

**BEFORE THE HUMAN AND CIVIL RIGHTS COMMISSION
FOR THE STATE OF DELAWARE**

Sorber, Kaitie a/k/a Mason Crandall Sorber, IV	)	
Complainant,	)	
	)	
v.	)	State #: S-EA-2829-24
	)	
The Hideout Arcade Bar & Grille	)	
And Bryan Derrickson	)	
Respondents.	)	

MEMORANDUM DECISION AND ORDER

PRESENT:

Dwayne Bensing, *Commissioner and Panel Chairperson*
Joseph Dawson, *Commissioner and Panel Member*
Calvin Christopher, *Commissioner and Panel Member*
Deputy Attorney General Victoria Counihan, *Commission Counsel*

APPEARANCES:

Kaitie Sorber a/k/a Mason Crandall Sorber IV, *Complainant, pro se*
Bryan Derrickson, *Respondents, pro se*

INTRODUCTION

After providing appropriate notice to the parties and public, the above Hearing Panel (the “Panel”) of the Delaware Human and Civil Rights Commission (the “Commission”) conducted a public evidentiary hearing by Microsoft Teams video conference on September 18, 2025, to determine whether Kaitie Sorber a/k/a Mason Crandall Sorber IV (“Ms. Sorber” or “Complainant”) would establish by a preponderance of the evidence that the Hideout Arcade Bar & Grille, located at 18693 Coastal Highway, Rehoboth Beach, DE (the “Hideout”), and its owner Bryan Derrickson (“Mr. Derrickson”) (collectively the “Respondents”), violated the Delaware Equal Accommodations Law, 6 *Del. C.* ch. 45, et seq. (hereinafter “DEAL”), as alleged in the

complaint filed by Ms. Sorber (the “Complaint”).¹

After the hearing was completed, the Panel deliberated privately as permitted by law² and subsequently voted publicly, following appropriate notice to the parties and the public, on July 16, 2026. This Memorandum Decision and Order (the “Decision and Order”) embodies the Panel’s Findings of Fact and Conclusions of Law, as required by statute.³

In conducting an evidentiary hearing under DEAL and rendering its Decision and Order, the Panel acts as a quasi-judicial body.⁴ Neither the Commission nor the Panel has jurisdiction to decide public policy questions that fall within the purview of the General Assembly. This Panel has just one function: to issue findings of fact and conclusions of law based upon the evidence presented at this hearing.⁵ The Panel does not have authority to issue advisory opinions, decide hypothetical questions, or predict how other cases might be decided in the future.

In articulating its legal conclusions here, the Panel has followed the law as enacted by the General Assembly, precedents from the Delaware courts and the United States Supreme Court, and persuasive decisional authority of other courts that have analyzed, interpreted and applied provisions similar or analogous to DEAL. We also have kept in mind an explicit direction from the General Assembly in the statute itself that, when necessary to achieve its legislative purpose, we must construe DEAL “liberally” and “consider, and apply higher or more comprehensive obligations established by otherwise applicable federal, state, or local law in defining the scope or

¹ See 6 Del. C. § 4504.

² See 29 Del. C. § 10004(h)(9)a.

³ See 6 Del. C. § 4508(h).

⁴ See *Lindsay v. Beaver Brook Section One Inc.*, 322 A.2d 13, 14 (Del. 1974); *Quaker Hill Place v. Saville*, 523 A.2d 947, 965-66 (Del. Super.), *aff’d*, 531 A.2d 201 (Del. 1987).

⁵ See 6 Del. C. § 4508(e)-(h).

extent of any duty imposed by this [statute].”⁶

The Complaint

Ms. Sorber, a transgender female, alleged in her Complaint that on April 5, 2023, the Respondents denied her the use of the women’s bathroom at the Hideout, a place of public accommodation, because of her gender identity. She asserted that after entering the premises, ordering a drink, and displaying her identification, she was confronted, required to display her identification again, and instructed that she could only use the men’s bathroom. She also alleged that she returned to the Hideout on April 12, 2023, but personnel at the front door refused her admission, telling her that she had been banned from the establishment because she had posted a comment on social media about the bathroom policy. Ms. Sorber also alleged that she later spoke with the owner of the Hideout, who insisted that since her driver’s license identified her as a male, she should use the bathroom that matched her license.

Preliminary Rulings

At the start of the hearing, Mr. Derrickson moved on behalf of the Respondents to sequester witnesses, which Ms. Sorber opposed. The Panel granted the Respondents’ motion unanimously.

Exhibits

As the hearing began, the Complainant suggested there was a Facebook post that she might want to introduce into evidence as an exhibit. The Panel Chair stated that “we’ll cross that bridge when we get to it.” (Hearing Video [“HV”] at 25:07).⁷ Ms. Sorber did not introduce any exhibits in her direct case, but read a Facebook post without objection as part of her testimony during her

⁶ 6 Del. C. § 4501.

⁷ Quotations of testimony from the hearing are accompanied by references in parentheses corresponding to the time stamps reflecting elapsed time that appear on the hearing video. A document generated by the video software is not a “transcript.” It contains many inaccuracies and was not prepared or certified by a court reporter.

rebuttal case. Because Ms. Sorber did not suggest that there were any other issues regarding Facebook posts that she wished to raise, the Panel has concluded that the Complainant was satisfied with her opportunity to read the post into evidence during her rebuttal case rather than introducing it as a formal exhibit.

Respondents did not offer any documents into evidence but asked the Panel to take judicial notice of a document on the Delaware Division of Motor Vehicles (“DMV”) website through which individuals can apply to change their gender identification on driver licenses. The Panel Chair granted Respondents’ application. There are two such forms on the DMV website. They are appended to this Decision and Order as Appendix A and Appendix B.

Witnesses

The Panel heard testimony from Complainant Kaitie Sorber and from Respondent Bryan Derrickson.⁸

FINDINGS OF FACT

The Hideout and Mr. Derrickson

The Hideout is a bar and restaurant open to the public that serves food and drink, including alcoholic beverages, and gives patrons a place to play pool and other games, sing karaoke, and enjoy music. The Hideout shifts its focus each day to cater to two different groups of patrons. In the afternoon and early evening hours, it endeavors to create a family restaurant environment. During the later part of the evening, the business creates an atmosphere for adults. Beginning at 9:00 p.m., the Respondents’ employees ensure patrons are at least 21 years old by scanning the licenses or identification documents of almost all who enter; the only exceptions are regular

⁸ The Panel Chair sustained the Respondents’ objection to the Complainant’s effort to call a third party who was not present for the events in question. The Chair overruled the Complainant’s objection to the testimony of Mr. Derrickson, a named Respondent.

customers who already are known by first and last name and visit the Hideout four or five times each week.

It was undisputed that Mr. Derrickson has an ownership interest in the Hideout. He issues the weekly paychecks for employees and personally made the decisions for the Respondents that Ms. Sorber has challenged as discriminatory in this case.

Ms. Sorber and Her Gender Identity

The Complainant Kaitie Sorber is a transgender female, but the name given to her at birth was Mason Crandall Sorber IV. Her employer issues paychecks to her in the name Mason Sorber, but the name that conforms to her gender identity is Kaitie Sorber. In addition, Ms. Sorber's state-issued driver's license specifies her gender as "male." She knows that Delaware allows people to change the gender designation on their driver's licenses but has not yet completed the steps required by DMV to change the designation on her license.

Ms. Sorber has been injecting hormones since 2018 and, as a result, has developed female body characteristics including "breast growth" and other "physical changes that ... are personal" (HV: 1:07:00). She expresses herself as a female in her physical appearance and other outward characteristics every day, including at work. She does not hide her female gender identity and is proud of it. She has consistently presented herself, through her appearance, behavior and expression, as a female to the outside world since 2018, does not get misgendered often, lives her everyday life as a woman, and considers herself to be female. Throughout the hearing, the Panel observed Ms. Sorber identify herself as female. Accordingly, the Panel finds her gender identity to be female.

The April 5 Incident

Before April 2023, the Hideout employees did not monitor bathroom usage based on gender identity and did not confront patrons to request or examine identification documents before allowing them access to the bathrooms. By April 2023, Ms. Sorber had been patronizing the Hideout for “a while.” She went there almost once a week and enjoyed the karaoke there. She identified herself as “Kaitie” to others at the establishment and had been able to use the women’s bathroom without incident until April 5, 2023.

The policy at the Hideout regarding bathroom access changed at some point on or before the April 5 Incident. According to that policy, a patron whose gender identity did not correspond to the gender marker appearing on their DMV-issued identification document would be required to use the bathroom facility matching the gender on the ID. This policy was applied to Ms. Sorber on April 5, 2023.⁹

Ms. Sorber arrived at the Hideout after 9:00 p.m. on that evening. An employee scanned her identification as she entered the premises, and Ms. Sorber bought a drink at the bar. She then went over near one of the arcade machines. Another Hideout employee approached and required Ms. Sorber to produce her identification again. Later, she made her way toward the women’s bathroom but was stopped by three Hideout employees. She believed they were bouncers. One of them told her that she could only use the men’s bathroom.

⁹ Ms. Sorber asked Mr. Derrickson whether Respondents “tell all patrons what bathrooms to use.” He replied, “We tell the patrons to use the bathroom that lines up with their gender identity,” but “[i]f they use the ones that is listed on their ID already, we don’t need to tell them anything” (HV: 1:19:33-1:19:48). Ms. Sorber asked whether restricting a person’s bathroom use to correspond to the sex or gender on a driver’s license represented a change in policy. Mr. Derrickson replied, “We didn’t realize we had a problem until we had a complaint” (HV: 1:21:01). Mr. Derrickson alleged that the complaint in question was directed at Ms. Sorber’s use of the women’s bathroom. When Ms. Sorber asked whether the Respondents’ employees were trained regarding how to approach patrons and discuss which bathroom to use, Mr. Derrickson replied, “I don’t think anybody’s trained on that in the entire State” (HV: 1:22:45).

On a later date, she spoke to the owner or a manager of the Hideout who told her that she had been prevented from using the women's bathroom because her driver's license identified her as male.

The April 12 Incident

On April 12, 2023, Ms. Sorber went to the Hideout again. She was told by an employee at the front door, however, that the management had banned her from entering the premises based on a Facebook post that she made about her inability to use the women's bathroom the previous week. The post stated, "The bouncers at the Hideout want me to go in the men's room only." Ms. Sorber did not make this post to the public; she sent it only to her Facebook friends. She speculates that one of her Facebook friends shared it with someone else and believes that this is how the post reached the Hideout's management.

Approximately 200 individuals, not just transgender persons, have been banned from the Hideout and other locations owned by Mr. Derrickson for causing "problems," including some who were ejected after engaging in "name calling" and using slurs, including some relating to gender identity.

Witness Credibility

The Panel found Ms. Sorber to be a credible witness. She forthrightly conceded that she has a driver's license that characterizes her as male. She also acknowledged that, while she presents herself as female at work, she receives her paychecks in the name that was assigned to her at birth. She knows that she can obtain documentation necessary to change the gender marker on her drivers' license with DMV but admitted that she had not yet changed the designation on her identification to match her gender identity.

Ms. Sorber shared deeply personal issues with the Panel and her adversary. She did so directly and with candor. Her grace while testifying about those matters, coupled with the overall

consistency of her testimony, convinced the Panel members that she was being honest and forthright. The Respondents even corroborated some of her testimony by conceding that Ms. Sorber was not permitted to use the women's bathroom during the April 5 Incident.¹⁰ The Panel finds Ms. Sorber's testimony to be credible in all material respects.

The Panel credits what Mr. Derrickson had to say about the general operations of the Hideout and the way its focus and clientele changed during the late evening hours. The Panel also credits those parts of his testimony that tended to corroborate Ms. Sorber's account of the April 5 Incident and April 12 Incident.

Mr. Derrickson testified that the Hideout's change in policy arose from: (1) a complaint by an unidentified woman about Ms. Sorber made about a week before the April 5 Incident, (2) vague concerns about safety, and (3) claims about conflicting state law. His explanations were short on details and consistency, two qualities upon which an assessment of credibility often depends.

Mr. Derrickson's testimony began with a claim that the April 5 Incident "stemmed from a complaint of a mother and [an] approximately eight-year-old little girl [who] walked out of the women's bathroom complaining to me that there was a biological male in the bathroom" (HV: 1:12:55). Ms. Sorber supposedly emerged from the bathroom just after the woman asserted that there was a man in the women's bathroom. Mr. Derrickson testified that he "just looked at the lady, and I was like, all right, I'll fix it" (HV: 1:13:08).

¹⁰ Mr. Derrickson disputed Ms. Sorber's assertion that three bouncers approached her when she headed toward the bathroom. He testified that one of the three was a kitchen worker who happened to walk past the scene. This discrepancy was immaterial because no matter how many employees delivered the message, its content was the same: she was not allowed to use the women's bathroom, which fact Mr. Derrickson conceded in response to questions from the Panel.

Mr. Derrickson claimed that he “took a week to try to evaluate how to handle this from a business standpoint” (HV: 1:13:14). He described his decision and reasoning process in the following way:

“I used the ideology of, you know, if you can show me that you're a female with a driver's license, that's something we use. The ABC likes us using the scanners, coming in, to determine age ... the idea of somebody cannot simply identify as 21. They have to prove that they're 21 in order to get served an alcoholic beverage.... So therefore, I thought, well, this is easy. Driver's license, whatever they have on it, if it's male, female or something else, we'll go by that.... That is straight from the State of Delaware. That wasn't my determination. That was what we used to apply, you know, some common sense with it, so we thought.”

(HV: 1:13:40-1:14:17). Mr. Derrickson confirmed that he was present during the April 5 Incident and corroborated that Ms. Sorber was told to use the men’s bathroom.

Mr. Derrickson invoked concerns of safety when he testified that “if an eight-year-old girl felt threatened by a biological male in the bathroom,” it was his “duty to respond to that” (HV: 1:16:00-1:16:13). Obviously, a suggestion that someone might have threatened a child is not something the Panel would take lightly. Nor would it be something that a complainant would be likely to elicit on their own if, in fact, they had acted inappropriately.¹¹ Not surprisingly, therefore, a panelist sought details about Mr. Derrickson’s reference to a threat, asking him directly, “you concluded from this encounter that the eight-year-old felt threatened, correct?” He replied, “That was my observation” (HV: 1:29:28).

Yet, it became clear that Mr. Derrickson had not observed this at all. The panelist asked, “Observation of the eight-year-old or from the two parents reacting?” Mr. Derrickson replied, “From the parents -- that they did not like the fact that there was a biological male in the bathroom at the same time their daughter was” (HV: 1:29:25-1:29:48). In other words, Mr. Derrickson never

¹¹ There was no indication whatsoever from any of the evidence presented at this hearing that Ms. Sorber ever did anything untoward during any of her visits to the Hideout or its bathroom facilities.

spoke to the eight-year-old, never heard of any “threat” and had no basis at all to testify about how the child felt, much less that she felt “threatened.”

A few minutes later, another Panel member asked Mr. Derrickson to clarify his concerns about “safety” in the bathroom. In contrast to his claim ten minutes earlier that he was duty-bound to respond to a potential threat to a child, Mr. Derrickson shifted his focus back to Ms. Sorber, insinuating that the unidentified woman’s husband was about to become violent. Mr. Derrickson testified that “The safety concern was that little girl’s father was going to take action of his own if I didn’t” (HV: 1:39:16-1:39:28).

Mr. Derrickson pointed out that the Hideout has gay, lesbian and transgender patrons and a transgender employee. Yet, when asked whether he disputed whether Ms. Sorber is a transgender female, Mr. Derrickson replied, “I don’t know her ... I don’t know her personally,” but then acknowledged, “I only know ... that she said she’s a transgender female” (HV: 1:40:52) (emphasis added). When asked whether he had reason to dispute Ms. Sorber’s status as a transgender female, he replied, “The fact that it says male on her driver’s license. So, the State won’t recognize her as female, so why should I?” (HV: 1:41:06). Then, when responding to a question about the little girl, noting that she “looked like a female,” Mr. Derrickson shifted his response to state that “Ms. Sorber does not look like a female necessarily; I mean, she has the makeup on and the clothes on and all that stuff, but that...” (HV: 1:53:07-1:53:18). In other words, after being reluctant to answer a direct question about whether Ms. Sorber is a transgender female because he does not “know her personally” (HV: 1:40:52) and because her driver’s license says “male” (HV: 1:41:02-

1:41:12), Mr. Derrickson went on to indicate that the Complainant does not look how he thinks a female should look.¹²

Finally, Mr. Derrickson implied that his decision to base bathroom access on a gender marker on a driver's license was prompted by a practice at DMV and the "Health Code." He explained, "I can't walk over in a DMV and say, 'Hey, I identify as a female. I want to change my license.' I'd have to get a therapist to fill out a form and do something from a legal standpoint. And that's all I was trying to do." (HV: 1:33:31-1:33:59). Mr. Derrickson's testimony also ambiguously cited section "403.1.3" of the "Health Code."

CONCLUSIONS OF LAW

Ms. Sorber alleges that Respondents violated DEAL by denying her access to a place of public accommodation because of her gender identity on two separate dates: (1) on April 5, 2023, when she was asked for her identification a second time and was thereafter denied access to the women's bathroom, and (2) on April 12, 2023, when she was told that she had been banned from the Hideout because of her social media post about the bathroom policy that resulted in her only being allowed to use the men's bathroom at the Hideout.

Section 4503 of DEAL provides: "All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities, advantages and privileges of any place of public accommodation regardless of" certain protected characteristics, including "gender identity." Section 4504(a) of the statute explicitly prohibits discrimination based on those characteristics. The Section states, in pertinent part, the following:

¹² Because appearance is a factor in determining gender identity, Mr. Derrickson certainly had a right to cross-examine Ms. Sorber about her appearance during the April 5 Incident through appropriate questions and to testify on his own behalf about how she looked on that night. Instead, he stated his personal subjective conclusion that Ms. Sorber did not look like a female, not supported by any factual record.

*no person being the owner . . . manager . . . agent or employee of any place of public accommodation, may directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity, military status, or national origin, any of the accommodations, facilities, advantages, or privileges thereof.*¹³

The Superior Court has reminded the Commission that DEAL must be liberally construed to achieve its “primary purpose” which is “to eliminate ‘the daily affront and humiliation involved in discriminatory denials of access’” to places of public accommodation.¹⁴

Section 4504(f) of DEAL protects against retaliation based on protected activities under DEAL. It provides, in pertinent part:

A person, being the owner . . . manager . . . agent, or employee of any place of public accommodation, may not engage in an act or practice that is unlawful under subsections (a) through (d) of this section or otherwise retaliate against an individual because the individual has done 1 of the following:
*Opposed an act or practice that is unlawful under subsections (a) through (d) of this section.*¹⁵

A discrimination case can be proven either through direct evidence, circumstantial evidence or both. Under the law, a case founded upon circumstantial proof of discrimination is analyzed somewhat differently from one in which discriminatory conduct and intent are established through direct evidence. When a claim is proven circumstantially in a case alleging a discriminatory denial of public accommodations under DEAL, the Panel generally must conduct an analysis through a framework established by the United States Supreme Court in an employment discrimination case called *McDonnell Douglas Corp. v. Green*.¹⁶ The Delaware

¹³ 6 Del. C. § 4504(a)(1)a.

¹⁴ *Ray v. Human Relations Comm’n*, N20A-09-001-VLM, 2021 WL 5492664, at *3 (Del. Super. Nov. 22, 2021) (quoting *Stewart v. Human Relations Comm’n*, 2010 WL 2653453, at *3 (Del. Super. July 6, 2010), *aff’d sub nom. Boggerty v. Stewart*, 14 A.3d 542 (Del. 2011)).

¹⁵ 6 Del. C. § 4504(f).

¹⁶ 411 U.S. 792 (1973).

Supreme Court has endorsed that approach in DEAL cases that involve circumstantial proof of discrimination.¹⁷

Under the *McDonnell Douglas* framework, the presentation of evidence in a DEAL case generally proceeds as follows:

- (1) Complainants make a *prima facie* showing of discrimination by presenting proof that:
 - (a) the site of the alleged discrimination was a place of public accommodation;
 - (b) the complainant possessed a characteristic protected by DEAL;
 - (c) they were denied service or access to a facility, advantage, privilege or accommodation at the site of the alleged discrimination; and
 - (d) others without the protected characteristic were treated more favorably in obtaining the service or access.
- (2) After the *prima facie* showing is made, the respondents introduce a non-discriminatory explanation for their conduct or decision.
- (3) Complainants present proof showing that the explanation was a pretext for discrimination.

Because this framework calls for an evaluation of what the *McDonnell Douglas* opinion itself called a “*prima facie*” case,¹⁸ there has been considerable confusion regarding the extent of its applicability. One court has explained that the *prima facie* case requirement is best understood as embodying the steps that are needed to give rise to a mandatory, but rebuttable, presumption of discrimination authorized in the *McDonnell Douglas* opinion. In June 2025, the Supreme Court itself, in a unanimous opinion, warned that the *prima facie* showing envisioned in its *McDonnell Douglas* opinion was never intended to be applied rigidly or in a mechanical way; instead, its contours may vary in light of the particular facts of a given case.¹⁹

¹⁷ *Boggerty v. Stewart*, 14 A.3d 542, 550-51 (Del. 2011); *Thompson v. Dover Downs, Inc.*, 887 A.2d 458, 461-66 (Del. 2005).

¹⁸ *McDonnell Douglas v. Green*, 411 U.S. at 802.

¹⁹ *Ames v. Ohio Dep’t of Youth Servs*, 605 U.S. 303, 310-311 (2025); *Weldon v. Kraft, Inc.*, 896 F.2d 793, 798-99 (3d Cir. 1990).

When the *McDonnell Douglas* framework calls for defendants/respondents to produce a non-discriminatory explanation for their conduct by virtue of the presumption, this does not shift the burden of *proof* (also known as the burden of *persuasion*), which always remains with the plaintiff/complainant. Although the *McDonnell Douglas* presumption *allows* the factfinder to infer discrimination, it does not *require* such a conclusion. If something about the evidence leaves the factfinder unconvinced that discrimination occurred despite the presumption, complainants cannot prevail because they have the burden of proof. When a non-discriminatory explanation is supplied, complainants must prove that the explanation is a pretext for discrimination; otherwise, the presumption of discrimination disappears, and the complainants do not prevail.

When complainants prove the explanation is pretextual, they prevail if the factfinder is convinced that discrimination occurred.²⁰ A factfinder's disbelief of a nondiscriminatory explanation does not automatically mean that the complainant prevails but certainly may be combined with the complainants' *prima facie* showing to justify the conclusion that intentional discrimination occurred.

When there is direct proof of discriminatory intent, there is no need for a rebuttable presumption at all, so many courts have concluded that the *McDonnell Douglas* framework need not be employed in such cases.²¹ In fact, when a rigid application of that framework has led to dismissal of cases despite direct evidence of discriminatory intent, appellate courts have reversed.²²

²⁰ *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510-12 (1993).

²¹ *Swierkiewicz v. Sorema NA*, 534 U.S. 506, 511 (2002) (when producing direct proof of discrimination, a plaintiff may prevail without establishing all the *prima facie* elements of *McDonnell Douglas*); *Trans World Airlines v. Thurston, Inc.*, 469 U.S. 111, 121 (1985) ("the *McDonnell Douglas* test is inapplicable where the plaintiff presents direct evidence of discrimination").

²² See, e.g., *Porter v. Dartmouth-Hitchcock Med. Ctr.*, 92 F.4th 129, 149-52 (2d Cir. 2024); *Cruz v. Farmers Ins. Exch.*, 42 F.4th 1205 (10th Cir. 2022); *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911 (11th Cir. 2018);

In this case, there is direct proof of discriminatory intent with respect to the April 5 Incident because Ms. Sorber demonstrated that the Respondents deliberately barred her from using the women's bathroom despite her gender identity as defined by DEAL. The Respondents do not dispute that they intentionally denied Ms. Sorber access to the women's bathroom, arguing instead that they complied with DEAL by offering her the use of the men's bathroom and that the law permitted them to exclude Ms. Sorber from the women's bathroom based on the gender marker on her driver's license.

In connection with the April 12 Incident, it is not disputed that Respondents knew Ms. Sorber was a transgender female and that their decision to permanently ban Ms. Sorber from the Hideout was a direct response to her social media post indicating the personnel at the Hideout attempted to force Ms. Sorber to only use the men's bathroom in the April 5 Incident. If the bathroom policy of the Hideout is found to be a violation of DEAL (or if Ms. Sorber is found to have had a reasonable belief that the bathroom policy was a violation of DEAL)²³ and if Ms. Sorber's social media post is found to be an expression of opposition to the bathroom policy, then the decision to ban Ms. Sorber based on her social media post opposing the bathroom policy would be unlawful retaliation under Section 4504(f) of DEAL.

The Panel will first analyze the April 5 Incident under DEAL. Based on the elements of a claim under section 4504(a)(1) of DEAL, similar steps will be used in analyzing the *prima facie*

Ramirez v. Sloss, 615 F.2d 166, 168-69 (5th Cir. 1980) ("In the rare situation in which the evidence establishes that an employer openly discriminates against an individual it is not necessary to apply the mechanical formula of McDonnell Douglas to establish an inference of intentional discrimination; the showing has already been made directly.").

²³ Under federal law related to the *prima facie* case for retaliation claims, "[A] plaintiff [in an opposition case] does not need to prove that the employment practice at issue was in fact unlawful under Title VII . . . [A plaintiff] must only show that she had a 'reasonable belief' that the employment practice she protested was prohibited under Title VII." *Trent v. Valley Elec. Ass'n, Inc.*, 41 F.3d 524, 526 (9th Cir. 1994).

elements of Ms. Sorber's DEAL claim for the April 5 Incident as those used in the *McDonnell Douglas* analysis. However, the Panel will not employ the rebuttable presumption allowed by *McDonnell Douglas* against the Respondents because they do not dispute their intentional exclusion of Ms. Sorber from the women's bathroom. Instead, the Panel will determine if the elements of a claim under DEAL were satisfied and will otherwise analyze the Respondents' justification for their actions with a view toward determining if they negate discriminatory intent or otherwise justify their conduct toward Ms. Sorber. The Panel will then analyze the elements of a retaliation claim under section 4504(f) of DEAL related to the April 12 Incident.

PART I

COMPLAINANT ESTABLISHED A *PRIMA FACIE* CASE UNDER DEAL FOR THE APRIL 5 INCIDENT AND ESTABLISHED RETALIATION WAS THE BASIS FOR THE APRIL 12 INCIDENT

A: The Hideout is a Place of Public Accommodation

To prevail on her DEAL claims, Ms. Sorber must first prove that the location in question was a place of public accommodation within the meaning of DEAL. *See 6 Del. C. §§ 4502(21)a.1, 4504(a)(1), (f)*. The factual descriptions given by both witnesses established that the Hideout is a restaurant and bar that caters to the public. This proved that the Hideout is a place of public accommodation.

B: Ms. Sorber Possesses a Characteristic Protected Under DEAL

Ms. Sorber must also prove that she possessed a characteristic protected under DEAL. Ms. Sorber argued that she was discriminated against based on her gender identity, female. “Gender identity” is a characteristic protected under DEAL. *See* 6 *Del. C.* §§ 4501, 4502(11), 4503, 4504(a)(1)a.

The Panel has found credible Ms. Sorber’s testimony regarding her own gender identity and how she manifests it to the outside world. She believes that she is a female, has taken female hormones since 2018, developed female physical characteristics, and consistently presented herself as a woman to the outside world, including her employer at work and the people at the Hideout. We have no trouble concluding from the evidence that, regardless of her assigned sex at birth, Ms. Sorber’s gender identity is female, and there has been no suggestion that her appearance, behavior or expression has changed in any material way since the incidents giving rise to the Complaint.

Mr. Derrickson suggested at the hearing that the statute “doesn’t really describe ... how the gender identity is determined...” (HV: 1:35:05). On the contrary, DEAL defines “gender identity” clearly. Reaching beyond a person’s own sense of self, the phrase is defined as meaning a “*gender-related identity, appearance, expression or behavior ... regardless of the person’s assigned sex at birth.*”²⁴ As noted above, Ms. Sorber has supplied more than enough evidence to demonstrate that, based on her appearance, expression, and behavior, her gender identity is female, and that she possessed a characteristic protected under DEAL.

²⁴ 6 *Del. C.* § 4502(11) (emphasis added).

C. Ms. Sorber Was Denied Access to an Accommodation, Facility, Advantage or Privilege at the Hideout on April 5, 2023

The next element that must be proven by the Complainant to establish her case under section 4504(a)(1)a. of DEAL is that the Respondents refused, withheld or denied “any of the accommodations, facilities, advantages or privileges” of the Hideout.

As to the April 5, 2023, incident, Mr. Derrickson disputes the notion that Ms. Sorber was denied access to any of the accommodations, facilities, advantages or privileges associated with a visit to the Hideout. While he concedes that Ms. Sorber was precluded from using the women’s bathroom, he points out that she had access to the men’s bathroom, so she had the same “ability to purchase drinks, sing karaoke, purchase food, and use bathrooms” as all other patrons (HV: 1:17:08-1:17:17).

The Panel does not agree with Mr. Derrickson’s analysis. Because DEAL explicitly gives everyone in the State a right to “full and equal accommodations, facilities, advantages and privileges of any place of public accommodation” regardless of any protected characteristics,²⁵ the Respondents cannot avoid responsibility under the statute by denying access to one part of their services or facilities to a person based on a protected characteristic, and raising, as a defense, that discrimination did not occur as to all the other privileges and amenities of a visit to the Hideout. Put simply, because DEAL explicitly prohibits denying “any” of the “accommodations, facilities, advantages or privileges” of a business, a proprietor cannot escape liability if even one service is denied to a person because of a protected characteristic.²⁶

While restaurants need not provide all amenities, DEAL and many analogous state and federal statutes ensure that when any such “advantages” are provided, they are supplied on an

²⁵ 6 Del. C. § 4503.

²⁶ 6 Del. C. § 4504(a)(1).

equal basis for all patrons. While these laws are not designed to address mere delays or inconveniences that do not involve discrimination, there are ample examples in state and federal judicial decisions illustrating that an intentional deprivation of equal treatment is a violation of an equal accommodation law or analogous provision notwithstanding that other services have been provided.

Indeed, these cases illustrate that providing a service, like the food at a restaurant, cannot automatically defeat a discrimination claim when a restaurant simultaneously subjects customers to indignities. For instance, spewing racial epithets or threats and creating other disturbances, like playing loud music or vacuuming near customers as they try to eat is actionable misconduct even though a meal was provided.²⁷ A hamburger franchise cannot escape liability merely because they provided an African-American man a meal before denying him the use of a bathroom by falsely claiming that it was out of order as white patrons are seen emerging from it.²⁸

Moreover, there are cases holding that when a person is prohibited from using a restroom that matches their gender identity, this can constitute a denial of access to the facilities, advantages and privileges of a place of public accommodation.²⁹ Here, the proof established that during the

²⁷ *McCaleb v. Pizza Hut of Am.*, 28 F. Supp. 2d 1043, 1046-47 (N.D. Ill. 1998) (claim under 42 USC § 1981).

²⁸ *Perry v. Burger King Corp.*, 924 F. Supp. 548, 550 (S.D.N.Y. 1996) (claims under 42 USC § 1981 & 42 USC § 2000a).

²⁹ *Hobby Lobby Stores, Inc. v. Sommerville*, 186 N.E.3d 67 (Ill. App. Ct. 2021); *see Doe v. Reg'l Sch. Unit 26*, 86 A.3d 600, 606-07 (Me. 2014) (allowing transgender student to use bathroom consistent with gender identity under a theory employing “sexual orientation” as a protected characteristic); *compare R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420 (Mo. Feb. 26, 2019) (public accommodation claim based on exclusion of transgender male from boys’ bathroom at school was properly pleaded as sex discrimination) *with R.M.A. v. Blue Springs R-IV Sch. Dist.*, 717 S.W.3d 187, 193-95 n.10 (Mo. June 10, 2025) (verdict for plaintiff could not be upheld because case was tried as discrimination against a male but the proof showed exclusion from bathroom to be based on female genitalia); *see generally Doe ex. rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 521 (3d Cir. 2018) (affirming denial of injunction application filed by cisgender high school students, holding that “under the circumstances here, the presence of transgender students in the locker and restrooms is no more offensive to constitutional or Pennsylvania-law

April 5 Incident, Ms. Sorber was required to display her identification a second time after already being admitted into the bar, and was later stopped on her way to the bathroom to be told that she was not allowed to use the women’s bathroom. The Panel concludes that this was a denial of access to a facility, advantage and privilege of a visit to the Hideout within the meaning of DEAL.

D. Ms. Sorber Met Her Burden of Showing That the Denial of Accommodations, Facilities, Advantages or Privileges During the April 5 Incident Was “On Account Of” Her Gender Identity

Under DEAL section 4504(a)(1)a., Ms. Sorber must prove that Respondents denied or refused the full facilities and advantages of a place of public accommodation “on account of” a protected class, in this case, on account of Ms. Sorber’s gender identity. Nothing in the text of DEAL supports the Respondents’ view that they are, or should be, permitted to demand any additional “proof,” much less demand an identification document, before allowing a transgender female to use a women’s bathroom. The Panel finds that Ms. Sorber has proved that the refusal to allow her to use the bathroom that aligned with her gender identity during the April 5 Incident was directly because of and “on account of” her gender identity. Respondents’ testimony about the bathroom policy they enacted prior to the April 5 Incident, the complaint about Ms. Sorber that generated the bathroom policy, and the implementation of the policy to Ms. Sorber in the April 5 Incident support that conclusion.

No language in DEAL allows operators of places of public accommodation to target someone for different treatment based on their gender identity or any other protected characteristic; quite the contrary, this sort of conduct is prohibited.

privacy interests than the presence of the other students who are not transgender”), *cert denied. Doe v. Boyertown Area Sch. Dist.*, 587 U.S. 1035 (2019).

The fact that a bathroom was involved does not require applying a different rule. Indeed, there is compelling evidence that the General Assembly opted not to create a “gender identity” exception in DEAL to cover bathrooms. At the same time that it added gender identity as a protected characteristic under DEAL, the General Assembly enacted a carefully crafted and explicit exemption allowing business owners to create “a separate or private space” as a “reasonable accommodation” for transgender individuals “in areas ... where disrobing is likely, such as locker rooms or other changing facilities.” The statute specifies that such private spaces must not be “inconsistent with the gender-related identity of such persons.”³⁰ Conspicuously absent from this explicit exemption is any language suggesting that it would cover bathrooms in restaurants, bars and similar places, or that any sort of “proof” of gender identity would be required like that demanded of Ms. Sorber by the Hideout. The fact that the General Assembly enacted an explicit provision relating to locker rooms and other places where disrobing is likely without mentioning bathrooms demonstrates that this was a deliberate choice.³¹

In addition to the State’s interest in conferring enforceable rights upon a historically oppressed minority, there are health and safety reasons to permit transgender individuals to use bathrooms consistent with their gender identity. Case law recognizes that presenting transgender people with a “take it or leave it” scenario by telling them that they are allowed only to use a facility consistent with their “biological sex” rather than their gender identity is psychologically damaging and may lead them to skip using a bathroom entirely (which is precisely what Ms. Sorber

³⁰ 6 *Del. C.* § 4504(a)(2).

³¹ See *Salzberg v. Sciabacucchi*, 227 A.3d 102, 118 (Del. 2020) (“principles of statutory construction instruct that statutes should not be superseded or altered by implication unless there is an irreconcilable conflict”); cf. *Olympus Spa v. Armstrong*, 169 F.4th 817 (9th Cir. 2026) (rejecting dissent’s view as creating an implied exemption to an unambiguous statute); *Comm’n on Human Rights & Opps. v. Edge Fitness LLC*, 268 A.3d 630, 633 (Conn. 2022) (holding that express exceptions in the plain language of statute precluded the creation of implied additional privacy exceptions).

did as a result of the April 5 Incident) which, in turn, can lead to serious adverse physiological consequences.³²

In sum, the evidence demonstrated that denying Ms. Sorber the ability to use the women's bathroom during the April 5 Incident was on account of her gender identity.

E. Ms. Sorber Has Met Her Burden of Showing Retaliation Was the Basis for the April 12 Incident

In connection with the April 12 Incident, Section 4504(f) of DEAL requires Ms. Sorber to establish that Respondents retaliated against her because she opposed an act or practice that is unlawful under DEAL.³³

The Panel concludes that Ms. Sorber's social media post stating that the bouncers at the Hideout were forcing her to use the men's bathroom, when the testimony made clear Respondents knew Ms. Sorber was a transgender female, and where Ms. Sorber in the past had always been permitted to use the women's bathroom at the Hideout, was a statement of her opposition to the bathroom policy and the refusal of the Respondents to allow her to use the bathroom that aligned with her gender identity. Accordingly, the Panel finds that Respondents retaliated against Ms. Sorber by banning her from the Hideout because in a social media post she opposed the bathroom policy of the Hideout as applied to transgender individuals, in violation of section 4504(f)(1) of DEAL.

³² *Doe ex. rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 521 (3d Cir. 2018), citing *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017).

³³ Federal caselaw analyzing retaliation claims under analogous federal statutes have concluded, "[A] plaintiff [in an opposition case] does not need to prove that the employment practice at issue was in fact unlawful under Title VII . . . [A plaintiff] must only show that she had a 'reasonable belief' that the employment practice she protested was prohibited under Title VII." *Trent v. Valley Elec. Ass'n, Inc.*, 41 F.3d 524, 526 (9th Cir. 1994). Because the Panel in this case found that the bathroom policy of the Hideout as applied to transgender individuals was a violation of DEAL, it is not necessary for the Panel to determine whether the Facebook post that led to the ban would qualify as retaliation under DEAL if it were based only on whether Ms. Sorber had a reasonable belief that the bathroom policy was a violation of DEAL.

PART II

NONE OF RESPONDENTS' ARGUMENTS NEGATE DISCRIMINATORY INTENT OR OTHERWISE JUSTIFY THEIR CONDUCT TOWARD MS. SORBER ON APRIL 5, 2023 OR APRIL 12, 2023

A. April 5, 2023 Incident:

Ms. Sorber's testimony showed that on April 5, 2023, she was asked for her identification a second time after having already displayed it to gain admission to the Hideout earlier that evening. Later, when she was on her way to the bathroom, she was stopped yet again and told to use the bathroom that matched the gender listed on her driver's license instead of the bathroom that corresponds to her gender identity. For Ms. Sorber to prevail, the evidence at the hearing must demonstrate that the Respondents acted with discriminatory intent.

As already noted, the April 5 Incident was established through direct evidence of discriminatory intent because Mr. Derrickson testified that after the unidentified woman made her complaint, he thought about the issue for a week. He ultimately decided that Ms. Sorber and other transgender customers would be required to display identification before using the bathroom and would be told to use whatever bathroom corresponded to the gender marker on their driver's licenses. Sure enough, as the evidence showed, on April 5, 2023, Ms. Sorber was required to show her identification more than once and was later confronted on the way to the women's bathroom and told to use the men's bathroom because of the gender marker on her driver's license. Mr. Derrickson's testimony made clear that these actions were both intentional and taken because of her gender identity.

Mr. Derrickson's denial of ill will toward Ms. Sorber and transgender people does not negate the Respondents' discriminatory intent. The law does not require the Complainant to prove

that the Respondents were motivated by hostility, ill will or hatred toward her or transgender people. “Discriminatory intent” simply means intentionally treating someone differently because of a protected characteristic, regardless of motive.³⁴

Mr. Derrickson’s motive to keep all his customers happy does not negate discriminatory intent either. A desire to placate customers cannot justify illegal actions in a place of public accommodation, and customer preference is not a valid defense to intentional discrimination under the law.³⁵

Mr. Derrickson’s claims that he is being victimized by conflicting legal rules are equally unavailing. Portraying himself as a business owner caught up in a maze of conflicting laws enforced by different state agencies, Mr. Derrickson professed an intention to do whatever the State requires, but argued that ambiguities in Delaware law left him and his business to rely on the gender printed on her driver’s license to determine which bathroom Ms. Sorber would be permitted to use. The Panel has carefully examined all of his claims about potential conflicts in Delaware law. We conclude that they lack merit.

First, although Mr. Derrickson argues that looking at a designation on a driver’s license would make it easier for him to confirm a bar patron’s gender identity, the General Assembly did

³⁴ See, e.g., *Saint-Jean v. Emigrant Mortgage Co.*, 129 F.4th 124, 152-54 (2d Cir. 2025), *cert. denied*, 146 S. Ct. 1501 (2026); *Cnty. Servs., Inc. v. Wind Gap Mun. Auth.*, 421 F.3d 170, 177 (3d Cir. 2005); *Ferrill v. Parker Grp., Inc.*, 168 F.3d 468, 472-73 & n.7 (11th Cir. 1999); *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1500-01 & n.16 (10th Cir. 1995)) (applying rule to a disabled plaintiff under the Fair Housing Act; see also *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644 (2020)) (analyzing statutory language and noting that prohibiting actions “because of,” “by reason of” and “on account of” all embody the simple test of “but for” causation)).

³⁵ See, e.g., *Chaney v. Plainfield Healthcare Ctr.*, 612 F.3d 908, 913. (7th Cir. 2010)) (complying with a patient’s racial preferences is discriminatory); *Ferrill v. Parker Grp., Inc.*, 168 F.3d 468, 472-75 (11th Cir. 1999)) (hiring practice based on belief that customers are more receptive to messages from people of same race is discriminatory); *Fernandez v. Wynn Oil Co.*, 653 F.2d 1273, 1276-77 (9th Cir. 1981) (complying with customer’s gender preferences is discriminatory).

not write the statute that way. The Panel’s task is to apply the law as it currently exists, not to import new requirements into a statute under the guise of interpreting statutory language that already is clear.³⁶

Because DEAL unambiguously instructs that gender identity is determined by a person’s appearance, expression and behavior, it is inappropriate to look beyond the words of the enactment to ascertain legislative intent. But, even if the Respondents could point to an actual ambiguity in DEAL, there is no support for the view that the General Assembly intended to require transgender people to present an identification card to use a bathroom matching their gender identity. Had that been the legislative intent, the relevant DEAL section would have said so and would have set forth a description of what type of identification the General Assembly had in mind. But DEAL says nothing about this, leading the Panel to the conclusion that no documentation is required and should not have been demanded by the Respondents in this case.

That conclusion becomes even clearer when one considers that the very next year the General Assembly passed a statute that does require documentation for certain bathroom use. Specifically, in 2014, the General Assembly enacted “Morgan’s Law,” which allows people suffering from certain conditions to access private bathrooms in business locations upon presenting appropriate documentation. The statute specifies that “any business or place where members of the public have access as invitees, licensees, or customers” must allow individuals with “any ... medical condition that requires immediate access to a restroom facility” to use private employee bathrooms (subject to a few exceptions) when public bathrooms are not available. The statute explicitly requires specific types of documentation to be presented: a signed physician’s note, an

³⁶ See, e.g., *Tesla Inc. v. Delaware Div. of Motor Vehicles*, 297 A.3d 625, 631 (Del. 2023).

identification card issued by a national health organization or a state identification card documenting the medical condition.³⁷

The fact that the General Assembly did not require similar documentation to support a transgender person's ability to use a bathroom consistent with their gender identity must be regarded as a conscious choice. It is unlikely that any detail about bathroom access by transgender males and females escaped the attention of the General Assembly members as they considered the bill that added gender identity to DEAL. The entire bill package was a landmark development containing a multitude of protections for transgender people. Gender identity provisions were added to hate crimes legislation, DEAL, the Fair Housing Act, the landlord/tenant code, the insurance laws, the labor laws and the statutes governing public contracts. Despite the historic nature of the bill and the breadth of protections that it proposed across a variety of industries for the benefit of transgender individuals, the bill became best known by its opponents as “the bathroom bill.”³⁸

On the day the General Assembly's vote originally had been scheduled, an amendment to the bill was introduced containing additional language defining “gender identity” as requiring a “consistent and uniform assertion” of a “core identity” and precluding the use of gender identity for an “improper purpose.” That language was added to address opponents' objections that

³⁷ See 79 Del. Laws c. 414, § 1; see also 16 Del. C. §§ 3001H-3006H.

³⁸ See <https://www.delawarepublic.org/2013-06-18/house-approves-transgender-anti-discrimination-bill> (6/18/2023) (noting “Opponents of the bill at Leg Hall have dubbed it the ‘Bathroom Bill,’ saying police would see an uptick in sexual crimes in those private areas.”); MacArthur, *Much Ado About Bathrooms*, <https://www.capegazette.com/blog-entry/much-ado-about-bathrooms/49735> (July 3, 2013). In a June 18, 2023, meeting of the Sussex County Council, a member stated, “Another bill ... of some interest to us, is this bathroom bill.” <https://sussexcountyde.gov/sites/default/files/audio/061813.3.MP3> (Recording at 9:08-10:17 minutes); see also Minutes, Sussex County Council, 6/18/23 & 6/25/23 Council Meetings available at the following links: <https://sussexcountyde.gov/sites/default/files/minutes/061813%281%29.pdf> and <https://sussexcountyde.gov/sites/default/files/minutes/062513%281%29.pdf>.

predators would pretend to be transgender people to gain access to bathrooms and victimize their prey.³⁹ In addition, Representative Short proposed language allowing businesses to create separate private areas in locker room environments to accommodate transgender people.⁴⁰ These amendments were adopted, and the full bill, as amended, was passed and signed into law by Governor Markell the following day.⁴¹

As the foregoing demonstrates, the gender identity protections for transgender people in DEAL were enacted after extensive consideration, including discussions that criminal actors might gain access to bathrooms by posing as transgender people. Moreover, amendments were proposed and passed just before the legislation was enacted, but none of them included a provision even approaching what the Respondents were requiring of Ms. Sorber to demonstrate her right to use the women's bathroom. Put simply, there is no evidence to show that the General Assembly ever intended to allow operators of places of public accommodation to confront transgender people in public places, demand identification, and tell them that bathroom access is limited to those who can show that their gender identities match their driver's license.

Equally unpersuasive is Mr. Derrickson's effort to import DMV procedures into DEAL. Casting himself in the role of a hypothetical customer, he explained, "I can't walk over in a DMV and say, 'Hey, I identify as a female. I want to change my license.' I'd have to get a therapist to fill out a form and do something from a legal standpoint. And that's all I was trying to do." (HV: 1:33:31-1:33:59). First, the practice of an administrative agency does not trump a statute. Second, when Ms. Sorber was confronted during the April 5 Incident, DEAL's gender identity protection

³⁹ See <https://why.org/articles/delaware-gender-identity-bill/> (June 19, 2013). This language adding to the definition of gender identity was repealed in 2021. See 83 Del. Laws, c. 195, § 1.

⁴⁰ That provision, which remains part of DEAL to this day, is discussed above. See Part I(D), *supra*.

⁴¹ <https://news.delaware.gov/2013/06/19/governor-signs-gender-identity-nondiscrimination-act/>

had been in place for nearly a decade and already had been amended once to *reduce* the proof required, not increase it or make it more complex by adding new requirements like checking someone's identification. Third, Ms. Sorber's gender identity is not an empty "I identify" declaration like the one that Mr. Derrickson has posited for his hypothetical DMV visitor. Ms. Sorber's gender identity is supported by an ample set of facts and fits squarely within a legal definition that has served the State well over the last dozen years.

The Respondents' bathroom policy would result in patrons, whether they are transgender or not, being stopped and directed to display their identification whenever they do not fit a Hideout employee's subjective view of masculine or feminine qualities. Mr. Derrickson made this clear during his cross-examination. Indeed, after Ms. Sorber asked whether the Hideout employees tell "all patrons which bathroom to use," he replied: "We tell the patrons to use the bathroom that lines up with their gender identity. If they use the ones that is listed on their ID already, we don't need to tell them anything" (HV: 1:19:33-1:19:48). In other words, the only ones who would be instructed "to use the bathroom that lines up with their gender identity" would be those whose identification documents do not "line up" with the bathroom they wish to use because, according to Mr. Derrickson, it is the gender marker on the ID that defines gender identity (HV: 1:41:06).

DMV's rules require documentation for all sorts of pedigree changes including one's name, gender marker, and date of birth. These obviously spring from a practical recognition that licenses are official state records and are used routinely as proof for many things beyond driving. As Mr. Derrickson himself testified, at 9:00 p.m. each night, the Hideout checks patrons' licenses to ensure that they are over 21 years old. Driver's licenses and state identification cards are also used for employment, credit applications, leases, voter registration, government benefits, cashing checks, and so on. This being the case, it is hardly a surprise that DMV developed specific rules detailing

the types of verification needed to obtain a driver's license or to change basic pedigree information after a license has been issued. *See 2 DE Admin. Code 2217, Sections 5.3, 5.4, 5.5; 2 DE Admin. Code 2225, Sections 5.1, 5.2, 5.5.*

Mr. Derrickson's suggestion that DEAL conflicts with the "Health Code" is also meritless. The definition of "gender identity" in DEAL is nowhere contradicted in any one of the more than 1300 sections of Title 16 of the Delaware Code, which governs Health and Safety in our State. The Panel has found no regulation even remotely suggesting that, despite DEAL, a business owner operating a place of public accommodation is allowed, much less required, to demand identification before allowing the person to use a publicly available bathroom that conforms to their gender identity.

Mr. Derrickson's specific citation during the hearing to section "403.1.3" of the "Health Code" was a bit puzzling until he explained that, apparently in response to Ms. Sorber's Complaint, he called a representative of DPH to ask whether he could simply remove the male and female signs on the bathrooms in the Hideout and simply do away with the distinction.

While there is no section 403.1.3 in Title 16, there is a provision that requires DPH to "adopt and enforce" the International Plumbing Code ("IPC").⁴² DPH adopted the 2021 version of the IPC with limited changes.⁴³ As its title suggests, the IPC contains a multitude of specifications about plumbing.

Among them is a table labeled 403.1. It does not discuss gender identity. It does, however, set forth in detail the minimum number of "water closets" -- toilet stalls -- that are required for males and females, along with the number of lavatories -- wash basins -- for particular types of

⁴² *See 16 Del. C. § 7903.*

⁴³ *See 16 DE Admin. Code 4455-2.0.*

establishments and occupancy levels. There also is a section of the 2021 IPC that has the exact section number identified by Mr. Derrickson, 403.1.3. It is entitled “Lavatory distribution” and provides: “Where two or more toilet rooms are provided for each sex, the required number of lavatories shall be distributed proportionately to the required number of water closets.”

Far from conflicting with DEAL, the information in the IPC merely sets forth that there are men's and women's bathrooms in a sizable place of public accommodation, and they all have sinks and toilets. This has nothing to do with providing access to bathrooms based on gender identity. It merely dictates the number of toilet stalls and sinks for bathrooms designated for males and females in particular types of facilities based on projected occupancy levels.

Nothing in the IPC transforms a business owner into the bathroom police. Nor does any legal principle permit, much less require, a business owner to stand guard at a bathroom to demand identification from those patrons who do not meet the owner's subjective impressions about masculinity or femininity. There is no reason to believe that the mere existence of a regulation regarding the designation of men's and women's bathrooms somehow supplants DEAL's explicit protections relating to gender identity. The law protects everyone from a manager's subjective judgments about who looks masculine, who looks feminine, as well as who can use which toilet stall.

B. April 12, 2023 Incident:

Under Section 4504(f) of DEAL, in order to prove retaliation, Ms. Sorber must prove that Respondents took discriminatory retaliatory action against Ms. Sorber for opposing an act or practice that is unlawful under DEAL.

Mr. Derrickson's stated reason for imposing the ban on Ms. Sorber's entry into the Hideout in the future was because she was causing problems – essentially, because she said something

negative about the business. He also testified that there are over 200 people who have been banned from the facility “that cause problems,” “not just transgender people.” The Panel has already found in this Decision that the bathroom policy of the Hideout as applied to transgender individuals was unlawful discrimination under DEAL. Respondents did not ban Ms. Sorber for “causing problems” by saying something negative about the business in general, such as criticizing their food or taste in music. Respondents banned Ms. Sorber for “causing problems” by making a statement opposing a policy of the business - a policy that was applied to Ms. Sorber and was found by this Panel to be a discriminatory policy under DEAL. Therefore, the Panel concludes that the ban of Ms. Sorber from the facility was in violation of the provisions of DEAL that are meant to prevent this exact type of retaliation. DEAL protects the right of a customer to speak out against a policy of a business that is discriminatory under DEAL itself.

Based on the hearing testimony and evidence in this case, the Panel finds that Ms. Sorber has met her burden to prove that Respondents’ decision to ban her from entry into the Hideout was unlawful retaliation under Sections 4504(f)(1) of DEAL.

Based upon the foregoing discussion, the Panel concludes that Ms. Sorber has proven by a preponderance of the evidence that Respondents discriminated against her because of her gender identity in violation of 6 *Del. C.* § 4504(a) on April 5, 2023. The Panel further concludes that Ms. Sorber proved that Respondents retaliated against her in violation of 6 *Del. C.* § 4504(f) on April 12, 2023.

PART III

DISCUSSION OF APPROPRIATE RELIEF IN THIS CASE

Because Respondents violated the Delaware Equal Accommodations Law by discriminating and retaliating against Ms. Sorber, the Panel has discretion to order “such relief as may be appropriate.”⁴⁴ The Panel may order “actual damages... ‘including damages caused by humiliation and embarrassment,’ costs, expenses, reasonable attorneys’ fees[,] and injunctive or other equitable relief.”⁴⁵ The Panel may also assess a civil penalty to be paid to the Commission’s Special Administration Fund “to vindicate the public interest.”⁴⁶

The Panel finds it appropriate to award Ms. Sorber \$5,000.00 in damages to compensate for Respondents’ actions on April 5, 2023, and also \$5,000.00 in damages to compensate Ms. Sorber for Respondents’ actions on April 12, 2023. Ms. Sorber was refused access to the bathroom that aligned with her gender identity, causing her to not use the restroom at the Hideout that evening, and a week later she was told while trying to gain access to the facility that she was banned from the Hideout due to a social media post. Both incidents caused her emotional injury, humiliation, embarrassment and distress, which the Panel finds to be compensable damages.

The Panel also finds the Respondents should pay a \$2,500.00 civil penalty for Respondents’ actions on April 5, 2023, and also a \$2,500.00 civil penalty for Respondents’ actions on April 12, 2023, to vindicate the public interest so that the Commission can, among other things, educate operators of places of public accommodation in Delaware that discrimination and

⁴⁴ 6 Del. C. § 4508(h).

⁴⁵ *Id.*

⁴⁶ *Id.*

retaliation against people based on their gender identity is demoralizing to its victims and perpetuates hatred and violence towards members of the transgender community.

In addition, the Panel concludes that the Hideout must require all its full time and part time employees and independent contractors (who are working for the Hideout as of the date of the training), to undergo an anti-discrimination and equal accommodations training, at the expense of the Hideout or its owners, to ensure that the facility will become, and remain, free of any discriminatory conduct prohibited by DEAL. The logistics of the training and approval of the training provider shall be handled by the Division of Human and Civil Rights.

The Panel also concludes that Respondents must remove Ms. Sorber from their list of banned patrons arising out of any of her actions related to the April 5 Incident, her social media post in response to that incident, or the Hideout's bathroom policy. Finally, the Panel concludes Respondents must revise their bathroom policy so that it does not conflict with or violate the provisions of DEAL.

CONCLUSION

After careful consideration of the evidence presented, the Panel, by majority vote, concludes that Ms. Sorber has shown that Respondents have violated DEAL, 6 *Del. C.* § 4504.

ORDER

A majority of the Panel has found that Respondents violated § 4504 of DEAL. Pursuant to § 4508(h) of DEAL, the Panel hereby orders the following:

- (1) Respondents, the Hideout Arcade Bar & Grille and owner Bryan Derrickson shall be jointly and severally liable to pay within 120 days of the date of this Order \$10,000.00 in compensatory damages to Ms. Sorber;
- (2) Respondents, the Hideout Arcade Bar & Grille and owner Bryan Derrickson shall

be jointly and severally liable to pay within 120 days of the date of this Order a civil penalty of \$5,000.00 to the Special Administration Fund, payable through the Division of Human and Civil Rights. Payment shall be made to the Delaware Human and Civil Rights Commission and mailed to 820 North French Street, 4th Floor, Wilmington, DE 19801;

- (3) Respondents shall ensure that all full time and part time employees and independent contractors who work for the Hideout Arcade Bar & Grille (as of the date of the training) shall undergo training in the area of anti-discrimination and DEAL equal accommodations laws by a training provider acceptable to the Division of Human and Civil Rights within six months of the date of this Order. The logistics of the training shall be coordinated with and approved by the Division of Human and Civil Rights. Any substantially similar training provided pursuant to any other Order of this Commission shall satisfy this requirement. Respondents shall incur all fees and expenses associated with said training; and
- (4) Respondents shall remove Ms. Sorber from their list of banned patrons arising out of any of her actions related to the April 5 Incident, her social media post in response to that incident, or the Hideout's bathroom policy; and
- (5) Respondents shall revise their bathroom policy so that it does not conflict with or violate the provisions of DEAL; and

- (6) On or before six months from the date of this Order, Respondents shall submit documentation of their compliance with the relief specified in this Order to Delaware Human and Civil Rights Commission, Chairperson Joseph Dawson, 820 North French Street, 4th Floor, Wilmington, DE 19801.

IT IS SO ORDERED this 22 day of July, 2026.



Dwayne J Bensing (Jul 22, 2026 13:16:15 EDT)

Dwayne Bensing
Commissioner and Panel Chair



Joseph Dawson (Jul 22, 2026 13:13:48 EDT)

Joseph Dawson
Commissioner and Panel Member



Calvin H. Christopher (Jul 22, 2026 13:12:58 EDT)

Calvin Christopher
Commissioner and Panel Member

Appendix A:

REQUEST FOR GENDER CHANGE ON DRIVER LICENSE/IDENTIFICATION CARD					
PLEASE TYPE OR PRINT ALL INFORMATION IN BLUE OR BLACK INK					
Customer: Please complete Sections A, B, C, and D.					
A - DRIVER INFORMATION					
DRIVER LICENSE NUMBER		LAST NAME(S)		SUFFIX	
FIRST NAME		MIDDLE NAME			
DATE OF BIRTH		DAYTIME TELEPHONE NUMBER		E-MAIL ADDRESS (if applicable)	
MONTH	DAY	YEAR			
Please check the product(s) you currently have:					
☐ Class D Driver License ☐ Commercial Driver License ☐ Identification Card					
B - GENDER DESIGNATION STATEMENT					
I, _____, wish the gender designation on my driver license/ID card to read:					
☐ MALE ☐ FEMALE					
C - TO BE COMPLETED BY MEDICAL OR SOCIAL SERVICE PROVIDER LICENSED IN THE UNITED STATES					
PROVIDER'S LAST NAME		PROVIDER'S FIRST NAME		PROVIDER'S TITLE	
PROVIDER'S ORGANIZATION			STATE MEDICAL LICENSE #		STATE LICENSED IN
PROVIDER'S STREET ADDRESS					
CITY		STATE		ZIP	
I am a licensed: ☐ Physician ☐ Therapist/Counselor ☐ Social Worker					
My practice includes assisting, counseling or treating persons with gender identity issues, including the applicant named herein, and in my professional opinion, the applicant's gender identity is _____ and can reasonably be expected to continue as such for the foreseeable future. ☐ Male ☐ Female					
I certify, under the penalty of perjury, that the foregoing medical or social service provider information on this application is true and correct.					
PROVIDER'S SIGNATURE: _____				DATE: _____	
D - AUTHORIZATION AND CERTIFICATION					
I certify, under the penalty of perjury, that the information on this application is true and correct to the best of my knowledge, that this request for the selected gender designation to appear on my driver license/ID card accurately reflects my gender identity and is not for any fraudulent or other unlawful purpose, and that I am a bona fide resident of Delaware.					
APPLICANT'S SIGNATURE: _____				DATE: _____	
E - TO BE COMPLETED BY THE DIVISION OF MOTOR VEHICLES					
APPROVING SUPERVISOR/SENIOR NAME: _____					
APPROVING SUPERVISOR/SENIOR SIGNATURE: _____				DATE: _____	
MV2020 08/11					

https://dmv.de.gov/forms/driver_serv_forms/pdfs/gender_change_request_form.pdf?cache=1769959715927

Appendix B:


STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

Gender Designation Change Consent Form

Name: _____

I, _____, request to have my gender designation
(print name)

changed from M/F/X to M/F/X on my driver license or identification card

(Delaware DL/ID Number)

I understand Selective Service registration is required by law under 50 U.S.C. Appendix §§ 451-473, the Military Selective Service Act (MSSA). Selective Service determines the registration requirement on gender assigned at birth and not on gender identity or on gender reassignment. Individuals who are born male and change their gender to female or not specified are still required to register.

Signature: _____ Date: _____

[Date of Issuance: _____]



https://dmv.de.gov/forms/driver_serv_forms/pdfs/Gender-Designation-Change-Consent-Form_2021.pdf?cache=1769959748143