



SPONSOR: Rep. K. Johnson & Sen. Gay

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 224

AN ACT TO AMEND TITLES 6, 11, 18, 19, AND 25 OF THE DELAWARE CODE RELATING TO DEFINITIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 45, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4502. Definitions.

As used in this chapter:

(7) “Disability” means ~~a physical or mental impairment which substantially limits a person’s major life activities, or being regarded as having such an impairment, but such terms do not include current, illegal use of a controlled substance as defined in § 102 of the Controlled Substance Act (21 U.S.C. § 802) or Chapter 47 of Title 16, Uniform Controlled Substance Act.~~ any condition or characteristic that renders a person a person with a disability as defined in this section.

(10) “Gender identity” means a gender-related identity, appearance, expression or behavior of a person, regardless of the person’s assigned sex at birth. ~~Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person’s core identity; provided, however, that gender identity shall not be asserted for any improper purpose.~~

() “Is regarded as having an impairment” means an individual that establishes that the individual subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

() “Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits 1 or more major life activities.

() “Major life activities” includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activities” also includes the operation of a major bodily function, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological brain, respiratory,

circulatory, endocrine, and reproductive functions. Such impairment does not include impairments that are transitory and minor.

() “Person with a disability” means any person who satisfies any one of the following:

a. Has a physical or mental impairment which substantially limits 1 or more major life activities.

b. Has a record of such impairment.

c. Is regarded as having such an impairment.

(17) “Sexual orientation” ~~exclusively means~~ includes heterosexuality, homosexuality, or bisexuality.

() “Transitory impairment” means an impairment with an actual or expected duration of 6 months or less.

Section 2. Amend Chapter 46, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4602. Definitions.

As used in this chapter:

(10) “Disability” means as defined in § 4502 of this title. ~~, with respect to a person:~~

~~a. A physical or mental impairment which substantially limits 1 or more of such person’s major life activities;~~

~~b. A record of having such an impairment; or~~

~~c. Being regarded as having such an impairment, but such term does not include current, illegal use of a controlled substance as defined in § 102 of the Controlled Substances Act (21 U.S.C. 802) or Title 16 of Chapter 47, Uniform Controlled Substances Act.~~

(16) “Gender identity” means a gender-related identity, appearance, expression or behavior of a person, regardless of the person’s assigned sex at birth. ~~Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person’s core identity; provided, however, that gender identity shall not be asserted for any improper purpose.~~

(24) “Sexual orientation” ~~exclusively means~~ includes heterosexuality, homosexuality, or bisexuality.

Section 3. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1304. Hate crimes; class A misdemeanor, class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony.

(a) Any person who commits, or attempts to commit, any crime as defined by the laws of this State, and who intentionally:

(1) Commits said crime for the purpose of interfering with the victim's free exercise or enjoyment of any right, privilege or immunity protected by the First Amendment to the United States Constitution, or commits said crime because the victim has exercised or enjoyed said rights; or

(2) Selects the victim because of the victim's race, religion, color, disability, sexual orientation, gender identity, national origin or ancestry, shall be guilty of a hate crime. For purposes of this section, the term "sexual orientation" ~~means~~ includes heterosexuality, bisexuality, or homosexuality, and the term "gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

(b) Hate crimes shall be punished as follows:

(1) If the underlying offense is a violation or unclassified misdemeanor, the hate crime shall be a class A misdemeanor;

(2) If the underlying offense is a class A, B, or C misdemeanor, the hate crime shall be a class G felony;

(3) If the underlying offense is a class C, D, E, F, or G felony, the hate crime shall be 1 grade higher than the underlying offense;

(4) If the underlying offense is a class A or B felony, the hate crime shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

Section 4. Amend Chapter 23, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2304. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(22) Unfair discrimination in the value of insurance policies and premiums based on race, color, religion, sexual orientation, gender identity or national origin; penalty. — a. It shall be an unlawful practice for any insurance company licensed to do business in this State to discriminate in any way because of the insured's race, color, religion, sexual orientation, gender identity or national origin, or to make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, to include the writing of any policy or the application therefor, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which discriminates in any

way because of the insured's race, color, religion, sexual orientation, gender identity or national origin or to classify or refer to any individual on the basis of race, color, religion, sexual orientation, gender identity or national origin.

b. "Sexual orientation" ~~exclusively means~~ includes heterosexuality, homosexuality, or bisexuality.

c. "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. ~~Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.~~

Section 5. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 710. Definitions.

For the purposes of this subchapter:

(10) "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. ~~Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.~~

(26) "Sexual orientation" ~~exclusively means~~ includes heterosexuality, homosexuality, or bisexuality.

§ 722. Definitions.

As used in this subchapter, unless the context otherwise requires:

(2) "Disability" means any condition or characteristic that renders a person a person with a disability as defined in ~~paragraph (4)~~ of this section.

(4) "Person with a disability" means any person who satisfies any one of the following:

a. Has a physical or mental impairment which substantially limits 1 or more major life ~~activities~~; activities.

b. Has a record of such an ~~impairment~~; or impairment.

c. Is regarded as having such an impairment. As used in this paragraph ~~the term~~:

1. "Major life activities" ~~means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.~~ includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Major life activities" also includes the operation of a major bodily function, including functions of the immune system, normal cell

growth, digestive, bowel, bladder, neurological brain, respiratory, circulatory, endocrine, and reproductive functions.

2. "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits 1 or more major life activities.

3. "Is regarded as having an impairment" means: an individual that establishes that the individual subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. Such impairment does not include impairments that are transitory and minor.

~~A. Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation;~~

~~B. Has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or~~

~~C. Does not have a physical or mental impairment but is treated as having such an impairment.~~

This term is intended to be interpreted in conformity with the federal Rehabilitation Act of 1973 [29 U.S.C. § 701 et seq.], as amended, and, consistent with § 728 of this title, shall be further defined by the Secretary through regulation to clarify and delimit its scope following adequate public notice and comment.

Enforcement of this subchapter by persons qualifying for protection solely under this paragraph (4)c. of this section shall be deferred until the issuance of the Secretary's final regulation.

4. "Substantially limits" means that the impairment so affects a person as to create a likelihood that such person will experience difficulty in securing, retaining or advancing in employment because of a disability.

5. "Person with a disability" shall not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

6. "Transitory impairment" means an impairment with an actual or expected duration of 6 months or less.

Section 6. Amend Chapter 51, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5141. Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(11) “Gender identity” means a gender-related identity, appearance, expression or behavior of a person, regardless of the person’s assigned sex at birth. ~~Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person’s core identity; provided, however, that gender identity shall not be asserted for any improper purpose.~~

(29) “Sexual orientation” ~~exclusively means~~ includes heterosexuality, homosexuality, or bisexuality.

SYNOPSIS

This bill makes the definitions of sexual orientation, gender identity, and disability consistent throughout the Delaware Code and with federal law.