

# COMPLIANCE WITH SAME SEX MARRIAGE AND STATE SEXUAL ORIENTATION DISCRIMINATION LAWS CREATES ECONOMIC OPPORTUNITY FOR THE HOSPITALITY INDUSTRY

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*A series of discrimination lawsuits brought against hospitality industry businesses under state public accommodation discrimination laws highlight the ways in which some state's laws afford protection to a broader range of protected groups than those covered by federal law. Given the relatively recent advent of legalized same-sex marriage and civil unions under some state laws, hospitality industry businesses need to ensure they are compliant with the relevant anti-discrimination laws in their respective states. In addition, research demonstrates a positive economic impact on wedding related spending in states permitting same-sex marriage and civil unions with a significant portion of that spending going to hospitality industry businesses for wedding related tourism.*

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Beginning in 2004, Massachusetts became the first state to recognize same-sex marriage (Same-Sex Marriage, Civil Unions and Domestic Partnerships, 2011). While some see the legal recognition of same-sex relationships in any form as a hot button issue of the culture wars, others see the opportunity for economic growth in the demand for hospitality related services generated

from resulting wedding and civil union ceremonies. Given its controversial nature, it is not surprising that it didn't take too long for lawsuits to begin to be filed in states that prohibit discrimination on the basis of sexual orientation. As the following examples reveal, providing same-sex couples services for marriage and civil union ceremonies is but one of the contexts in which sexual orientation discrimination has been alleged in recently filed cases against a hospitality industry business.

By their own accounts, the stories represent little remarkable. A couple from New York wants to hold their wedding reception at a Vermont inn. Another couple, this time from California, plans a trip to Hawaii to visit a friend with a newborn baby. Then there is the group of friends in Queens who go out together for a Saturday afternoon brunch. On the face of it, each story is nothing more or less than seemingly ordinary people doing seemingly ordinary things. Nevertheless, each of these stories led to an unusual result. Between July 19 and December 19 of 2011, each story ended in a lawsuit with the same underlying allegation: illegal discrimination on the basis of sexual orientation by a place of public accommodation. The couple wanting a Vermont inn wedding pursued their case against the Wildflower Inn under Vermont's public accommodation discrimination law. The California couple sued the Aloha Bed & Breakfast under Hawaii's public accommodation discrimination law. The complaining party from the Saturday afternoon brunch group of friends used New York's public accommodation discrimination law in her suit against the Sizzler Restaurant. In the Vermont lawsuit, the couple is represented by the American Civil Liberties Union. Both the Hawaii and New York cases were brought with the assistance of Lambda Legal Defense and Education Fund, Inc. (a civil rights advocacy group that focuses on issues such as gay rights).

While only one of these cases involved a couple seeking accommodation for a wedding, the fact that a number of states now permit same-sex marriage or civil unions between same-sex couples increases the likelihood that, at least in those states, more same-sex couples will look to book facilities for weddings, civil unions, and other celebrations. Furthermore, there are a number of states that do not permit same-sex marriage or civil unions but nevertheless prohibit places of public accommodation from discriminating on the basis of sexual orientation. At the outset, understanding the broader context of what constitutes discrimination in places of public accommodation requires an examination of the differences between federal public accommodation discrimination law and that of the individual states as it relates to sexual orientation discrimination.

### **Federal Public Accommodation Discrimination Law**

Federal law prohibiting discrimination in places of public accommodation is found in Title II of the Civil Rights Act of 1964. It prohibits discrimination or segregation on the basis of “race, color, religion, or national origin” (Title II of the Civil Rights Act of 1964, 42 U.S.C. §2000a(a)). Subsequently, the Americans with Disabilities Act expanded the list of protected groups by making it illegal for places of public accommodation to discriminate against individuals with disabilities as well (Americans with Disabilities Act, 2012). Under the power of Congress to regulate interstate commerce, a broad range of private businesses are required to adhere to its mandate. As spelled out by the statute:

(b) Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its

operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment (Title II of the Civil Rights Act of 1964, 42 U.S.C. §2000a(b)).

Despite its breadth of coverage, federal law carves out two exceptions for certain establishments that are permitted to discriminate in their choice of clientele. One exception is found under subsection (b)(1) in the just quoted statute and is popularly referred to as the “Mrs. Murphy’s Boarding House” exception or the “B&B” exception. It exempts from the statute’s coverage lodging establishments that rent five or fewer rooms and are also owner occupied. The second exception applies to private clubs or other private establishments that are “not in fact open to the public” (Title II of the Civil Rights Act of 1964, 42 U.S.C. §2000a(e)). Federal law does not detail what qualifies as such a private club or establishment. However, over the years the courts have developed criteria which are applied on a case-by-case basis. Generally, courts use the following factors in evaluating a private club to determine whether it qualifies for this exemption:

1. Extent to which membership is genuinely selective.
2. Extent to which members control club operations.
3. Club’s history.
4. Extent to which facilities are used by nonmembers.
5. Club’s purpose.
6. Extent to which club advertises for members.

7. Whether the club is organized for profit or not for profit.
8. Extent to which formalities (such as implementing and following by-laws, use of membership cards, etc.) are observed (Ewan, 2000).

As noted earlier, federal law prohibiting discrimination in places of public accommodation applies only to discrimination or segregation based on “race, color, religion or national origin” (Title II of the Civil Rights Act of 1964, 42 U.S.C. §2000a(a)). It does not prohibit discrimination on the basis of sexual orientation. Nevertheless, states are permitted to enact their own laws that apply only to businesses and other establishments that operate within their states. These state laws are not required to limit their protection to only those same groups covered by federal law. Furthermore, they are not required to provide the same exceptions as federal law.

### **Trilogy of State Lawsuits**

In this trilogy of lawsuits brought under state laws, *Baker and Linsley vs. Wildflower Inn* was the first to be filed on July 19, 2011. According to the complaint, Baker and Linsley are residents of New York who wanted to hold their wedding reception at a site near the Vermont religious retreat at which they planned to hold their wedding ceremony (*Baker and Linsley vs. Wildflower Inn a/k/a DOR Associates LLP*, Amended Complaint, Docket No. 187-7-11 CACV). Linsley’s mother helped with the plans by contacting the Vermont Convention Bureau (VCB) looking for a suitable location. A VCB representative responded that he would solicit VCB members willing to host the reception and provide the other requested services. As the complaint details, Linsley’s mother received the following response from the Meeting and Events Director at the Wildflower Inn.

I received this referral from the Vermont Convention Bureau and wanted to follow up on your request for a reception location. I am so happy you are looking at Vermont as a location for your wedding and reception, there are few places left in America with the unspoiled beauty and tranquility as Vermont. What better way to start a life together than in a place such as that! The Wildflower Inn would be the perfect location to showcase a “rustic” and “Classic Country” occasion. We have a 500 acre estate available to your guests with walking, biking and hiking trails right out the door of your room. We also have a heated, in-ground pool, batting cage, tennis court and jacuzzi for guests to enjoy while getting ready for the party. You could not offer a better “destination wedding” location for your guests (*Baker and Linsley vs. Wildflower Inn a/k/a DOR Associates LLP*, Amended Complaint, Docket No. 187-7-11 CACV).

As the complaint goes on to detail, several days later, Linsley’s mother has a phone conversation with the Meetings and Events Director in which she clarified to the Director that the wedding involved “two brides” and not a bride and groom. According to the allegations, this is the point at which the problem arose. The complaint maintains that within five minutes of the conversation, Linsley’s mother received an e-mail message from the Director with the subject heading: “I have bad news” (*Baker and Linsley vs. Wildflower Inn a/k/a DOR Associates LLP*, Amended Complaint, Docket No. 187-7-11 CACV). The body of the message went on to say: “After our conversation, I checked in with my Innkeepers and unfortunately due to their personal feelings, they do not host gay receptions at our facility. I am so sorry and want to stress it does not reflect my personal or professional views.”

In the response to the lawsuit, the owners of the Wildflower Inn deny having a policy of discriminating against same sex couples and claim the Meeting and Events Director was not instructed to reject such business (*Baker and Linsley vs. Wildflower Inn a/k/a DOR Associates LLP*, Answer, Docket No. 187-7-11 CACV). Interestingly, they do acknowledge the Director was instructed to inform the owners of such requests and they “would then speak with the couple.” In the balance of their response, the owners of the Wildflower Inn go on to ask that the Vermont public accommodation statute prohibiting discrimination on the basis of sexual

orientation be declared unconstitutional under both the Vermont and U.S. Constitutions (*Baker and Linsley vs. Wildflower Inn a/k/a DOR Associates LLP*, Answer, Docket No. 187-7-11 CACV). They argue that being forced to host such “expressive events” violates their “free-exercise rights under Article 3 of the Vermont Constitution, and the Free Exercise Clause of the First Amendment of the United States Constitution” (*Baker and Linsley vs. Wildflower Inn a/k/a DOR Associates LLP*, Answer, Docket No. 187-7-11 CACV). In other words, they claim the law is unconstitutional in that it requires them to do business with customers whose sexual orientation they object to by virtue of religious or other personal beliefs.

In the end, the owners of the Wildflower Inn decided to not continue to fight the case by proceeding to trial. On August 2, 2012, a settlement was reached in which the inn’s owners agreed to:

- pay a \$10,000.00 penalty to the Vermont Human Rights Commission;
- establish a \$20,000.00 charitable trust with beneficiaries designated by Baker and Linsley;
- comply with Vermont’s Public Accommodation Act in the future; and
- no longer host weddings or wedding receptions (*Baker and Linsley vs. Wildflower Inn a/k/a DOR Associates LLP*, Settlement, Docket No. 187-7-11 CACV).

*Cervelli and Bufford vs. Aloha Bed & Breakfast* was filed in the First Circuit Court of Hawaii on December 19, 2011 (*Cervelli and Bufford vs. Aloha Bed & Breakfast*, Complaint, Civil Action No. 11-1-3103-12 ECN). Like *Baker and Linsley vs. Wildflower Inn*, it involves allegations against a lodging establishment. According to the complaint, Cervelli and Bufford planned to go to Honolulu to visit a friend with a newborn baby. At the friend’s recommendation, Cervelli contacted the Aloha Bed & Breakfast to inquire about the availability of a room for their stay. Phyllis Young, the proprietor of the Aloha Bed & Breakfast responded by e-mail indicating some of the dates they wanted were available. Once the dates of the visit with their friend were finalized, Cervelli contacted Young by phone to find out whether she still

had a room. Young confirmed the room was available and then asked Cervelli if she would have someone else staying with her. Cervelli responded that a second person would be with her and that “her name is Taeko Bufford.” At this point, the complaint alleges that Young asked Cervelli: “Are you lesbians?” When Cervelli acknowledged that they are lesbians, Young refused to rent them the room saying that she “would be very uncomfortable having lesbians in her house.” The phone call ended and an upset Cervelli called Bufford to let her know what had happened. Bufford then called Young again asking that they be allowed to rent the room. As described in the Complaint:

[Young] again refused access to [her] accommodation. [Bufford] asked, “Is it because we are lesbians that you will not rent to us?” to which [Young] replied, “Yes.” [Young] stated that she felt uncomfortable renting a room to homosexuals, citing her personal religious views. [Bufford] told [Young] that she was discriminating in violation of the law, but [Young] insisted that she could exclude whomever she wanted to exclude from [her] accommodation (*Cervelli and Bufford vs. Aloha Bed & Breakfast*, Complaint, Civil Action No. 11-1-3103-12 ECN).

On February 8, 2012, the court ruled against the Aloha Bed & Breakfast on its Motion to Dismiss (*Cervelli and Bufford vs. Aloha Bed & Breakfast First Circuit Court of Hawaii*, Order: Defendant’s Motion to Dismiss, Civil Action No. 11-1-3103-12 ECN). As a result, further proceedings are pending. As previously noted, Cervelli and Bufford are represented by Lambda Legal Defense and Education Fund, Inc., a civil rights advocacy group; Young and the Aloha Bed & Breakfast are represented by an attorney who is reportedly “representing her on behalf of the Alliance Defense Fund, an organization of attorneys representing people whose religious freedom is infringed” (Kelleher, *MiddletownJournal.com*, 2011).

The third case in this trilogy, *Friedlander vs. Waroge Met, Ltd. d/b/a Sizzler Restaurant 0489 et al*, was brought under New York law against the owner of a Sizzler Restaurant franchise in Queens, New York. According to the Complaint, Friedlander joined other friends for a



Saturday brunch at the Sizzler in Forest Hills, Queens (*Friedlander vs. Waroge Met, Ltd. d/b/a Sizzler Restaurant 0489 et al*, Complaint, Index No. 017910/2011). The Complaint alleges that Friedlander and her friends paid for the buffet and began to serve themselves from the buffet. Friedlander started to return to her table with her food when the manager “entered the dining area and aggressively approached [her]” accusing her “of not paying for the breakfast buffet.” He then, allegedly “pushed his body against [her] and leaned his head close to hers – getting ‘into her face.’” The Complaint goes on to assert that he then “used both hands and violently shoved [her] in the chest, causing her to fall backward, and kicked her in the legs. While attacking [her], he yelled at her to get out of the Sizzler and called her a ‘f---ing dyke.’” Subsequently, other patrons allegedly joined in the homophobic name-calling. Given the nature of the alleged facts in this case, the complete lawsuit involves multiple counts including assault and battery in addition to those related to alleged violations of New York’s public accommodation discrimination law that prohibits discrimination on basis such as sexual orientation (*Friedlander vs. Waroge Met, Ltd. d/b/a Sizzler Restaurant 0489 et al*, Complaint, Index No. 017910/2011).

Like the Vermont case, Friedlander’s case against the Sizzler Restaurant ended with a monetary payment. In this case, the New York court ruled that Friedlander had been discriminated against in a place of public accommodation based on sexual orientation; and further ordered the restaurant’s owners to pay her \$25,000.00 in compensation for that violation (Lambda Legal, 2012).

### **Newsworthy Cases**

Each of these cases generated media attention in mainstream press. Despite the long worn adage that “there is no such thing as bad publicity,” their impact on the individual

businesses, or in the case of Sizzler Restaurants on the franchise name, remains to be seen. The following are representative examples for each. The Vermont case appeared in *The New York Times* under the headline “Couple Sues a Vermont Inn for Rejecting Gay Wedding” (Zezima, 2011). The case against the Sizzler franchise was reported in both the Times Ledger as “Sizzler burned in lawsuit” (Anuta, 2011) and the New York Daily News as “Queens woman, gay rights group sues Sizzler over alleged homophobic bias attack by manager” (Sandoval and Zambito, 2011). It also appeared in Yelp.com (Sizzler, 2011). The Hawaii B&B case was, in fact, an Associated Press piece that was published by a number of domestic news outlets including MSNBC (Kelleher, Gay couple sue Hawaii B&B, claim discrimination, 2011) and Yahoo! News (Kelleher, Couple sue Hawaii B&B, claim discrimination, 2011) as well as *The Guardian* in the United Kingdom (Kelleher, Gay couple sue Hawaiian bed and breakfast for discrimination, 2011).

### **Same-Sex Marriage and Civil Unions**

As of September 2012, same-sex marriage is allowed in eight states plus the District of Columbia. Those eight states are: Connecticut, Iowa, Maryland, Massachusetts, New Hampshire, New York, Vermont and Washington (Same-Sex Marriage, Civil Unions and Domestic Partnerships, 2011; Washington State Gov. approves same-sex marriage, 2012; Breitenbach, 2012). In addition, the following states allow civil unions that afford same-sex couples rights that are similar to those that accompany marriage: Delaware, Hawaii, Illinois, New Jersey and Rhode Island (Same-Sex Marriage, Civil Unions and Domestic Partnerships, 2011). Both same-sex marriage and civil unions remain controversial and their status remains in flux with states such as New Hampshire considering repeal, the governor of New Jersey

advocating for a popular referendum, and the U.S. Supreme Court preparing to likely rule on a California test case (Smith, 2012).

**State Public Accommodation Laws That Include Protection on the Basis of Sexual Orientation**

It should come as no surprise that the District of Columbia and all of the states that permit same-sex marriage or civil unions include sexual orientation in their lists of protected groups under their respective public accommodation discrimination laws. In addition, the following nine states prohibit places of public accommodation from discriminating on the basis of sexual orientation: California, Colorado, Maine, Maryland, Minnesota, Nevada, New Mexico, Oregon, and Wisconsin. Table I summarizes the protections under these laws by identifying the list of protected groups and exemptions in each jurisdiction.

**Table I**  
*Summary of State Public Accommodation Laws That Include Sexual Orientation as a Protected Group*

State	Protected Groups	Exemptions	Statute
California	sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation	truly private clubs (per court interpretation—See Warfield vs. Peninsula Golf & Country Club 896 P2d 776 (1995))	Cal. Civ. Code § 51(b)
Colorado	race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry	churches, synagogues, mosques, or other places principally used for religious purposes	C.R.S. 24-34-601
Connecticut	race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income, mental retardation,	rental of sleeping accommodation provided by associations and organizations which rent all	Conn. Gen. Stat. §§ 46a-64 & 81d

	mental disability or physical disability, including, but not limited to, blindness or deafness, sexual orientation	such sleeping accommodation on a temporary or permanent basis for the exclusive use of persons of the same sex; separate bathrooms or locker rooms based on sex; provisions with respect to the prohibition of discrimination on the basis of age shall not apply to minors or to special discount or other public or private programs to assist persons sixty years of age and older	
Delaware	race, age, marital status, creed, color, sex, handicap, sexual orientation, national orientation	tourist homes with less than 10 rental units	Del. C. Title 6 § 4503
District of Columbia	every person	distinctly private club, institution or place of accommodation; public buildings or structures occupied by a single tenant	D.C. Code § 2-1402.01
Hawaii	race, color, religion, age, sex, gender identity, sexual orientation, marital status, national origin, ancestry, disability	separate facilities or schedules for female and male patrons when based on bona fide requirements to protect personal rights or privacy	H.R.S. §§ 368-1, 498-1 et seq
Illinois	race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation	lodging establishment located within a building that contains not more than 5 units for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor	Ch. 775 ILCS 5/1-101, 102, 103
Iowa	race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability	bona fide private club or distinctly private establishment	Iowa Code § 216.2 et seq
Maine	race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or	lodging establishments that serve breakfast and contain no more than 5 rooms	M.R.S. Title 5 §§ 4591-

	national	available to be let to lodgers and in which the owner resides on the premises;	4592
Maryland	race, sex, age, color, creed, national origin, marital status, sexual orientation, or disability	private clubs; facilities that are uniquely private and personal designed to accommodate only a particular sex; lodging establishments renting five or fewer rooms and is owner occupied as the proprietor's residence	Md. Code Ann. § 20-302 et seq
Massachusetts	religious sect, creed, class, race, color, denomination, sex, sexual orientation, nationality, deafness or blindness, any physical or mental disability	bona fide fitness facility for exclusive use of persons of same sex; establishments that rent rooms exclusively to persons of the same sex	MGL Ch. 272, § 92A
Minnesota	race, color, creed, religion, disability, national origin, marital status, sexual orientation, or sex	facilities as restrooms, locker rooms, and other similar places; employees or volunteers of a nonpublic service organization whose primary function is providing occasional services to minors, such as youth sports organizations, scouting organizations, boys' or girls' clubs, programs providing friends, counselors, or role models for minors, youth theater, dance, music or artistic organizations, agricultural organizations for minors, and other youth organizations, with respect to qualifications based on sexual orientation; restricting membership on an athletic team or in a program or event to participants of one sex if the restriction is necessary to preserve the unique character of the team, program, or event and it	Minn. Stat. § 363A.11 et seq

		would not substantially reduce comparable athletic opportunities for the other sex.	
Nevada	race, religious creed, color, age, sex, disability, sexual orientation, national origin or ancestry	lodging establishments located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of the establishment as the proprietor's residence	Nev. Rev. Stat. Ann. § 233.010, § 651.050 et seq
New Hampshire	age, sex, race, creed, color, marital status, physical or mental disability, national orientation, sexual orientation	distinctly private institutions or clubs	N.H. RSA 354-A:16.
New Jersey	race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity	bona fide club or place of accommodation that is distinctly private; educational institution operated or maintained by a bona fide religious or sectarian institution	N.J. Stat. § 10:5-4 et seq
New Mexico	race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap	bona fide private club or other place or establishment that is by its nature and use distinctly private	N.M. Stat. Ann. § 28-1-2, § 28-1-7
New York	age, race, creed, color, national origin, sexual orientation, military status, sex, marital status, disability	public halls, structures and buildings occupied by a single tenant; institutions, clubs and accommodation that are distinctly private; religious corporations	NY CLS Exec §§291-292
Oregon	race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older	bona fide club or place of accommodation which is in its nature distinctly private	ORS §§ 659A.400, 659A.403
Rhode Island	race or color, religion, country of ancestral origin, disability, age, sex, sexual orientation, gender identity or expression	distinctly private places of accommodation, resort or amusement; public halls and buildings with a single tenant or no more than two tenants one of which is the owner; religious	R.I. Gen. Laws §§ 11-24-2, 11-24-3

		organizations in relation to sexual orientation	
Vermont	race, creed, color, national origin, marital status, sex, sexual orientation, gender identity	owners or operators of inns, hotels, motels etc. with five or fewer rooms may restrict who they rent to based on sex or marital status; religious organizations and nonprofit organizations affiliated with religious organizations are not required to provide services or accommodation related to the solemnization or celebration of a marriage	V.S.A. Title 9 § 4502
Washington	race, creed, color, national origin, sexual orientation, sex, honorably discharged veteran or military status, status as a mother breastfeeding her child, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability	public structures or buildings occupied by a single tenant; bona fide club or place of accommodation which by its nature is distinctly private	Rev. Code Wash. (ARCW) § 49.60.215
Wisconsin	sex, race, color, creed, disability, sexual orientation, national origin or ancestry	bona fide private, nonprofit organizations or institutions that satisfy specified criteria; fitness center whose services or facilities are intended for the exclusive use of persons of the same sex	Wis. Stat. § 106.52

With the exception of the District of Columbia that affords protection for “every person,” all of the states instead specify protected groups by category. While they may not use the identical wording, most include the same groups covered by federal law under the previously discussed Title II of the Civil Rights Act of 1964 and Americans With Disabilities Act: race, color, religion, national origin, individuals with disabilities. Every state in this group explicitly

includes “sex” as well as “sexual orientation” as protected groups. A number of the states also include categories related to ancestry, marital status, and military status.

Similarly, tracking the structure of the federal law that exempts “private clubs” and certain small lodging establishments, with the exception of California, every jurisdiction in this group provides limited statutory exemptions. Many of the statutes include some kind of exemption for religious groups and their affiliated institutions as well as distinctly private clubs. Only six states carve out an exemption for small lodging establishments. The states that exempt some such establishments are: Delaware, Illinois, Maine, Maryland, Nevada, and Vermont. While only a proposed bill at this point in time, New Hampshire is considering adding an exemption to its public accommodation discrimination law to permit “providers of wedding-related goods or services to withhold those services if they believe doing business with gay couples would violate their conscience or religious faith” (Brnger, 2012).

Because of the differences between the federal and state laws, it is important to understand how they apply to businesses affected by public accommodation discrimination law. Generally, the framework is this. The federal law applies to all places of public accommodation regardless of where the business is located. The rules are the same throughout the country. The only exceptions to the federal requirements are those discussed earlier regarding private clubs and the “Mrs. Murphy’s Boarding House” exception. In addition to following federal law, places of public accommodation must comply with the requirements of their state laws as well. So, while certain practices may be allowed under federal law, if they are prohibited by the law of a particular state, businesses within that state must comply with those additional requirements as well.



## State Public Accommodation Laws that Do Not Include Protection on the Basis of Sexual Orientation

In addition to the states that include sexual orientation as a protected group under their respective state public accommodation discrimination laws, every other state also has a state public accommodation discrimination law. That is, every state has its own requirements in addition to those found under federal law. While a detailed examination of the remaining states is outside the scope of this work, the following table identifies the laws of the remaining states along with the groups protected in each case. The table does not include their respective exemptions or exceptions.

**Table II**  
**Listing of Protected Groups Under Public Accommodation Laws in States that Do Not Include Protection on the Basis of Sexual Orientation**

State	Protected Groups	Statute
Alabama	blind, the visually handicapped and the otherwise physically disabled	Ala. § 21-7-3
Alaska	sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, or national origin	Alaska Stat. § 18.80.210
Arizona	race, color, religion, sex, national origin or ancestry	A.R.S. § 41-1442
Arkansas	visually handicapped, hearing impaired, and other physically handicapped persons	A.C. A. § 20-14-303
Florida	race, color, national origin, sex, handicap, familial status, or religion	Fla. Stat. § 760.08
Georgia	blind persons, persons with visual disabilities, persons with physical disabilities, and deaf persons	O.C.G.A. § 30-4-2
Idaho	race, creed, color, sex, national origin, or disability	Idaho Code § 18-7301, § 67-5901 et seq
Indiana	race, religion, color, sex, disability, national origin or ancestry	Ind. Code Ann. § 22-9-1-2
Kansas	race, religion, color, national origin or ancestry	K.A.R. § 21-31-3
Kentucky	disability, race, color, religion, or national origin	KRS § 344.120
Louisiana	race, creed, color, religion, sex, age, disability, or	La. R.S. 51:2247

	national origin	
Michigan	religion, race, color, national origin, age, sex, height, weight, familial status, or marital status	MCL § 37.2102
Mississippi	blind persons, visually handicapped persons, deaf persons and other physically disabled persons	Miss. Code Ann. § 43-6-5
Missouri	race, color, religion, national origin, sex, ancestry, or disability	Mo. R.S. Title 12 § 213.065
Montana	sex, marital status, race, age, physical or mental disability, creed, religion, color, or national origin	Mont. Code Anno., § 49-2-304
Nebraska	race, color, creed, religion, ancestry, sex, marital status, national origin, familial status, handicap, age, or disability	R.R.S. Neb. § 20-132
North Carolina	qualified person with a disability	N.C. Gen. Stat. § 168A-6
North Dakota	race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance	N.D. Cent. Code, § 14-02.4-14
Ohio	race, color, religion, sex, military status, national origin, disability, age, or ancestry	ORC Ann. 4112.02
Oklahoma	race, color, religion, sex, national origin, age, or disability	Okl. St. Title 25 § 1402
Pennsylvania	race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals	P.S. Title 43 § 952
South Carolina	race, color, religion, or national origin	S.C. Code Ann. § 45-9-10
South Dakota	race, color, creed, religion, sex, ancestry, disability or national origin	S.D. Codified Laws § 20-13-23
Tennessee	race, creed, color, religion, sex, age or national origin	Tenn. Code Ann. § 4-21-501
Texas	race, religion, color, sex, or national origin	Tex. Transp. Code § 391.094
Utah	race, color, sex, religion, ancestry, or national origin	Utah Code Ann. § 13-7-3
Virginia	race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, age, marital status or disability (requires county ordinance)	Va. Code Ann. § 15.2-853
West Virginia	race, religion, color, national origin, ancestry, sex, age, blindness or disability	W. Va. Code § 5-11-9
Wyoming	race, religion, color, sex or national origin	Wyo. Stat. § 6-9-101

### **Economic Impact of Same- Sex Weddings and Tourism**

In addition to the legal issues associated with same-sex marriage and discrimination on the basis of sexual orientation, there are financial considerations due to the potential economic impact of accommodating this market segment. In 2004, Forbes magazine estimated that the wedding industry and related retail spending (e.g. gifts) would benefit from a \$16.8 billion windfall if same-sex couples were allowed to marry (Lagorce, 2004). At that point, with no historical data, this estimate was based on the assumption that same-sex couples would, on average, spend the same amount of money on their weddings and civil unions as heterosexual couples. By 2009, with data to examine, the earlier estimate proved to be incorrect. When Forbes re-visited the gay marriage windfall in 2009, its report included then existing research which shows that same-sex couples, on average, “spent 34% of what straight couples spent on their weddings” (Marcus, 2009).

The state of New York legalized same-sex marriage in 2011. In reporting on its expected impact, *Businessweek* placed the impact at \$310 million over a three year period. The same article goes on to cite Wall Street executives who support same-sex marriage because of another dimension of its economic impact. They see it as an economic necessity relative to their ability to recruit talented employees.

New York may reap \$310 million over the next three years from license fees, taxes, and tourism related to same-sex weddings, according to a May report by four New York state senators. Morgan Stanley Chairman John Mack, Goldman Sachs Chief Executive Officer Lloyd Blankfein, and other Wall Street executives argue that legalization was necessary for the state to remain an economic leader. As other places “extend marriage rights regardless of sexual orientation, it will become increasingly difficult to recruit the best talent if New York cannot offer the same benefits and protections,” the business leaders wrote in an open letter in April urging legalization of same-sex unions (Deprez, 2011).

Similar conclusions concerning the economic impact of same-sex marriage were drawn in research conducted and published by The Williams Institute at the UCLA School of Law. It provides one of the most extensive collections of research examining the economic impact of same-sex marriage and civil unions including reports on a number of individual states some of which do not permit same-sex marriage or civil unions. In “Spending on Weddings of Same-Sex Couples in the United States” (Konnoth, 2011), the article looks only at the six states then permitting same-sex marriages (i.e. not including civil unions) examining wedding related spending in the first year after same-sex marriages were allowed. The data for Connecticut, Iowa, Massachusetts, New Hampshire and Vermont are based on actual data. Given that New York legalized same-sex marriage shortly before the release of this report, the New York spending is based on projections consistent with patterns found in the other states. Table III summarizes the report’s findings by state.

**Table III**  
**Wedding Related Spending on Same-Sex Ceremonies in the First Year of Legalized Same-Sex Marriage**

<b>State</b>	<b>Spending on Weddings</b>	<b>Wedding Related Tourism Spending</b>	<b>Total</b>	<b>Actual Or Projected</b>
Connecticut	\$13,100,000	\$3,400,000	\$16,400,000	Actual
Iowa	\$7,100,000	\$1,200,000	\$8,300,000	Actual
Massachusetts	\$48,800,000	\$11,500,000	\$60,300,000	Actual
New Hampshire	\$3,900,000	\$1,000,000	\$4,900,000	Actual
New York	\$101,100,000	\$53,700,000	\$154,800,000	Projected
Vermont	\$3,700,000	\$1,800,000	\$5,500,000	Actual

The economic impact for only the first year after the legalization of same-sex marriage totaled slightly in excess of \$250,000,000 for these six states. It is important to note that this data

includes only the amounts spent on the actual weddings and wedding-related travel. It does not include monies spent on related expenditures such as honeymoons or gifts (Konnoth, 2011).

There are some indications that the economic impact of same-sex marriages may increase over time. While only about 22% of same-sex couples in the United States have entered into some type of legal relationship, in individual states that permit some kind of legal relationship, 47% of same-sex couples in such states took advantage of the legal formalities available (Herman, 2011). When that legal formality was marriage: “An average of 30% of same-sex couples married in the first year that their state allowed them to marry, while only 18% entered into civil unions or ... domestic partnerships ...” (Herman, 2011). As this study further points out, based on current trends in Massachusetts, same-sex couples will enter into marriage at the same rate as heterosexual couples by 2013 (Herman, 2011). The “16<sup>th</sup> Annual Gay & Lesbian Tourism Report,” also examined the impact of same-sex marriage and civil unions on tourism (Community Marketing, Inc., 2011). Its findings include the following:

- There is no traditional same-sex marriage.
- Same-sex couples are more likely to combine the ceremony and reception at a single venue to save money.
- Many same-sex couples have been together for years and so large ceremonies did not make sense to them.
- Many same-sex couples were willing to spend more money on a marriage ceremony than on a civil union ceremony.
- Many same-sex couples receive little or no financial assistance from parents for their ceremonies.
- Many couples planned their ceremonies to take place right after state law permitted marriage or civil unions which gave them little time to plan large events.

Taken together, this data suggests that to the extent that same-sex marriage is legalized in more states and develops more of a tradition that is accepted and supported by parents; more same-sex couples will have the time and resources to plan larger and more elaborate ceremonies.

Further, if the Massachusetts trend of same-sex couples marrying at rates approaching those of heterosexual couples is replicated in other states, the demand for wedding related products and services will only increase.

## **Conclusions**

It is important for hospitality industry businesses to be aware of the extent to which the requirements of their state's laws are different from and in some cases in addition to those spelled out by federal law only. Despite the culture wars dimension to competing views concerning the legalization of same-sex relationships via marriage or civil unions, the laws of many states provide same-sex couples and individuals protection from discrimination on the basis of sexual orientation. As previously noted, all of the states that permit same-sex marriages or civil unions also prohibit discrimination on the basis of sexual orientation. In addition, nine other states provide protection from discrimination on the basis of sexual orientation only. Nevertheless, as illustrated by the trilogy of 2011 cases provided as examples, the fact that issue oriented organizations such as the American Civil Liberties Union, the Lambda Legal Defense and Education Fund, Inc., and the Alliance Defense Fund are involved in the litigation suggests that the legal contours of permitted and prohibited discrimination are far from settled.

Finally, it is important to acknowledge the demonstrated economic impact of the same-sex marriage laws on weddings and related tourism in those states that permit it. The potential for a positive economic impact may not be the first thing that comes to mind for most people when considering such anti-discrimination laws. Nevertheless, at least in this case, legalizing same-sex marriages not only did just that but also further developed a market segment possessing significant signs for growth.

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