

**Illinois Human Rights Act Protections Regarding Sexual Orientation  
Added by SB 3186 (Pub. Act 93-1078, Jan. 21, 2005)**

**FAQ  
(Frequently Asked Questions)**

**By  
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**1. What is the effective date of the new protections?**

The Illinois Compiled Statutes version of the Illinois Human Rights Act (the “Act”) provides that they are effective January 1, 2006.

**2. Do the protections cover the transgendered?**

As amended, the Act provides that it is the public policy of Illinois to extend freedom from discrimination due to “sexual orientation” (along with existing specified classes) “in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.”

“Sexual orientation” is defined in the Act as “...actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth.” The phrase “gender-related identity, whether or not traditionally associated with the person’s designated sex at birth” was specifically intended to cover the transgendered.

Note that the amendment protects someone who is *perceived* a certain way.

**3. What rights are provided?**

The Act previously provided protection against discrimination with regard to employment, real estate transactions, access to financial credit, and the availability of public accommodations. The amendments merely extends this coverage to persons with regard to protection from discrimination due to sexual orientation.

**4. Do the new protections provide greater rights or special protections to the LGBT community?**

No. The Act specifically provides that “[n]othing in this Act shall be construed as requiring any employer, employment agency, or labor organization to give preferential treatment or special rights based on sexual orientation or to implement affirmative action policies or programs based on sexual orientation.”

In other words, the new protections simply extend the existing protections afforded certain protected classes of persons to persons with respect to sexual orientation.

**5. Are there any special exemptions from these new protections?**

Yes. Although the Act *generally* extends the same protections to persons with regard to discrimination due to sexual orientation as it does for other protected classes, there are exceptions.

As mentioned earlier, the protections of the Act cover four main categories: 1) employment; 2) housing; 3) access to financial credit; and 4) public accommodation. So, if something does not fall within one of those four categories, the Act does not cover it. Also, the Act provides certain specific exemptions under the four categories. *There is no specific carve-out from any of these exemptions with regard to sexual orientation.* In fact, just the opposite is true. As discussed below, there is an additional exemption relating to rental housing regarding sexual orientation.

The housing exemptions under the Act before the amendment cover (1) certain private sales of single family homes, (2) rental of housing in an apartment building for five or fewer families where the lessor or a family member resides in one of the units, (3) rental of private rooms in a private home where a family member resides or intends to return within 12 months, (4) reasonable governmental restrictions on maximum number of occupants, (5) sale, rental or occupancy of a dwelling by religious organization owned or operated for other than commercial purpose to, or a preference to, persons of the same religion, unless membership in such religion is restricted on account of race, color, or national origin, (6) restricting rental of rooms in a housing accommodation to persons of one sex, (7) persons convicted of drug-related offenses, and (8) persons engaged in real estate appraisals from taking into account factors other than those based on unlawful discrimination or familial status in furnishing appraisals. Special rules apply under these exemptions regarding older persons.

In addition, the law's amendment added a new exemption from the Act's protections with regard to the decision to rent based on a person's sexual orientation for a unit in an owner-occupied residential building with five or fewer units (including the unit in which the owner resides) (the "5 Unit Owner Occupied Exemption"). This new exemption *explicitly permits* a person eligible to make decisions regarding whether to rent to someone based on that person's sexual orientation.

As a result, the existing exemptions under the Act apply to the protections added for sexual orientation and additionally, a special exemption--the 5 Unit Owner Occupied Exemption also applies.

#### **6. Do the new protections interfere with religious beliefs?**

The new protections do not include any explicit interference. The protections with respect to prohibition against discrimination due to sexual orientation do not extend beyond the four protected categories—employment, housing, fair credit and public accommodation, as narrowed by their exemptions. The amendments included no provision that would supersede a religious institution's First Amendment right to hire and fire according to the tenets of its religion.

#### **7. Do the new protections address the "bathroom" issue?**

The Act specifically protects the availability of "public accommodations." Section 5-102 of the Act provides that it is a civil rights violation for any person on the basis of unlawful discrimination to "[d]eny or refuse to another the full and equal enjoyment of the facilities and services of any public place of accommodation." Section 5-101(A)(2) specifically includes bathrooms and restrooms in a list of examples of places of public accommodation.

Of course, restrooms are typically gender specific for men and women. Section 5-103(b) of the Act permits this sort of sex discrimination. The City of Chicago anti-discrimination ordinance included an explicit provision addressing the public accommodation issue for transgendered persons (Chap. 2-160-070(e)). It provides that a person is entitled to gender privileges based on the gender marker on the driver's license, state identification card or passport. Similar language is included in the Cook County provision (Ordinance 93-O-13, Section V(b)(d)).

It is presumed that a similar standard applies under the Act. This is because the definition of "sexual orientation," which is a protected class under the Act as amended, includes "gender-related identity, whether or not traditionally associated with the person's designated sex at birth."

The Chicago and Cook County provisions merely clarify the standard. This presumption is consistent with specific discussion of the law's amendment of the Act to provide such protection for the transgendered in legislative committee sessions, prior to its passage. Accordingly, the Act should protect a transgendered person from discrimination regarding the use of public restrooms provided the use is consistent with the gender marker on their driver's license, state identification card or passport.

**8. Where can I find a copy of the new protections?**

Public Act 93-1078 (1/21/2005) has been incorporated into the Illinois Human Rights Act set forth in Chapter 775 of Illinois' Compiled Statutes. It can be found on the State of Illinois website under "laws." It can also be found in many public and private libraries.

Here is a link: <http://www.ilga.gov/legislation/ilcs/ilcs2.asp?ChapterID=64>

**9. How are the protections of the Act enforced?**

In general, the protections are principally enforced by the Illinois Human Rights Commission. There is an existing procedure for bringing complaints before the Commission. Available remedies are specified in the Act. Some of the potentially available remedies include the issuance of a cease and desist order; actual damages (as determined by Commission) for injury or loss suffered; hiring, reinstatement, promotion, backpay and fringe benefits previously denied; restoration of membership or restoration to programs previously denied; admission to public accommodations; coverage of attorneys fees and costs; and otherwise making the complainant whole. Here is a link: <http://www.state.il.us/dhr/>