

Transgender Equal Rights Coalition Legislative Brief

An Act Relative to Equal Access in Hospitals, Public Transportation, Nursing Homes, Supermarkets, Retail Establishments, and all other places open to the public.

House Bill filed by Rep. Carl Sciortino & Rep. Byron Rushing

Senate Bill filed by Sen. Sonia Chang-Diaz & Sen. Benjamin Downing

Summary and Background

The Equal Access Bill would add “gender identity” to existing Massachusetts civil rights law for public accommodations, which currently prohibit discrimination on the basis of age, race, creed, color, national origin, sexual orientation, sex, and marital status. The Massachusetts Public Accommodation Law (M.G.L. c. 272, s. 92A, 98 and 98A) defines a place of public accommodation as “any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public.”

What are public accommodations?

A “public accommodation” is any establishment, public or private, that is open to the general public. This includes, but is not limited to:

- health care facilities, including medical & dental offices, hospitals, pharmacies, and nursing homes;
- public transit, bus stations, train terminals, and airports, platforms;
- hotels, motels, and campsites;
- restaurants, bars, coffee shops, and nightclubs;
- retail establishments, including stores, shopping centers, and car rental agencies;
- theaters, concert halls, convention centers, sports arenas and stadiums;
- museums, libraries, and galleries;
- parks, zoos, beaches, and other places of recreation;
- public streets, highways, sidewalks, and boardwalks;
- service establishments, including dry-cleaners, banks, gas stations, hair salons, funeral parlors, and employment agencies;
- professional services such as law offices, accountants, and insurance agents;
- offices of state and local government including, court rooms, hearing rooms, polling places, public information counters and displays.

Why is this bill needed?

Transgender people in Massachusetts frequently encounter unequal treatment in public accommodations, including access to health care, public services, and transportation. According to a national transgender discrimination survey released this year, 58% of Massachusetts respondents experienced verbal harassment or mistreatment in public accommodations like hotels, restaurants, buses, airports and government agencies because they are transgender; 22% of transgender adults were denied equal treatment by a government agency or official; and 24% of transgender adults who have interacted with police reported harassment by officers.

What does “gender identity” mean?

As defined in the 2011 law, *An Act Relative to Gender Identity*: “Gender identity” shall mean a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, as part of a person’s core identity; provided however, gender-related identity shall not be asserted for any improper purpose.”

Is MA the first to include “gender identity” in a public accommodations non-discrimination law?

No. Nationwide, 15 states, Washington D.C., and 187 cities and counties (including Boston, Cambridge, Amherst, and Northampton) have passed non-discrimination laws or ordinances protecting people on this basis. States included are: California, Colorado, Connecticut, Hawaii, Illinois, Maine, Minnesota, New Jersey, New Mexico, Rhode Island, Vermont, Iowa, Oregon, Washington, and Nevada.

Furthermore, many employers based/operating in Massachusetts are places of public accommodation, and businesses need clarity and guidance on this issue.

With or without the inclusion of public accommodations protections for transgender people in our laws, employers and other entities have to figure out how to address the needs and concerns of transgender employees, patrons and customers. Ensuring that transgender people have the comprehensive protections of our non-discrimination laws provides simplicity and clarity about their legal obligations, and will prevent them from being subjected to the time and expense of litigation and/or MCAD complaints.