	4,592	142	3.0
1995	5,144	146	2.8
1996	4,990	155	3.1
1997	5. 173	148	2.9
1998	4,558	169	3.7
1999	4,180	113	2.7
Minnesota (law effective 1993)			
1995	886	34	3.8
1996	980	24	2.4
1997	1,436	34	2.3
1998	1,299	26	2.0
1999	1,268	32	2.5
Nevada (law effective October 1, 1999)[e]			
New Hampshire (law effective 1998)			
1998	220	2	0.9
1999	241	8	3.3
New Jersey (law effective 1992)			
1992	2,712	17	0.6
1993	2,159	20	0.9
1994	1,919	25	1.3
1995	2,127	30	1.4
1996	1,277	20	1.6
1997[f]	1,580	35	2.0
1998	1,495	27	2.0
1999	1,202	21	2.0
Rhode Island (law effective 1995)			
1996	317	2	0.6
1997	449	14	3.1
1998	428	5	1.1
1999	337	5	1.4
Vermont (law effective 1991)[g]			
1993	139	4	2.9
1994	136	5	3.7
1995	152	2	1.3
1996	129	2	1.6
1997	115	6	5.2
1998	200	6	3.0
1999	150	4	2.7
Wisconsin (law effective 1982)			
1996[h]	3,653	43	1.2
1997	4,619	61	1.4
1998	4,073	64	1.6
1999	3,598	65	1.8

[a] For 1998 and 1999, Connecticut gave us exact data on the number of employment sexual orientation cases. At the time of our 1997 correspondence, they did not have those data and estimated that approximately 90 percent of the total sexual orientation cases involved employment.
[b] Data on the number of complaints based on sexual orientation were not available for 1998.
[c] Massachusetts provided data for all discrimination complaints filed and the number of sexual orientation complaints filed. The state does not keep separate records on the number of employment discrimination complaints. The figures are for calendar years.
[d] These are actual numbers of sexual orientation complaints filed between 1990 and 1999.
[e] Only one employment discrimination complaint on the basis of sexual orientation has been filed since the new law went into effect (fiscal year 2000). In fiscal year 1999, the total number of employment discrimination complaints for Nevada was 1,070.
[f] In our previous correspondence, the data for fiscal year 1997 were estimates.
[g] Data provided are for calendar years.
[h] Data were not readily available for these earlier fiscal years.

As table 1 indicates, complaints of employment discrimination based on sexual orientation have remained low as a portion of total discrimination complaints filed each year with the 12 states. The percentage of sexual orientation cases relative to total complaints ranged in 1999 from 0.8 percent to 3.3 percent. The highest percentage in the 1992-1999 period was 5.2 percent in Vermont in 1997. However, that percentage is the result, not of an unusually large number of complaints based on sexual orientation–six were filed, just as in the following year when they were 3 percent of the total—but rather of an unusually small number of total employment discrimination complaints, less than any of the other years.

Litigation under State Laws on Sexual Orientation Rare

In 1997, we found few decisions by courts under the states' laws prohibiting discrimination in employment on the basis of sexual orientation, and that has not changed in the intervening time. A current search of standard sources for the 12 states found few court rulings under the states' laws prohibiting discrimination in employment on the basis of sexual orientation since 1997. Follow-up discussions with state officials responsible for enforcing the prohibition against employment discrimination confirmed that since 1997, a small number of lawsuits have been filed in court under their employment discrimination statutes.

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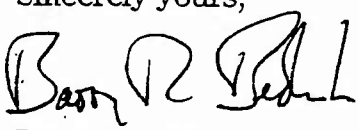
As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies to interested parties. We will make copies available to others upon request.

This report was prepared by Stefanie Weldon, Senior Attorney, and Dayna K. Shah, Assistant General Counsel. Please call me at (202) 512-8203 if you or your staff have any questions.

Sincerely yours,



Barry R. Bedrick
Associate General Counsel

Enclosure

B-284923

ENCLOSURE ENCLOSURE

ENDA-97 and ENDA-99: Selected Provisions Compared

Provision	ENDA-97
Coverage	Law generally would apply to an employer with 15 or more employees (but not to a tax-exempt private membership club), to an employment agency, labor organization, joint labor-management committee, and certain other entities.
Sexual orientation	Homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived. Would also bar discrimination based on the sexual orientation of anyone with whom the employee has or is believed to have associated.
Discrimination prohibited	Proscribes conduct which subjects individuals to a different standard or treatment or otherwise discriminates
Enforcement Procedures	Procedures the same as those followed for employment discrimination complaints under Title VII of the Civil Rights Act of 1964
Enforcement and Remedies	Expressly bars quotas and preferential treatment as remedies Provides for all other remedies available under applicable civil rights laws (which do not include civil penalties)
Affirmative Action	No specific provision
Retaliation and Coercion Prohibited	Prohibits retaliation against individuals because they oppose an act or practice prohibited by the bill, or testified or assisted in an investigation
Disparate Impact	Fact that employment practice has a disparate impact on the basis of sexual orientation does not establish a prima facie violation of the Act.

B-284923

ENCLOSURE

ENCLOSURE

Provision	ENDA-99
Coverage	Coverage similar. Definitions of employer, employment agency, and labor organization now more closely track definitions in Title VII of the Civil Rights Act of 1964.
Sexual orientation	Same
Discrimination prohibited	By taking language directly from existing civil rights laws, it clarified and expanded what is proscribed conduct for employer practices, employment agency practices, labor organizations, and training programs. Such proscribed conduct includes failure or refusal to hire; discrimination respecting compensation, terms, conditions, and privileges of employment; or limiting, segregating, or classifying in a way that deprives or adversely affects opportunities. It also includes failure or refusal to refer for employment; exclusion or expulsion from membership in a labor organization; and exclusion from apprenticeship, training, and on-the-job programs.
Enforcement Procedures	Same
Enforcement and Remedies	Same
Affirmative Action	Affirmative action for a violation of this Act may not be imposed.
Retaliation and Coercion Prohibited	Same
Disparate Impact	Same

(996230)

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Maryland

SPECIAL COMMISSION TO STUDY SEXUAL-ORIENTATION DISCRIMINATION IN MARYLAND

Geoffrey L. Greif, D.S.W., *Chair (chosen by Governor)*

Appointed by Governor: Shannon E. Avery, Esq.; Christopher J. Gallant; William Z. Goldstein; Ann Gordon; Stuart Harvey; Rabbi Mark G. Loeb; Fred Douglas Mason, Jr.; Nancy J. Meyer; Kenneth B. Morgen, Ph.D.; Melinda Sadler; Mark F. Scurti, Esq.; Peter Alfred Shapiro; Carlton R. Smith; Tineke B. Tan.

Appointed by Senate President: Nathaniel Exum; Timothy R. Ferguson.

Appointed by House Speaker: Sheila E. Hixson; Samuel I. Rosenberg.

Ex officio: J. Joseph Curran, Jr., Attorney General; Georges C. Benjamin, M.D., Secretary of Health & Mental Hygiene; Raymond A. Skinner, Secretary of Housing & Community Development; Henry B. Ford, Executive Director, Commission on Human Relations.

Staff: Martha Dickey

c/o Commission on Human Relations
6 St. Paul St., Suite 900
Baltimore, MD 21202 - 1631
(410) 767-8580
e-mail: mchr@mail.mchr.state.md.us

In September 2000, the Special Commission to Study Sexual-Orientation Discrimination in Maryland was formed by the Governor (Executive Order 01.01.2000.19; Executive Order 01.01.2000.22). The Commission developed recommendations to eliminate sexual discrimination in employment, housing, and public accommodations. These recommendations included legislative proposals for introduction during the 2001 session of the General Assembly, as well as proposals for executive action if deemed appropriate.

The Commission submitted its interim report to the Governor on December 15, 2000. Thereafter, the General Assembly enacted the Antidiscrimination Act of 2001 (Chapter 340, Acts of 2001). By June 5, 2001, the Commission had concluded its work.

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University of Maryland Baltimore News
Office of External Affairs

News

November 2 , 2000

School of Social Work Hosts Public Hearings on Sexual Orientation Discrimination

Associate Dean of the School of Social Work **Geoffrey L. Greif**, DSW, has been appointed chairman of Gov. Parris N. Glendening's Special Commission to Study Sexual Orientation Discrimination. The first of a series of statewide public hearings will be **Wednesday, November 8 at 7pm** at the School of Social Work **Auditorium, 525 Redwood St**.

According to Greif, "State law prohibits discrimination in employment, housing and public accommodations based on race, gender, religion, color, national origin, age, marital status, and disability but not on the basis of sexual orientation."

He is the only academic on the commission of 23 people throughout Maryland, including the head of the state housing department. The commission was established by executive order and will make recommendations for executive action and legislation to eliminate sexual orientation discrimination in employment, housing, and public accommodations.

"Discrimination is an issue for many lesbians, gays, and bi-sexuals in Maryland as they go about their lives. The commission will be looking for ways to address these issues," says Greif.

Dean Jesse J. Harris, PhD, of the School of Social Work says that he is honored to have a member of his faculty appointed to the commission. "I was pleased to receive the news of the appointment of Dr. Greif as chairman of the commission. He is an excellent choice. He is a strong leader and has shown that he is sensitive to issues of social justice," says Harris.

The commission will operate from November 1 until July 1, 2001.

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Public Hearings
State of Maryland Commission on Human Relations
Special Commission to Study
Sexual Orientation Discrimination in Maryland
By Executive Order 01.01.2000.19; 01.01.2000.22 as amended
Of Governor Parris N. Glendening

.. "Discrimination in employment housing and public accommodations on the basis of an individual's sexual orientation is prohibited in four local jurisdictions, representing 48.5% of Maryland's population. In all other locations gay, lesbian, and bisexual Marylanders have no recourse under

current State law if an employer fires or refuses to hire them, a restaurant refuses to serve them or a landlord refuses to rent to them because of their sexual orientation." -Executive Order 01.01.2000.19

Without any legal recourse, discrimination remains the harsh reality for many gay, lesbian and bisexuals in Maryland, forcing them to suffer personal hardships that other Marylanders do not.

"Submit your testimony regarding discrimination against gays, lesbians, and bisexuals in Maryland. Testimony can be presented orally at the hearings*, and must be accompanied by a written transcript to be included in the record. Those who are not testifying in person can mail written testimony directly to the Commission Chair. **Written testimony will be accepted until November 28, 2000. If you wish your identity to remain confidential, please do not include any identifying information. Mail to:**

Dr. Geoffrey Greif
University of Maryland
525 West Redwood Street
Baltimore, MD 21201"

* Please note that oral testimony will be limited to between three and five minutes at the hearings, to ensure fairness. However, the written document accompanying your testimony will be considered in its entirety for the purposes of the hearings reports.

More from the State of Maryland >

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EXECUTIVE ORDER

01.01.2000.22

Special Commission to Study Sexual Orientation Discrimination in Maryland

(Amends 01.01.2000.19)

WHEREAS, The Special Commission to Study Sexual Orientation Discrimination in Maryland was established by Executive Order 01.01.2000.19 to focus on discrimination in employment, housing and public accommodations based on an individual's sexual orientation; and

WHEREAS, It is in the interest of the Commission that the membership be expanded to provide for additional participation from interested individuals in the community.

NOW, THEREFORE, I, PARRIS N. GLENDENING, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Established. There is a Special Commission to Study Sexual Orientation Discrimination in Maryland.

B. Membership and Procedures.

(1) The Commission shall consist of [21] 23 members, including:

(a) The Executive Director of the Maryland Commission on Human Relations;

(b) The Secretary of Health and Mental Hygiene, or the Secretary's designee;

(c) The Secretary of the Department of Housing and Community Development, or the Secretary's designee;

(d) The Attorney General, or the Attorney General's designee;

(e) Two members of the Senate appointed by the President of the Senate;

(f) Two members of the House of Delegates appointed by the Speaker of the House; and

(g) Up to [13] 15 individuals, appointed by the Governor, with relevant experience, who may include representatives of advocacy organizations, religious groups, the business community, labor organizations and members of the general public.

(2) Members shall serve at the pleasure of the Governor.

(3) The Governor shall designate the chairperson of the Commission.

(4) The members of the Commission may not receive compensation for their services. Members may be reimbursed for their reasonable expenses incurred in the performance of their duties, in accordance with the State Standard Travel Regulations and as provided in the State Budget.

(5) Staffing for the Commission shall be provided by the Maryland Commission on Human Relations and the Governor's Office.

C. Duties of the Commission.

(1) The Commission shall:

(a) Examine the characteristics, coverage and exclusion of existing laws that prohibit discrimination in employment, housing and public accommodations based on sexual orientation;

(b) Gather information on the number of complaints filed alleging discrimination under laws currently banning discrimination based on sexual orientation, the number of lawsuits brought under these laws, the potential liability on employers and other persons or organizations charged with discrimination and the impact sexual orientation discrimination complaints have on the workload of the agency responsible for enforcing anti-discrimination laws;

(c) Solicit input from the business community, non-profit organizations, religious groups, advocacy groups, government entities and Maryland citizens on the most effective and efficient methods for eliminating discrimination in employment, housing and public accommodations based on sexual orientation;

(d) Develop recommendations to eliminate sexual orientation discrimination in employment, housing and public accommodations in both the public and private sector, including legislative proposals for introduction during the 2001 Session of the Maryland General Assembly as well as any proposals for executive action that the Commission deems appropriate; and

(e) Perform any other tasks that the Commission deems appropriate in examining sexual orientation discrimination in employment, housing and public accommodations.

(2) In completing its charge, the Commission shall hold public meetings to gather comment and allow individuals the opportunity to share their views with the Commission.

D. Reporting Requirements. The Commission shall prepare and submit an interim report with its recommendations to the Governor on or before December 15, 2000, and a final report with any additional recommendations by July 1, 2001.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 19th Day of October, 2000.

_____

Parris N. Glendening
Governor

ATTEST:

_____

John T. Willis
Secretary of State