

SENATE BILL No. 787

September 29, 2005, Introduced by Senators BRATER, JACOBS, THOMAS, BASHAM, LELAND, CLARK-COLEMAN, SCOTT, EMERSON and CLARKE and referred to the Committee on Judiciary.

A bill to amend 1976 PA 453, entitled
"Elliott-Larsen civil rights act,"
by amending the title and sections 102, 103, 202, 203, 204, 205,
206, 207, 209, 302, 302a, 402, 502, 504, 505, and 506 (MCL 37.2102,
37.2103, 37.2202, 37.2203, 37.2204, 37.2205, 37.2206, 37.2207,
37.2209, 37.2302, 37.2302a, 37.2402, 37.2502, 37.2504, 37.2505, and
37.2506), the title as amended by 1992 PA 258, sections 102, 502,
504, 505, and 506 as amended by 1992 PA 124, section 103 as amended
by 1999 PA 202, section 202 as amended by 1991 PA 11, section 302a
as added by 1992 PA 70, and section 402 as amended by 1993 PA 216.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

1

1 An act to define civil rights; to prohibit discriminatory
2 practices, policies, and customs in the exercise of those rights
3 based upon religion, race, color, national origin, age, sex, **SEXUAL**
4 **ORIENTATION**, height, weight, familial status, or marital status; to
5 preserve the confidentiality of records regarding arrest,
6 detention, or other disposition in which a conviction does not
7 result; to prescribe the powers and duties of the civil rights
8 commission and the department of civil rights; to provide remedies
9 and penalties; and to repeal ~~certain~~ acts and parts of acts.

10 Sec. 102. (1) The opportunity to obtain employment, housing
11 and other real estate, and the full and equal utilization of public
12 accommodations, public service, and educational facilities without
13 discrimination because of religion, race, color, national origin,
14 age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION**,
15 height, weight, familial status, or marital status as prohibited by
16 this act, is recognized and declared to be a civil right.

17 (2) This section ~~shall~~ **DOES** not ~~be construed to~~ prevent an
18 individual from bringing or continuing an action arising out of sex
19 discrimination before July 18, 1980 ~~which~~ **FOR AN** action **THAT** is
20 based on conduct similar to or identical to harassment.

21 (3) This section ~~shall~~ **DOES** not ~~be construed to~~ prevent an
22 individual from bringing or continuing an action arising out of
23 discrimination based on familial status before the effective date
24 of the amendatory act that added this subsection ~~which~~ **FOR AN**
25 action **THAT** is based on conduct similar to or identical to
26 discrimination because of the age of persons residing with the
27 individual bringing or continuing the action.

1 Sec. 103. As used in this act:

2 (a) "Age" means chronological age except as otherwise provided
3 by law.

4 (b) "Commission" means the civil rights commission established
5 by section 29 of article V of the state constitution of 1963.

6 (c) "Commissioner" means a member of the commission.

7 (d) "Department" means the department of civil rights or its
8 employees.

9 (e) "Familial status" means 1 or more individuals under the
10 age of 18 residing with a parent or other person having custody or
11 in the process of securing legal custody of the individual or
12 individuals or residing with the designee of the parent or other
13 person having or securing custody, with the written permission of
14 the parent or other person. For purposes of this definition,
15 "parent" includes a person who is pregnant.

16 **(F) "GENDER IDENTITY OR EXPRESSION" MEANS HAVING OR BEING**
17 **PERCEIVED AS HAVING A GENDER-RELATED SELF-IDENTITY OR EXPRESSION**
18 **WHETHER OR NOT ASSOCIATED WITH AN INDIVIDUAL'S ASSIGNED SEX AT**
19 **BIRTH.**

20 (G) ~~—(f)—~~ "National origin" includes the national origin of an
21 ancestor.

22 (H) ~~—(g)—~~ "Person" means an individual, agent, association,
23 corporation, joint apprenticeship committee, joint stock company,
24 labor organization, legal representative, mutual company,
25 partnership, receiver, trust, trustee in bankruptcy, unincorporated
26 organization, the state or a political subdivision of the state or
27 an agency of the state, or any other legal or commercial entity.

1 (I) ~~—(h)—~~ "Political subdivision" means a county, city,
2 village, township, school district, or special district or
3 authority of the state.

4 (J) ~~—(i)—~~ Discrimination because of sex includes sexual
5 harassment. Sexual harassment means unwelcome sexual advances,
6 requests for sexual favors, and other verbal or physical conduct or
7 communication of a sexual nature under the following conditions:

8 (i) Submission to the conduct or communication is made a term
9 or condition either explicitly or implicitly to obtain employment,
10 public accommodations or public services, education, or housing.

11 (ii) Submission to or rejection of the conduct or communication
12 by an individual is used as a factor in decisions affecting the
13 individual's employment, public accommodations or public services,
14 education, or housing.

15 (iii) The conduct or communication has the purpose or effect of
16 substantially interfering with an individual's employment, public
17 accommodations or public services, education, or housing, or
18 creating an intimidating, hostile, or offensive employment, public
19 accommodations, public services, educational, or housing
20 environment.

21 (K) **"SEXUAL ORIENTATION" MEANS HAVING AN ORIENTATION FOR**
22 **HETEROSEXUALITY, HOMOSEXUALITY, OR BISEXUALITY OR HAVING A HISTORY**
23 **OF SUCH AN ORIENTATION OR BEING IDENTIFIED WITH SUCH AN**
24 **ORIENTATION.**

25 Sec. 202. (1) An employer shall not do any of the following:

26 (a) Fail or refuse to hire or recruit, discharge, or otherwise
27 discriminate against an individual with respect to employment,

1 compensation, or a term, condition, or privilege of employment,
2 because of religion, race, color, national origin, age, sex, **SEXUAL**
3 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight, or
4 marital status.

5 (b) Limit, segregate, or classify an employee or applicant for
6 employment in a way that deprives or tends to deprive the employee
7 or applicant of an employment opportunity, or otherwise adversely
8 affects the status of an employee or applicant because of religion,
9 race, color, national origin, age, sex, **SEXUAL ORIENTATION, GENDER**
10 **IDENTITY OR EXPRESSION**, height, weight, or marital status.

11 (c) Segregate, classify, or otherwise discriminate against a
12 person on the basis of sex with respect to a term, condition, or
13 privilege of employment, including, but not limited to, a benefit
14 plan or system.

15 ~~—— (d) Until January 1, 1994, require an employee of an~~
16 ~~institution of higher education who is serving under a contract of~~
17 ~~unlimited tenure, or similar arrangement providing for unlimited~~
18 ~~tenure, to retire from employment on the basis of the employee's~~
19 ~~age. As used in this subdivision, "institution of higher education"~~
20 ~~means a public or private university, college, community college,~~
21 ~~or junior college located in this state.~~

22 (2) This section ~~shall~~ **DOES** not ~~be construed to~~ prohibit
23 the establishment or implementation of a bona fide retirement
24 policy or system that is not a subterfuge to evade the purposes of
25 this section.

26 (3) This section does not apply to the employment of an
27 individual by his or her parent, spouse, or child.

1 Sec. 203. An employment agency shall not fail or refuse to
2 procure, refer, recruit, or place for employment, or otherwise
3 discriminate against, an individual because of religion, race,
4 color, national origin, age, sex, **SEXUAL ORIENTATION, GENDER**
5 **IDENTITY OR EXPRESSION**, height, weight, or marital status; or
6 classify or refer for employment an individual on the basis of
7 religion, race, color, national origin, age, sex, **SEXUAL**
8 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight, or
9 marital status.

10 Sec. 204. A labor organization shall not **DO ANY OF THE**
11 **FOLLOWING:**

12 (a) Exclude or expel from membership, or otherwise
13 discriminate against, a member or applicant for membership because
14 of religion, race, color, national origin, age, sex, **SEXUAL**
15 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight, or
16 marital status.

17 (b) Limit, segregate, or classify membership or applicants for
18 membership, or classify or fail or refuse to refer for employment
19 an individual in a way ~~which~~ **THAT** would deprive or tend to
20 deprive that individual of an employment opportunity, or ~~which~~
21 **THAT** would limit an employment opportunity, or ~~which~~ **THAT** would
22 adversely affect wages, hours, or employment conditions, or
23 otherwise adversely affect the status of an employee or an
24 applicant for employment, because of religion, race, color,
25 national origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
26 **EXPRESSION**, height, weight, or marital status.

27 (c) Cause or attempt to cause an employer to violate this

1 article.

2 (d) Fail to fairly and adequately represent a member in a
3 grievance process because of religion, race, color, national
4 origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
5 **EXPRESSION**, height, weight, or marital status.

6 Sec. 205. An employer, labor organization, or joint labor-
7 management committee controlling an apprenticeship, on the job, or
8 other training or retraining program, shall not discriminate
9 against an individual because of religion, race, color, national
10 origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
11 **EXPRESSION**, height, weight, or marital status, in admission to, or
12 employment or continuation in, a program established to provide
13 apprenticeship on the job, or other training or retraining.

14 Sec. 206. (1) An employer, labor organization, or employment
15 agency shall not print, circulate, post, mail, or otherwise cause
16 to be published a statement, advertisement, notice, or sign
17 relating to employment by the employer, or relating to membership
18 in or a classification or referral for employment by the labor
19 organization, or relating to a classification or referral for
20 employment by the employment agency, ~~which~~ **THAT** indicates a
21 preference, limitation, specification, or discrimination, based on
22 religion, race, color, national origin, age, sex, **SEXUAL**
23 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight, or
24 marital status.

25 (2) Except as permitted by rules promulgated by the commission
26 or by applicable federal law, an employer or employment agency
27 shall not **DO ANY OF THE FOLLOWING:**

1 (a) Make or use a written or oral inquiry or form of
2 application that elicits or attempts to elicit information
3 concerning the religion, race, color, national origin, age, sex,
4 **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight,
5 or marital status of a prospective employee.

6 (b) Make or keep a record of information described in
7 subdivision (a) or ~~to~~ disclose that information.

8 (c) Make or use a written or oral inquiry or form of
9 application that expresses a preference, limitation, specification,
10 or discrimination based on religion, race, color, national origin,
11 age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION**,
12 height, weight, or marital status of a prospective employee.

13 Sec. 207. An individual seeking employment shall not publish
14 or cause to be published a notice or advertisement that specifies
15 or indicates the individual's religion, race, color, national
16 origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
17 **EXPRESSION**, height, weight, or marital status, or expresses a
18 preference, specification, limitation, or discrimination as to the
19 religion, race, color, national origin, age, height, weight, sex,
20 **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION**, or marital
21 status of a prospective employer.

22 Sec. 209. A contract to which ~~the~~ **THIS** state, a political
23 subdivision, or an agency ~~thereof~~ **OF THIS STATE OR A POLITICAL**
24 **SUBDIVISION** is a party shall contain a covenant by the contractor
25 and his **OR HER** subcontractors not to discriminate against an
26 employee or applicant for employment with respect to hire, tenure,
27 terms, conditions, or privileges of employment, or a matter

1 directly or indirectly related to employment, because of race,
2 color, religion, national origin, age, sex, **SEXUAL ORIENTATION**,
3 **GENDER IDENTITY OR EXPRESSION**, height, weight, or marital status.
4 Breach of this covenant may be regarded as a material breach of the
5 contract.

6 Sec. 302. Except where permitted by law, a person shall not **DO**
7 **ANY OF THE FOLLOWING**:

8 (a) Deny an individual the full and equal enjoyment of the
9 goods, services, facilities, privileges, advantages, or
10 accommodations of a place of public accommodation or public service
11 because of religion, race, color, national origin, age, sex, **SEXUAL**
12 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, or marital status.

13 (b) Print, circulate, post, mail, or otherwise ~~cause to be~~
14 ~~published~~ **PUBLISH** a statement, advertisement, notice, or sign
15 ~~which~~ **THAT** indicates that the full and equal enjoyment of the
16 goods, services, facilities, privileges, advantages, or
17 accommodations of a place of public accommodation or public service
18 will be refused, withheld from, or denied an individual because of
19 religion, race, color, national origin, age, sex, **SEXUAL**
20 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, or marital status, or
21 that an individual's patronage of or presence at a place of public
22 accommodation is objectionable, unwelcome, unacceptable, or
23 undesirable because of religion, race, color, national origin, age,
24 sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION**, or marital
25 status.

26 Sec. 302a. (1) This section applies to a private club that is
27 defined as a place of public accommodation ~~pursuant to~~ **UNDER**

1 section 301(a).

2 (2) If a private club allows use of its facilities by 1 or
3 more adults per membership, the use must be equally available to
4 all adults entitled to use the facilities under the membership. All
5 classes of membership shall be available without regard to race,
6 color, gender, **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION,**
7 religion, marital status, or national origin. Memberships that
8 permit use during restricted times may be allowed only if the
9 restricted times apply to all adults using that membership.

10 (3) A private club that has food or beverage facilities or
11 services shall allow equal access to those facilities and services
12 for all adults in all membership categories at all times. This
13 subsection shall not require service or access to facilities to
14 persons that would violate any law or ordinance regarding sale,
15 consumption, or regulation of alcoholic beverages.

16 (4) This section does not prohibit a private club from
17 sponsoring or permitting sports schools or leagues for children
18 less than 18 years of age that are limited by age or to members of
19 1 sex, if comparable and equally convenient access to the club's
20 facilities is made available to both sexes and if these activities
21 are not used as a subterfuge to evade the purposes of this article.

22 Sec. 402. An educational institution shall not do any of the
23 following:

24 (a) Discriminate against an individual in the full utilization
25 of or benefit from the institution, or the services, activities, or
26 programs provided by the institution because of religion, race,
27 color, national origin, ~~or~~ sex, **SEXUAL ORIENTATION, OR GENDER**

1 **IDENTITY OR EXPRESSION.**

2 (b) Exclude, expel, limit, or otherwise discriminate against
3 an individual seeking admission as a student or an individual
4 enrolled as a student in the terms, conditions, or privileges of
5 the institution, because of religion, race, color, national origin,
6 ~~or~~ sex, **SEXUAL ORIENTATION, OR GENDER IDENTITY OR EXPRESSION.**

7 (c) For purposes of admission only, make or use a written or
8 oral inquiry or form of application that elicits or attempts to
9 elicit information concerning the religion, race, color, national
10 origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
11 **EXPRESSION,** or marital status of a person, except as permitted by
12 rule of the commission or as required by federal law, rule, or
13 regulation, or pursuant to an affirmative action program.

14 (d) Print or publish or cause to be printed or published a
15 catalog, notice, or advertisement indicating a preference,
16 limitation, specification, or discrimination based on the religion,
17 race, color, national origin, ~~or~~ sex, **SEXUAL ORIENTATION, OR**
18 **GENDER IDENTITY OR EXPRESSION,** of an applicant for admission to the
19 educational institution.

20 (e) Announce or follow a policy of denial or limitation
21 through a quota or otherwise of educational opportunities of a
22 group or its members because of religion, race, color, national
23 origin, ~~or~~ sex, **SEXUAL ORIENTATION, OR GENDER IDENTITY OR**
24 **EXPRESSION.**

25 Sec. 502. (1) A person engaging in a real estate transaction,
26 or a real estate broker or salesman, shall not on the basis of
27 religion, race, color, national origin, age, sex, **SEXUAL**

1 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, familial status, or
2 marital status of a person or a person residing with that person **DO**
3 **ANY OF THE FOLLOWING:**

4 (a) Refuse to engage in a real estate transaction with a
5 person.

6 (b) Discriminate against a person in the terms, conditions, or
7 privileges of a real estate transaction or in the furnishing of
8 facilities or services in connection with a real estate
9 transaction.

10 (c) Refuse to receive from a person or transmit to a person a
11 bona fide offer to engage in a real estate transaction.

12 (d) Refuse to negotiate for a real estate transaction with a
13 person.

14 (e) Represent to a person that real property is not available
15 for inspection, sale, rental, or lease when in fact it is so
16 available, or knowingly fail to bring a property listing to a
17 person's attention, or refuse to permit a person to inspect real
18 property, or otherwise make unavailable or deny real property to a
19 person.

20 (f) ~~Make, print~~ **PRINT**, circulate, post, mail, or otherwise
21 ~~cause to be made or published~~ **MAKE OR PUBLISH** a statement,
22 advertisement, notice, or sign, or use a form of application for a
23 real estate transaction, or make a record of inquiry in connection
24 with a prospective real estate transaction, ~~which~~ **THAT** indicates,
25 directly or indirectly, an intent to make a preference, limitation,
26 specification, or discrimination with respect to the real estate
27 transaction.

1 (g) Offer, solicit, accept, use, or retain a listing of real
2 property with the understanding that a person may be discriminated
3 against in a real estate transaction or in the furnishing of
4 facilities or services in connection ~~therewith~~ **WITH A REAL ESTATE**
5 **TRANSACTION.**

6 (h) Discriminate against a person in the brokering or
7 appraising of real property.

8 (2) A person shall not deny a person access to, or membership
9 or participation in, a multiple listing service, real estate
10 brokers' organization or other service, organization, or facility
11 relating to the business of selling or renting real property or to
12 discriminate against him or her in the terms or conditions of that
13 access, membership, or participation because of religion, race,
14 color, national origin, age, sex, **SEXUAL ORIENTATION, GENDER**
15 **IDENTITY OR EXPRESSION**, familial status, or marital status.

16 (3) This section is subject to section 503.

17 Sec. 504. (1) A person to whom application is made for
18 financial assistance or financing in connection with a real estate
19 transaction or in connection with the construction, rehabilitation,
20 repair, maintenance, or improvement of real property, or a
21 representative of that person, shall not **DO ANY OF THE FOLLOWING:**

22 (a) Discriminate against the applicant because of the
23 religion, race, color, national origin, age, sex, **SEXUAL**
24 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, familial status, or
25 marital status of the applicant or a person residing with the
26 applicant.

27 (b) Use a form of application for financial assistance or

1 financing or make or keep a record or inquiry in connection with an
2 application for financial assistance or financing ~~which~~ **THAT**
3 indicates, directly or indirectly, a preference, limitation,
4 specification, or discrimination as to the religion, race, color,
5 national origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
6 **EXPRESSION**, familial status, or marital status of the applicant or
7 a person residing with the applicant.

8 (2) A person whose business includes engaging in real estate
9 transactions shall not discriminate against a person because of
10 religion, race, color, national origin, age, sex, **SEXUAL**
11 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, familial status, or
12 marital status, in the purchasing of loans for acquiring,
13 constructing, improving, repairing, or maintaining a dwelling or
14 the making or purchasing of loans or the provision of other
15 financial assistance secured by residential real estate.

16 (3) Subsection (1)(b) does not apply to a form of application
17 for financial assistance prescribed for the use of a lender
18 regulated as a mortgagee under the national housing act, ~~chapter~~
19 ~~847, 48 Stat. 1246~~ **12 USC 1701 TO 1750G**, or by a regulatory board
20 or officer acting under the statutory authority of this state or
21 the United States.

22 Sec. 505. (1) A condition, restriction, or prohibition,
23 including a right of entry or possibility of reverter, that
24 directly or indirectly limits the use or occupancy of real property
25 on the basis of religion, race, color, national origin, age, sex,
26 **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION**, familial status,
27 or marital status is void, except a limitation of use as provided

1 in section 503(1)(c) or on the basis of religion relating to real
2 property held by a religious institution or organization, or by a
3 religious or charitable organization operated, supervised, or
4 controlled by a religious institution or organization, and used for
5 religious or charitable purposes.

6 (2) A person shall not insert in a written instrument relating
7 to real property a provision that is void under this section or
8 honor such a provision in the chain of title.

9 Sec. 506. A person shall not represent, for the purpose of
10 inducing a real estate transaction from which the person may
11 benefit financially, that a change has occurred or will or may
12 occur in the composition with respect to religion, race, color,
13 national origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
14 **EXPRESSION**, familial status, or marital status of the owners or
15 occupants in the block, neighborhood, or area in which the real
16 property is located, or represent that this change will or may
17 result in the lowering of property values, an increase in criminal
18 or antisocial behavior, or a decline in the quality of schools in
19 the block, neighborhood, or area in which the real property is
20 located.