



## MEMORANDUM

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**TO:** Senate Urban Affairs and Housing Committee

**FROM:** Andy Hoover, Legislative Director, ACLU of Pennsylvania

**DATE:** June 14, 2016

**RE: COMMENTS ON SENATE BILL 1307 (BROWNE)**

On Wednesday, the Senate Urban Affairs and Housing Committee is scheduled to consider Senate Bill 1307. Introduced by Senator Browne, this legislation would amend the Pennsylvania Human Relations Act (PHRA) to prohibit discrimination in housing based on sexual orientation and gender identity or expression. Both the primary sponsor and the American Civil Liberties Union of Pennsylvania have been long-time supporters of comprehensive non-discrimination legislation for gay and transgender Pennsylvanians, including Senate Bill 974, which is currently before the Senate State Government Committee.

Unfortunately, by excluding protections in employment and public accommodations, SB 1307 falls short. Thus, the ACLU of Pennsylvania does not support the legislation and encourages the committee to amend it to include employment and public accommodations protections.

Without comprehensive language that includes protection from discrimination in public accommodations for gay and transgender Pennsylvanians, the legislature will nearly duplicate coverage that is currently available under federal law. In recent years, interpretations of Title VII and the Fair Housing Act have evolved to encompass protections from discrimination in employment and housing for LGBT people as sex discrimination. If a gay or transgender person is fired for being who they are in Pennsylvania today, they can file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC). According to the EEOC<sup>1</sup>

EEOC resolved a total of 1,135 LGBT charges in FY 2015, including through voluntary agreements providing approximately \$3.3 million in monetary relief for workers and achieving changes in employer policies so that discrimination would not recur.

This is the result of significant advances in federal interpretations of sex discrimination to include discrimination on the basis of sexual orientation and gender identity. Discrimination based on a person's sexual orientation or gender identity often is directly related to the sex-based stereotypes and preferences of employers.

This understanding of the scope of existing sex discrimination protections in federal law has evolved greatly in just the last year. In July, 2015, the EEOC reached a landmark decision in which it recognized discrimination based on sexual orientation as sex discrimination,<sup>2</sup>

<sup>1</sup> Available at [https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement\\_protections\\_lgbt\\_workers.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm).

<sup>2</sup> *Baldwin v. Foxx*, EEOC Doc. 0120133080, 2015 WL 4397641 (EEOC July 15, 2015).

following a previous, similar decision on gender identity.<sup>3</sup> And in March, the EEOC filed suit in the federal district court for the western district of Pennsylvania on behalf of a gay man from the Commonwealth who alleges that he faced workplace harassment due to his sexual orientation.<sup>4</sup>

Similarly, if a gay or transgender person is denied housing for being who they are in Pennsylvania today, they can file a complaint with their local U.S. Department of Housing and Urban Development (HUD) office or file a lawsuit in federal court under the federal Fair Housing Act, which prohibits discrimination in housing on the basis of race or color, national origin, religion, sex, familial status, or disability. Every legal remedy that is available to those discriminated against based on these characteristics can also be pursued by LGBT people for discrimination on the basis of sex.

Unfortunately, federal law provides no protection from discrimination in public accommodations as the PHRA does.

If the General Assembly's intent is to prohibit and discourage discrimination against the LGBT community, that goal is best achieved through explicit and comprehensive legislation, like Senate Bill 974. A piecemeal approach will send a muddled message about where, exactly, the legislature stands on prohibiting discrimination against gay and transgender Pennsylvanians. A comprehensive bill will treat sexual orientation and gender identity or expression in the same manner as every other protected characteristic in the PHRA, and it will definitively ensure that gay and transgender Pennsylvanians will have a remedy in state law for answering discrimination in the workplace, in renting and buying a home, and in their participation in public life.

Please support amendments to SB 1307 to add employment and public accommodations.

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<sup>3</sup> *Macy v. Holder*, EEOC Doc. 0120120821, 2012 WL 1435995 (EEOC Apr. 20, 2012).

<sup>4</sup> *EEOC v. Scott Medical Health Center, P.C.*, (W.D. Pa., No. 2:16-cv-00225-CB, filed March 1, 2016) More information is available at [https://www.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm](https://www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm).