

Sorry Equality Maryland: HB-235 Does Not Protect the Homeless

By Kat

Published March 20, 2011 | Updated March 31, 2026

https://www.transadvocate.com/sorry-equality-maryland-hb-235-does-not-protect-the-homeless_n_3130.htm

Abstract

[Note from Kat: In 2001, Maryland gays and lesbians blatantly and openly lied to the Legislature and to the public, claiming that trans people were already protected under Maryland law and, as such, inclusion in the gay rights bill was unnecessary. Now, it appears as though their claims that the anti-trans HB 235 will be [...]]

Article

[Note from Kat: In 2001, Maryland gays and lesbians blatantly and openly lied to the Legislature and to the public, claiming that trans people were already protected under Maryland law and, as such, inclusion in the gay rights bill was unnecessary. Now, it appears as though their claims that the anti-trans HB 235 will be of benefit to homeless trans people is even more of a lie. At least some who pushed the 2001 lie might actually have just been guilty of grossly wishful thinking, hoping for Maryland law to apply *Price Waterhouse v. Hopkins* in a way that would actually help trans people obtain and keep employment.

Michiko Ota, however, has discovered that the 2011 claim of Maryland's gays is as empty as the cooling pool at the Fukujima nuclear reactor - and as potentially politically deadly for trans people as the radiation now drifting out of the pile of spent fuel rods. This was first posted at Pam's House Blend. Its is re-posted here by permission.]

Equality Maryland has been misinforming the public that the current language of HB-235 would provide protection for transgender men and women who are homeless under the "housing discrimination" language. As much as I have been hard on Equality Maryland on this, I am thinking that this has been a misunderstanding on their part.

Maryland law is very clear about what constitutes "housing" which is covered under the housing discrimination laws and what is considered "transient lodging" which is covered under the existing public accommodation law.

The first reading of HB-235 covers amending housing discrimination laws to include gender identity but does not amend the laws relating to public accommodation.

According to a post that was made on Equality Maryland's Facebook page in a note titled "FAQ - Censorship, HB 235 and the EQMD Facebook page", the official Equality Maryland made in a comment expressing concerns about homeless shelters:

..the bill that we are working on actually provides protections for shelters, since they are included under housing.

I have seen Equality Maryland make this comment several times during the debate to assure supporters that homeless shelters are supported.

Let's look at the "definitions" within the current housing discrimination law (Title 20, subtitle 7):

§ 20-701:

(d) Dwelling.- "Dwelling" means:

- (1) any building, structure, or portion of a building or structure that is occupied, or designed or intended for occupancy, as a residence by one or more families; and*
- (2) any vacant land that is offered for sale or lease for the construction or location on the land of any building, structure, or portion of a building or structure described in item (1) of this subsection.*

Key phrase here is "as a residence".

Homeless shelters are emergency temporary housing intended for transient occupation not intended for short term or long term "residence".

Let's now look at what the existing housing law does not apply to:

§ 20-704. Scope of subtitle.

(a) In general.- This subtitle does not apply to:

- (1) the sale or rental of a single-family dwelling, if the dwelling is sold or rented without:*
 - (i) the use of the sales or rental facilities or services of any:*
 - 1. real estate broker, agent, or salesperson;*
 - 2. agent of any real estate broker, agent, or salesperson;*
 - 3. person in the business of selling or renting dwellings; or*
 - 4. agent of a person in the business of selling or renting dwellings; or*
 - (ii) the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this subtitle; and*
- (2) with respect to discrimination on the basis of sex, sexual orientation, or marital status:*
 - (i) the rental of rooms in any dwelling, if the owner maintains the dwelling as the owner's principal residence; or*
 - (ii) the rental of any apartment in a dwelling that contains not more than five rental units, if the owner maintains the dwelling as the owner's principal residence.*

Pay attention to section (a). What that says that in order for the housing rules to be enforced, there must be a SALE or RENTAL which is arranged through a real estate agent, broker, salesperson in the business of selling or renting dwellings or the agent of such a person.

Someone requesting and receiving emergency shelter is not purchasing entering into a sales contract, lease or rental agreement in exchange for a "dwelling" as we have already read the definition of.

Now.. let's look at the current Maryland public accommodation law.

First of all, as a matter of full disclosure and for those who just think “public accommodation” is only about restroom access. Here’s what’s covered in Maryland law:

§ 20-301. “Place of public accommodation” defined.

In this subtitle, “place of public accommodation” means:

- (1) an inn, hotel, motel, or other establishment that provides lodging to transient guests;**
- (2) a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food or alcoholic beverages for consumption on or off the premises, including a facility located on the premises of a retail establishment or gasoline station;**
- (3) a motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment;**
- (4) a retail establishment that:**
 - (i) is operated by a public or private entity; and**
 - (ii) offers goods, services, entertainment, recreation, or transportation; and**
- (5) an establishment:**
 - (i) 1. that is physically located within the premises of any other establishment covered by this subtitle; or**
 - 2. within the premises of which any other establishment covered by this subtitle is physically located; and**
 - (ii) that holds itself out as serving patrons of the covered establishment.**

As you can see, public restrooms are not even mentioned in here. It just happens to be that public restrooms are in these places. I want to focus on what is in bold.

Users of a homeless shelter may stay for one night, they may stay for several nights and then they move on. They have no intention of long term residence. Therefore, it can be argued that a homeless shelter can be defined as an “other establishment” that provides “lodging to transient guests”. If you check into a shelter, you are not signing a 30-day month to month rental agreement or a 1 year lease. You are allowed to come in for the night and in some cases, expected to leave the next morning. Sounds like transient housing to me. No different than when I travel and I check into a hotel for 3 days and then I leave.

What this comes down to is that Equality Maryland is misunderstood by the definition of the existing law. If you read the first reading of HB-235 introduced into committee, you will notice there’s nothing in the that places transient housing under the umbrella of “housing discrimination”.

In order for it to be considered “housing discrimination”, the exchange of money or other consideration must take place through a rental or mortgage contract. This does not happen when someone checks into a shelter.

Also remember, the housing discrimination law does not apply to rented rooms if the owner lives in the same establishment or apartment buildings with 5 or fewer units if it also the owner’s primary place of residence. This provision also applies to sex or sexual orientation in the existing law.

Unfortunately, Equality Maryland has missed the mark on this one. I think this is just a substantial oversight on their part. I really think they feel that HB-235 would cover emergency transient homeless shelters.

Based on this, leaving public accommodations out of HB-235 is now more than ever, a fatal flaw as it will defeat one of the primary intentions of the legislation which is to address the large percentage of transgender women and men who are currently living in the streets.

Those inside and outside Maryland must continue to put the pressure on Equality Maryland, the NCTE, HRC and the Maryland House of Delegates and State Senate to insist that public accommodations are placed back into this legislation.

Without protection for the transgender homeless, the exclusion of public accommodations from HB-235 is now a much more serious issue well beyond the bathroom.

Edited by Michi [after original publication at PHB] to add:

Just to clear something on this in case you read it.. I am referring to shelters (homeless, domestic violence, etc.) which are for temporary and transitory lodging to stay warm for a night or get away from a violent partner while determinin...g where to go next. My interpretation of the regulations would protect gender identity where it comes to public housing (e.g. housing projects, remaining in a location for a longer period). Establishment of residence is the key to the differences between what is considered “lodging” for public accommodation (you check in at the Hampton Inn on a trip to Omaha for a week, that does not establish your residency there and you don’t change your address on your drivers license, etc.) but public housing is where you would establish your residence (e.g. change your address) and should be protected under the currently written 235.

Suggested citation

Kat. "Sorry Equality Maryland: HB-235 Does Not Protect the Homeless." TransAdvocate, March 20, 2011.
https://www.transadvocate.com/sorry-equality-maryland-hb-235-does-not-protect-the-homeless_n_3130.htm