

**STATE OF MICHIGAN
IN THE SUPREME COURT**

ROUGH WORLD, LLC, and UPROOTED
ELECTROLYSIS, LLC,

Plaintiffs-Appellees,

v

DEPARTMENT OF CIVIL RIGHTS and
DIRECTOR OF THE DEPARTMENT OF
CIVIL RIGHTS,

Defendants-Appellants.

Supreme Court No. 162482

Court of Appeals No. 355868

Court of Claims No. 20-000145-MZ

**AMICUS CURIAE BRIEF OF
THE MICHIGAN CATHOLIC CONFERENCE**

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TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE	1
I. Introduction.....	2
II. The text of the ELCRA does not support the Department’s interpretation.	4
a. Discrimination on the basis of sexual orientation is not “because of sex.”	6
b. The Department’s interpretation of the ELCRA renders its express exemptions unworkable.....	7
c. <i>Bostock</i> should not control.....	10
III. The Department’s interpretation poses special problems for religious believers and institutions.....	13
a. Catholics and other faith traditions distinguish between status and action.	14
b. Churches, schools, and religious charities will be uniquely affected.	16
i. Churches	16
ii. Schools.....	17
iii. Religious Charities.....	18
CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases

<i>Barbour v Dep’t of Social Servs</i> , 198 Mich App 183 (1993)	2, 11
<i>Bibby v Philadelphia Coca Cola Bottling Co</i> , 260 F3d 257 (CA 3, 2001).....	2
<i>Bostock v Clayton Co Bd of Comm’rs</i> , 723 F App’x 964 (CA 11, 2018).....	12
<i>Bostock v Clayton Co</i> , 140 S Ct 1731 (2020)	3, 5, 6, 10, 12, 14
<i>Chambers v Trettco, Inc</i> , 463 Mich 297 (2000).....	10
<i>Christian Legal Society Chapter of the Univ of Cal v Martinez</i> , 561 US 661 (2010)	15
<i>DeSantis v Pac Tel & Tel Co, Inc</i> , 608 F2d 327 (CA 9, 1979).....	2
<i>Fulton v City of Philadelphia</i> , 141 S Ct 1868 (2021)	18
<i>Garg v Macomb Co Community Mental Health Servs</i> , 472 Mich 263 (2005)	10
<i>Hegadorn v Dep’t of Human Servs Dir</i> , 503 Mich 231 (2019)	3
<i>Hosanna-Tabor Evangelical Lutheran Church & Sch v EEOC</i> , 565 US 171 (2012)	16
<i>Hurley v Irish-American Gay, Lesbian & Bisexual Grp of Boston</i> , 515 US 557 (1995).....	17
<i>In re Complaint of Rovas</i> , 482 Mich 90 (2008)	3
<i>Johnson v Recca</i> , 492 Mich 169 (2012).....	9
<i>Lemon v Kurtzman</i> , 403 US 602 (1971)	17
<i>Little Sisters of the Poor Saints Peter & Paul Home v Pennsylvania</i> , 140 S Ct 2367 (2020).....	18
<i>Maciejewski v Breitenbeck</i> , 162 Mich App 410 (1987).....	16
<i>Matras v Amoco Oil Co</i> , 424 Mich 675 (1986)	7
<i>Medina v Income Support Div, New Mexico</i> , 413 F3d 1131 (CA 10, 2005)	2
<i>Nat’l Wildlife Federation v Cleveland Cliffs Iron Co</i> , 471 Mich 608 (2004).....	13

<i>Our Lady of Guadalupe Sch v Morrissey-Berru</i> , 140 S Ct 2049 (2020)	16, 17
<i>People v Peltola</i> , 489 Mich 174 (2011)	5
<i>Ronnisch Constr Group, Inc v Lofts on the Nine, LLC</i> , 499 Mich 544 (2016)	4
<i>Sharp v City of Lansing</i> , 464 Mich 792 (2001)	5, 10
<i>Vickers v Fairfield Med Ctr</i> , 453 F3d 757 (CA 6, 2006)	2, 11
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972)	17
<i>Zarda v Altitude Express, Inc</i> , 883 F3d 100 (CA 2, 2018)	12
Statutes	
42 USC 2000e(b)	12
42 USC 2000e-1(a)	16
MCL 37.2201(a)	12
MCL 37.2402	9
MCR 37.2208	8
MCR 37.2403	7
MCR 37.2404	9
MCR 7.312(H)(4)	1
Other Authorities	
American Heritage Dictionary (1976)	5
HB 4850 (2003)	2
HB 5107 (1999)	2
Journal of the House of Representatives, 1975, vol 1	8
Public Act 124 of 1992	2

SB 1053 (2014).....	2
SB 1063 (2012).....	2

INTEREST OF AMICUS CURIAE¹

The Michigan Catholic Conference (MCC) serves as the official voice of the Catholic Church in Michigan on matters of public policy. Michigan's large and diverse Catholic population includes nearly one out of every five adults in the state. Among the most important advocacy issues for the MCC is the protection of individuals and religious organizations to engage in freedom of speech and free exercise of religious beliefs in accordance with the teachings of the Catholic Church and of one's conscience.

The MCC has an interest in the interpretation of legislatively crafted compromises through statutes. Its work helps individuals and organizations determine whether to support or oppose proposed legislation. In fact, the MCC participated in the effort to enact the Elliott-Larsen Civil Rights Act in 1976. The MCC continues to regularly advise stakeholders of proposed legislation and its import for Catholics, and therefore has an interest in the manner in which the ELCRA and other laws are interpreted.

¹ Pursuant to MCR 7.312(H)(4), no party, nor any party's counsel, authored this brief in whole or in part, nor did any party or its counsel make any monetary contribution intended to fund the preparation or submission of the brief.

I. Introduction

In 1976, legislators Daisy Elliott and Melvin Larsen led a bi-partisan effort to pass the Elliott-Larsen Civil Rights Act (ELCRA). Elliott and Larsen were on opposite sides of the political aisle, and the bill was a compromise three years in the making. It was intended to address specific forms of discrimination in a manner that had the support of a majority of the Legislature and the Governor. Language of the ELCRA was the subject of extensive debate and revisions, and various stakeholders fully participated in that process, resulting in the enactment of Public Act 453 of 1976, codified at MCL 37.2101 *et seq.*

Since 1976, many attempts have been made to amend the ELCRA's language. Some have been successful, some have not. For instance, in 1992, the Legislature passed and the Governor signed an amendment adding "familial status" to the list of protected characteristics. Public Act 124 of 1992. In contrast, legislators have regularly proposed adding "sexual orientation" to the list, but so far none has garnered enough support to become law. See, e.g., Michigan Legislature SB 1053 (2014), SB 1063 (2012), HB 4850 (2003), and HB 5107 (1999), MCC Appendix pp 1-63.

This case is about whether decades of legislative compromise and debate were unnecessary. According to the Michigan Civil Rights Commission, discrimination because of sexual orientation has always been forbidden because discrimination because of "sex" is forbidden. MCRC Interpretive Statement, MCC Appendix pp 64-66. However, Michigan courts have long concluded otherwise, as have the vast majority of federal courts when interpreting similar language in Title VII. See, e.g., *Barbour v Dep't of Social Servs*, 198 Mich App 183 (1993); *DeSantis v Pac Tel & Tel Co, Inc*, 608 F2d 327 (CA 9, 1979); *Bibby v Philadelphia Coca Cola Bottling Co*,

260 F3d 257 (CA 3, 2001); *Medina v Income Support Div, New Mexico*, 413 F3d 1131 (CA 10, 2005); and *Vickers v Fairfield Med Ctr*, 453 F3d 757 (CA 6, 2006).

The relevant language of the ELCRA has not changed, but two other changes have occurred. First, public sentiment has shifted. See Pew Research Center, *The Global Divide on Homosexuality Persists*, <https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists> (June 25, 2020). Second, the U.S. Supreme Court issued a split decision last year interpreting the Federal Civil Rights Act (Title VII) in a new way. See *Bostock v Clayton Co*, 140 S Ct 1731 (2020). Neither of these changes should affect the Court's present task: to interpret the plain meaning of the ELCRA, as its words were understood at the time of their enactment and with an eye toward the statute as a whole. So viewed, the only conclusion is that the ELCRA does not forbid discrimination because of sexual orientation. The MCRC's interpretation is contrary to law.

It is also contrary to the Michigan Constitution's separation of powers, under which the "powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Const 1963, art 3, § 2. This Court has recognized that "in accordance with longstanding Michigan precedent and basic separation of powers principles, . . . courts may not abdicate their judicial responsibility to interpret statutes by giving unfettered deference to an agency's interpretation." *In re Complaint of Rovas*, 482 Mich 90, 93 (2008). Where, as here, an agency rewrites a statute rather than interpret it, a court properly rejects the agency's version. See, e.g., *Hegadorn v Dep't of Human Servs Dir*, 503 Mich 231, 266-

67 (2019) (recognizing that the Department of Human Services’ interpretation was “not entitled to respectful consideration because it is foreclosed by the text” of the relevant statute).

By bypassing the constitutional path for amending a law, the Commission and, by extension, the Michigan Department of Civil Rights (“the Department”), have bypassed the legislative process of debate and compromise. This is a grave mistake. Millions of Michiganders abide by faith traditions that are inextricably intertwined with understandings about sexuality and sexual expression. Those Michiganders have rights under both the U.S. and Michigan Constitutions to freely practice their religions. Such practice is not limited to houses of worship; for many it extends to the workplace and to every aspect of daily living.

The Michigan Catholic Conference is a voice for some of those Michiganders. For years, the MCC has participated in the legislative process to assure that the laws of this State take account of religious believers—Catholic or otherwise. In fact, the MCC was among the stakeholders that participated in the crafting of the ELCRA, and the MCC advocated for its passage. The Department’s new interpretation of the ELCRA, however, puts religious practice at risk. And these risks were never accounted for in the shortcut method of simply redefining the ELCRA’s language well beyond its plain meaning, through a mere interpretive statement. The Department’s request to judicially “update” the law should not be allowed.

II. The text of the ELCRA does not support the Department’s interpretation.

The meaning of the word “sex” as used in the ELCRA is not in serious dispute. The Department properly argues that the term “sex” should be construed as defined and understood at the time the ELCRA was enacted into law (1976). Appellant Brief 11. See also *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 552 (2016) (“we examine the statute as a

whole, reading individual words and phrases in the context of the entire legislative scheme”). By that measure—and using the Department’s cited dictionary—“sex” means “the condition or character of being male or female.” *See* American Heritage Dictionary (1976), p 1123. Although the Department now suggests, for the first time, that in 1976 the word “sex” as used in the ELCRA meant “[t]he sexual urge or instinct as it manifests itself in behavior,” *id.* at 12, no reasonable person would apply that definition in this context. Notably, the Department has not offered a single instance of a court ever using its proposed definition. Cf *Bostock*, 140 S Ct at 1766 (Alito, J., dissenting) (discussing the absurdity of applying that definition under Title VII).

The real issue in the case—and the one the Department focuses on—is the phrase “because of sex.” The Department contends, “discrimination on the basis of sexual orientation necessarily constitutes action that is taken because of the individual’s sex.” Appellant Brief 13. And this appeal is “limited to the issue whether the prohibition on discrimination ‘because of . . . sex’ in the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101, *et seq.*, applies to discrimination based on sexual orientation.” Order Granting Bypass Application.

The Department’s argument is a rehash of the reasoning used in *Bostock*. That is a federal case interpreting a federal law, and so has persuasive value only. *Sharp v City of Lansing*, 464 Mich 792, 803 (2001). And for several reasons discussed *infra*, Sec. II(c), *Bostock* is not persuasive in interpreting “because of sex” as that phrase is used in the ELCRA.

This Court should proceed under its own, well-established method of interpreting Michigan statutes. Under that framework, the “overriding goal for interpreting a statute is to determine and give effect to the Legislature’s intent. The most reliable indicator of the Legislature’s intent is the words in the statute,” which are interpreted “in light of their ordinary meaning and their context

within the statute and read them harmoniously to give effect to the statute as a whole.” *People v Peltola*, 489 Mich 174, 181 (2011). Interpreting “because of sex” as proposed by the Department results in logical inconsistencies and makes nonsense of other provisions. A plain and comprehensive reading of the ELCRA requires the conclusion that making distinctions because of sexual orientation is not the same as making them because of sex.

a. Discrimination on the basis of sexual orientation is not “because of sex.”

The Department’s position is that the phrase “because of sex” necessarily implicates sexual orientation because “it is impossible to discriminate against a person for being homosexual [or bisexual] without discriminating against that individual based on sex.” Appellant Brief 24. But that interpretation is mistaken: it *is* possible to discriminate on the basis of sexual orientation without discriminating because of the person’s sex. If an employer knows only that a prospective job applicant is homosexual, but does not know that person’s sex, and declines to hire the applicant solely due to the applicant’s sexual orientation, then the employer has not made a distinction “because of” sex. The employer does not even know the applicant’s sex. The distinction was made solely on the basis of sexual orientation.

The Department has seemingly adopted, wholesale, the reasoning in *Bostock*, and the majority’s answer to this situation was as follows:

By discriminating against homosexuals, the employer intentionally penalizes men for being attracted to men and women for being attracted to women. . . . Any way you slice it, the employer intentionally refuses to hire applicants in part because of the affected individuals’ sex, even if it never learns any applicant’s sex.

140 S Ct at 1746.

A simple, alternative hypothetical demonstrates the error in such reasoning. A business serves only persons who are attracted to both sexes. It willingly serves men and women with this sexual orientation, and in like manner it does not serve men or women who are attracted to only one sex, or to neither sex. The business has therefore discriminated against men *and* women who are not attracted to women, and against men *and* women who are not attracted to men. But it has not discriminated against anyone because of that person's sex. Each person's sex could be entirely unknown. The business expressly and exclusively discriminated based on sexual orientation. It is therefore possible to discriminate because of sexual orientation without doing so "because of sex." And it means those two forms of discrimination are distinct.

There may be a case where both forms of discrimination are implicated, in which case a violation of ELCRA could occur. See *Matras v Amoco Oil Co*, 424 Mich 675, 682 (1986) (recognizing that the protected trait "does not have to be the only reason, or even the main reason, but it does have to be one of the reasons which made a difference" in taking the adverse action). But the sole question before the Court is "whether the prohibition on discrimination 'because of . . . sex' in the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101, *et seq.*, applies to discrimination based on sexual orientation." Order Granting Bypass App. It does not. The two bases are distinct, and a covered person or entity could discriminate on the basis of sexual orientation without violating the ELCRA.

b. The Department's interpretation of the ELCRA renders its express exemptions unworkable.

Critical to the ELCRA are the exemptions included therein. For example, there is an exemption that allows a religious institution to "limit[] admission or give[] preference to an

applicant of the same religion.” MCR 37.2403 (Sec. 403). Without this exemption, certain institutions could not carry on their religious missions in accordance with their beliefs. Moreover, the ELCRA may not have been passed without these types of exemptions. Cf Journal of the House of Representatives, 1975, vol 1, 3706-3709, MCC Appendix pp 67-70 (certain members voted no on the ELCRA due to concern that, as worded, a provision “could be interpreted to deny liquor licenses to such organizations as the Knights of Columbus . . . and other organizations whose basis for existence is to render a service to persons of specific religious, ethnic, or other backgrounds”).

The Department’s position hinges on the phrase “because of sex,” not on any alternative meaning of the term “sex” by itself. But the exemptions do not always use the phrase “because of sex.” They sometimes refer to “sex” without the “because of” preceding it. This does not make a difference when “because of sex” is interpreted properly. But it produces inconsistent results when the Department’s interpretation is followed.

For instance, there is a provision that lists specific protected characteristics as potential bona fide occupational qualifications (BFOQs):

A person subject to this article may apply to the commission for an exemption on the basis that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. [MCR 37.2208]

The BFOQ exemption is limited to the listed traits themselves, not conditions that result “because of” those traits. A person may therefore apply for an exemption “on the basis that . . . sex is a bona fide occupational qualification,” but may not apply for an exemption on the basis that sexual orientation is a bona fide occupational qualification. The result is an imbalance that provides more expansive protection for a characteristic that does not even appear in the statute.

Consider this example: A Christian school requires its teachers to abide by a certain code of conduct, both in and out of the classroom. The reason for the requirement is the school's commitment to forming its students in the Christian faith, and its recognition that teachers serve as models that students may emulate. One such requirement is that a teacher must be an adherent of the Christian faith. Another requirement is that a teacher may not be in a romantic, same-sex relationship, as such relationships are considered sinful in the school's religious denomination. Adam and Bill both apply for teaching jobs. Adam is not a Christian but is not in a romantic relationship of any kind. Bill is a Christian, but is in a romantic relationship with another man. All things being equal, the school can decline to hire Adam, but not Bill, even though religion is an expressly protected characteristic, while sexual orientation is not.²

Statutes must be read comprehensively. Words are to be read in the "context within the statute" and read in a way that "harmoniously [gives] effect to the statute as a whole." *Johnson v Recca*, 492 Mich 169, 177 (2012). "Statutory interpretation requires courts to consider the placement of the critical language in the statutory scheme. In doing so, courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Id.* Section 208 demonstrates that the Department's interpretation is inconsistent with the rest of ELCRA and is therefore not a reasonable reading of the "because of . . . sex" language.

² The Department has not made a distinction between status (same-sex attraction) and action (e.g., pursuing a same-sex relationship), causing issues discussed *infra*, Sec. III(a).

Under the Department's interpretation, another exemption produces different, though similarly strange results. Section 402 forbids educational institutions from discriminating "because of . . . sex" in admission, expulsion, and in other ways. MCL 37.2402. Section 404 provides an exemption: "The provisions of section 402 relating to sex shall not apply to a private educational institution not exempt under section 403, which now or hereafter provides an education to persons of 1 sex." MCR 37.2404. Under the Department's interpretation, a private school is forbidden from expelling a student due to the student's sexual orientation if it is a coed school, but not if it is a single-sex school.

The ELCRA operates by forbidding certain forms of discrimination and then providing exemptions that mirror them under appropriate circumstances. The exemptions for BFOQs and schools are sensible and logical when the phrase "because of sex" is given its plain meaning. The exemptions become absurd when the Department's interpretation is employed. The absurdities reveal that the Department's interpretation is illogical. Because the ELCRA must be read as a whole, the Department's interpretation must be rejected.

c. Bostock should not control.

Given the Department's near-exclusive reliance on *Bostock*, that case bears special discussion. As noted, when interpreting a Michigan statute, a federal case interpreting a federal law is only as good as its power to persuade. *Sharp v City of Lansing*, 464 Mich 792, 803 (2001). And persuasiveness is not a given, even when statutes are similar:

While federal precedent may often be useful as guidance in this Court's interpretation of laws with federal analogues, such precedent cannot be allowed to rewrite Michigan law. The persuasiveness of federal precedent can only be considered after the statutory differences between Michigan and federal law have been fully assessed, and, of course, even when this has been done and language in

state statutes is compared to similar language in federal statutes, federal precedent remains only as persuasive as the quality of its analysis.

Garg v Macomb Co Community Mental Health Servs, 472 Mich 263, 283 (2005). See also *Chambers v Trettco, Inc*, 463 Mich 297, 318 (2000) (“because the Court of Appeals erroneously failed to apply controlling Michigan legal principles regarding sexual harassment claims brought under Michigan law [the ELCRA], and instead applied the federal principles announced in *Faragher* and *Ellerth*, it is necessary that we remand this case to the Court of Appeals for reconsideration of defendant’s challenge to plaintiff’s hostile environment claim under the proper legal framework”).

The Department argues that, “the very principle that led the *Barbour* Court to rule as it did—following analogous federal precedent in discrimination cases—counsels that *Barbour* be overruled.” Appellant Brief 18. But of course, this Court could overrule or affirm *Barbour* based on its own independent reasoning and application of Michigan law and Michigan jurisprudence.

If nothing else, this case presents a clear example why lockstep adherence to a federal court decision is unwise when interpreting a Michigan statute—even if the language is similar or identical. The MCRC’s interpretive statement expressly cited as part of its rationale the then-recent U.S. Court of Appeals decision, *EEOC v RG & GR Harris Funeral Homes Inc.*, 884 F3d 560 (CA 6, 2018) (“*Harris*”), where the panel concluded that transgender discrimination was actionable under Title VII. As the panel recognized, however, the law in the Sixth Circuit as to sexual orientation was settled in precisely the *opposite* way. *Id.* at 579-80.

Years before, the Sixth Circuit held that “sexual orientation is not a prohibited basis for discriminatory acts under Title VII.” *Vickers v Fairfield Med Ctr*, 453 F3d 757, 762 (CA 6, 2006).

Even the dissent agreed: “It is beyond debate that Title VII does not prohibit workplace discrimination or harassment based on sexual preference, sexual orientation, or homosexuality.” *Id.* at 766 (Lawson, J., dissenting). And the panel in *Harris* did not overrule the prior decision as to sexual orientation discrimination. The MCRC’s purported effort to follow federal law was conflicted from the start.

At any rate, the precedential sway of *Harris* was immediately called into question when the Supreme Court granted certiorari, along with two other cases where circuits split on whether sexual-orientation discrimination is discrimination “because of sex” under Title VII. See *Zarda v Altitude Express, Inc.*, 883 F3d 100 (CA 2, 2018); *Bostock v Clayton Co Bd of Comm’rs*, 723 F App’x 964 (CA 11, 2018). When the Supreme Court decided those cases, the justices split, too, 6-3. *Bostock v Clayton Co*, 140 S Ct 1731, 1737 (2020). In the end, the Supreme Court’s decision was based solely on the text of Title VII. Although *Bostock* settled a circuit split for the federal courts, if this Court rejects its logical reasoning, then the decision has little to no special insight into the meaning of the ELCRA.

Moreover, *Bostock* was considerably more limited than the question now before this Court. Title VII applies only to employers of 15 or more employees, whereas the ELCRA is not so limited. Compare 42 USC 2000e(b) with MCL 37.2201(a). Even then, the *Bostock* majority offered this reassurance:

The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind. The only question

before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual “because of such individual’s sex.”

Bostock, 140 S Ct at 1753. The question in this case, however, encompasses every application of the phrase “because of . . . sex” as used in the ELCRA. If the U.S. Supreme Court is waiting to fully consider the implications of its ruling, it makes little sense to rely on that decision to go many steps further in interpreting the ELCRA.

III. The Department’s interpretation poses special problems for religious believers and institutions.

The Department asks for a sweeping ruling that would necessarily affect religious believers and entities, but refuses to address that problem. When it applied to bypass the Court of Appeals, the Department simply asserted (in a footnote) “[t]his case presents an ideal vehicle” to address whether “the plain language of the ELCRA prohibits discrimination on the basis of an individual’s sexual orientation” because “[a]lthough considerations of religious liberty may be weighed in a future case, they are not presented in this appeal.” Bypass App 10 n 3. In other words, the Department concedes that this interpretive overhaul might violate constitutional protections, but puts them off for another day. It makes no further mention of these problems in its principal brief.

The question facing this Court is a comprehensive one interpreting the entire ELCRA: “whether the prohibition on discrimination ‘because of . . . sex’ in the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101, et seq., applies to discrimination based on sexual orientation.” Order Granting Bypass App. The Court has traditionally strived for “avoidance of unnecessary constitutional issues.” *Nat’l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 614-15 (2004). The scope of the interpretation presented by the Department would commit Michigan

law to a singular conclusion—constitutional or not—before those issues have even had a chance to be fully litigated on the merits.

a. Catholics and other faith traditions distinguish between status and action.

Many religious traditions make an important distinction between how a person feels and how a person chooses to self-identify or act, and that distinction has significant moral implications.

Consider the U.S. Conference of Catholic Bishop’s description of the Catholic Church’s teachings:

While the Church teaches that homosexual acts are immoral, she does distinguish between engaging in homosexual acts and having a homosexual inclination. While the former is always objectively sinful, the latter is not. To the extent that a homosexual tendency or inclination is not subject to one’s free will, one is not morally culpable for that tendency. Although one would be morally culpable if one were voluntarily to entertain homosexual temptations or to choose to act on them, simply having the tendency is not a sin. Consequently, the Church does not teach that the experience of homosexual attraction is in itself sinful.

United States Conference of Catholic Bishops, Ministry to Persons with a Homosexual Inclination: Guidelines for Pastoral Care, at 5 (Nov. 14, 2006).

The Department has seemingly adopted, wholesale, the reasoning in *Bostock*. The test adopted in that case is simple, if nothing else. “[I]f changing the employee’s sex would have yielded a different choice by the employer” then the employer has discriminated because of sex. 140 S Ct at 1741. This test, however, fails to account for the status-versus-action distinction, and would deprive religious persons and entities of the ability to effectively live out and communicate that distinction.

Imagine two women apply for positions at a Catholic, lay organization. Each advises the organization that she experiences same-sex attraction. One states that, in accordance with Church teaching, she does not act on those feelings, while the other states that she is in a romantic, same-

sex relationship. Consistent with Catholic teaching, the organization might hire the first, but not the second, on the grounds that, by her actions, the second woman has demonstrated an opposition to Church teaching.³

The differential treatment shows two things. First, this is not discrimination because of sex; both are women. And it is not discrimination on the basis of sexual orientation; both women have the same orientation. The distinction is based upon action. Yet under the Department's reasoning, this is impermissible because the test is whether a man and a woman would be treated differently for being in a romantic relationship with a woman.

Even if this man-compared-to-woman test were not used, there is no guarantee that the Department will pay mind to the distinction between status and action. Courts have not always done so. In *Christian Legal Society Chapter of the Univ of Cal v Martinez*, 561 US 661 (2010), a Christian club was denied participation in a student organization program because the club "exclude[d] from affiliation anyone who engages in 'unrepentant homosexual conduct,'" and those "who hold religious convictions different from those in the Statement of Faith." The club argued that its policy was rooted in beliefs and action, not status, but the Supreme Court "declined to distinguish between status and conduct in this context," in part because of the difficulty in "determining whether a student organization cloaked prohibited status exclusion in belief-based

³ The scenario is hypothetical, but the reality of women, and men, who approach their sexuality in this way is not. The first woman would fall into a growing number of Catholics seeking to reconcile their personal experiences with living a life of faith in communion with the Catholic Church. See Courage International, *About*, <https://couragerc.org/about/>.

garb[.]” *Id.* at 861. Statutory compromises can avoid these dilemmas, but again, the Department has skipped that process.

b. Churches, schools, and religious charities will be uniquely affected.

The ELCRA, as enacted and amended through the legislative process, is a workable framework built on compromises. The Department’s interpretation is an amendment by fiat. Section II, *supra*, demonstrates some of the more glaring problems that result from that administrative shortcut approach to lawmaking. There are many more problems, specifically affecting those in particular religious traditions, which are sure to arise if the Department’s view is accepted. These problems illustrate why the Department’s interpretation of a consensus-driven statute like the ELCRA is not a sensible reading of the statutory text.

i. Churches

Religious institutions must be free to decide whom to hire, retain, discipline, promote, or discharge consistent with their religious missions, under both the ministerial exception and the ecclesiastical abstention doctrine. *Hosanna-Tabor Evangelical Lutheran Church & Sch v EEOC*, 565 US 171, 196 (2012) (“When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.”); see also *Our Lady of Guadalupe Sch v Morrissey-Berru*, 140 S Ct 2049, 2060 (2020) (religious institutions require “autonomy [in] the selection of the individuals who play certain key roles”); and *Maciejewski v Breitenbeck*, 162 Mich App 410, 414 (1987) (“power to make assignments of ministers to a parish is certainly a matter of ecclesiastical polity in which the courts may not interfere”).

Churches often employ persons who do not hold “religious positions,” but whose association within the church affects the church’s mission and message. The receptionist, for instance, may not qualify for the ministerial exception, but a church nonetheless has an interest in cautiously choosing who holds that position given its public-facing nature. These are precisely the situations where statutory exemptions, rather than constitutional doctrines, are the better tool. See 42 USC 2000e-1(a) (partially exempting religious corporations, associations, educational institutions, and societies from Title VII provisions). The Department’s new interpretation of the ELCRA precludes that type of careful compromise.

ii. Schools

“Religious education is vital to many faiths practiced in the United States,” and “religious education and formation of students is the very reason for the existence of most private religious schools” *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2055, 2064. For Catholic schools, providing religious education is not merely *consistent* with the practice of their faith—it is the practice of the faith itself. That is why the Supreme Court has recognized the “close connection that religious institutions draw between their central purpose and educating the young in the faith.” *Id.* at 2066.

A core component of religious education is the modeling of belief and practice for students. “The various characteristics of the schools make them a ‘powerful vehicle for transmitting the Catholic faith to the next generation.’ This process of inculcating religious doctrine is, of course, enhanced by the impressionable age of the pupils, in primary schools particularly.” *Lemon v Kurtzman*, 403 US 602, 616 (1971); see also *Id.* at 657 (“the nature of its **faculty**, its supervision, decor, program, extracurricular activities, assemblies, courses, etc.[.] produced an intangible religious atmosphere, since the diocesan school system is an integral part of the religious mission of the

Catholic Church”) (Douglas, J., concurring) (emphasis added). And of course, parents have a right to direct “the religious upbringing and education of their children,” which must include these various aspects of the religious experience. *Wisconsin v. Yoder*, 406 U.S. 205, 313-214 (1972).

The Department’s interpretation of the ELCRA would interfere with the ability of religious schools to determine the character of the religious education they provide. If a teacher is living openly in a romantic, same-sex relationship, the teacher’s hiring or continued employment may undermine the school’s ability to convey and instill Catholic teaching on the subject to students.

In *Hurley v Irish-American Gay, Lesbian & Bisexual Grp of Boston*, 515 US 557 (1995), the Supreme Court unanimously held that parade organizers could not be compelled to allow a unit into the parade that expressed an undesired message about homosexuality. The Court explained that “a speaker has the autonomy to choose the content of his own message,” including what expressive messages to omit. *Id.* at 573. The same interests are at play when a religious school makes public-facing hiring decisions. Just as a company would not be compelled to hire or retain an employee who has publicly derided its products, so too should a religious organization be able to decline hiring someone who, through action, has demonstrated an opposition to the organization’s mission and beliefs.

iii. Religious Charities

For centuries, the Catholic faith has motivated individuals and groups to care for the sick, the suffering, and the needy. Catholics practice these works of mercy whether or not the served persons share their beliefs. See, e.g., *Little Sisters of the Poor Saints Peter & Paul Home v Pennsylvania*, 140 S Ct 2367, 2375-76 (2020) (“The Little Sisters are an international congregation of Roman Catholic women religious who have operated homes for the elderly poor in the United

States since 1868 . . . They feel called by their faith to care for their elderly residents regardless of faith, finances, or frailty.”). But Catholics and other religious persons must be allowed to carry out charitable work in a manner that is consistent with their religious convictions. *Cf Fulton v City of Philadelphia*, 141 S Ct 1868, 1882 (2021) (“The refusal of Philadelphia to contract with [Catholic Social Services] for the provision of foster care services unless it agrees to certify same-sex couples as foster parents cannot survive strict scrutiny, and violates the First Amendment.”) The Department’s interpretation of the ELCRA threatens the ability to do so.

The provision of housing is a clear example. Suppose a Catholic organization provides free, single-room housing to those in need. Although any single person, regardless of belief or sexual orientation, is permitted to utilize the service, the organization permits only couples who are married in the eyes of the Church to share such a room, not other couples. The organization’s reason for this policy is rooted in Catholic teaching on avoiding complicity in sin. The Department’s interpretation of the ELCRA might forbid this distinction as discrimination “because of . . . sex” by simply asking whether a man who is legally married to a man would be treated differently than a man legally married to a woman. The organization would then be faced with the dilemma of continuing to provide a valuable social service, or cease to do so entirely.

CONCLUSION

Good laws are a byproduct of careful deliberation, discussion, and mutually agreeable compromises by stakeholders. The Elliot-Larsen Civil Rights Act—as written—is such a law. The Department’s interpretation—now being offered over 50 years after the enactment of the ELCRA—departs from the plain meaning of that law, favoring instead to follow federal precedent on federal law. In doing so, it leaves religious communities in its wake. This Court should reject

the unlawful interpretation and allow Michiganders, through their elected representatives, to craft solutions that fully and fairly account for the rights, liberties, and consciences of all in our state.

Respectfully submitted,

BODMAN PLC

By: /s/Thomas Van Dusen

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December 17, 2021

CERTIFICATE OF SERVICE

The undersigned certifies that on December 17, 2021 the foregoing document was filed with the clerk of the court via the MiFile/TrueFiling program, which will send notification to all registered counsel of record.

By: /s/Thomas Van Dusen

Thomas Van Dusen (P30602)

**STATE OF MICHIGAN
IN THE SUPREME COURT**

ROUCH WORLD, LLC, and UPROOTED
ELECTROLYSIS, LLC,

Plaintiffs-Appellees,

v

DEPARTMENT OF CIVIL RIGHTS and
DIRECTOR OF THE DEPARTMENT OF
CIVIL RIGHTS,

Defendants-Appellants.

Supreme Court No. 162482

Court of Appeals No. 355868

Court of Claims No. 20-000145-MZ

**APPENDIX TO BRIEF OF
AMICUS CURIAE THE MICHIGAN CATHOLIC CONFERENCE**

	Document	Page #
1	SB 1053 (2014)	1
2	SB 1063 (2012)	16
3	HB 4850 (2003)	31
4	HB 5107 (1999)	47
5	MCRC Interpretive Statement	64
6	Journal of House of Representatives	67

SENATE BILL No. 1053

September 11, 2014, Introduced by Senators WARREN, ANANICH, GREGORY, ANDERSON, YOUNG, JOHNSON, WHITMER, BIEDA, SMITH, HOPGOOD and HOOD and referred to the Committee on Government Operations.

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 2009 PA 190, 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

An act to define civil rights; to prohibit discriminatory
practices, policies, and customs in the exercise of those rights

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

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

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

20 (3) This section ~~shall~~ **DOES** not ~~be construed to~~ prevent an
21 individual from bringing or continuing an action arising out of
22 discrimination based on familial status before ~~the effective date~~
23 ~~of the amendatory act that added this subsection which~~ **JUNE 29,**
24 **1992 FOR AN** action **THAT** is based on conduct similar to or identical
25 to discrimination because of the age of persons residing with the
26 individual bringing or continuing the action.

27 Sec. 103. As used in this act:

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

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

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

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

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

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

19 (G) ~~(F)~~ "National origin" includes the national origin of an
20 ancestor.

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

27 (I) ~~(H)~~ "Political subdivision" means a county, city, village,

1 township, school district, or special district or authority of the
2 **THIS** state.

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

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

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

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

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

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

25 (a) Fail or refuse to hire or recruit, discharge, or otherwise
26 discriminate against an individual with respect to employment,
27 compensation, or a term, condition, or privilege of employment,

1 because of religion, race, color, national origin, age, sex, **SEXUAL**
2 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight, or
3 marital status.

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

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

14 (d) Treat an individual affected by pregnancy, childbirth, or
15 a related medical condition differently for any employment-related
16 purpose from another individual who is not so affected but similar
17 in ability or inability to work, without regard to the source of
18 any condition affecting the other individual's ability or inability
19 to work. For purposes of this subdivision, a medical condition
20 related to pregnancy or childbirth does not include nontherapeutic
21 abortion not intended to save the life of the mother.

22 (2) This section does not prohibit the establishment or
23 implementation of a bona fide retirement policy or system that is
24 not a subterfuge to evade the purposes of this section.

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

27 Sec. 203. An employment agency shall not fail or refuse to

1 procure, refer, recruit, or place for employment, or otherwise
2 discriminate against, an individual because of religion, race,
3 color, national origin, age, sex, **SEXUAL ORIENTATION, GENDER**
4 **IDENTITY OR EXPRESSION**, height, weight, or marital status; or
5 classify or refer for employment an individual on the basis of
6 religion, race, color, national origin, age, sex, **SEXUAL**
7 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight, or
8 marital status.

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

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

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

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

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

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

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

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

27 (a) Make or use a written or oral inquiry or form of

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

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

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

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

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

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

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

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

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

24 Sec. 302a. (1) This section applies to a private club that is
25 defined as a place of public accommodation ~~pursuant to~~ **UNDER**
26 section 301(a).

27 (2) If a private club allows use of its facilities by 1 or

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

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

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

20 Sec. 402. An educational institution shall not do any of the
21 following:

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

27 (b) Exclude, expel, limit, or otherwise discriminate against

1 an individual seeking admission as a student or an individual
2 enrolled as a student in the terms, conditions, or privileges of
3 the institution, because of religion, race, color, national origin,
4 ~~or~~ sex, **SEXUAL ORIENTATION, OR GENDER IDENTITY OR EXPRESSION**.

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

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

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

23 Sec. 502. (1) A person engaging in a real estate transaction,
24 or a real estate broker or salesman, shall not on the basis of
25 religion, race, color, national origin, age, sex, **SEXUAL**
26 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, familial status, or
27 marital status of a person or a person residing with that person **DO**

1 ANY OF THE FOLLOWING:

2 (a) Refuse to engage in a real estate transaction with a
3 person.

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

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

10 (d) Refuse to negotiate for a real estate transaction with a
11 person.

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

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

25 (g) Offer, solicit, accept, use, or retain a listing of real
26 property with the understanding that a person may be discriminated
27 against in a real estate transaction or in the furnishing of

1 facilities or services in connection therewith ~~WITH THAT~~
2 **TRANSACTION.**

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

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

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

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

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

24 (b) Use a form of application for financial assistance or
25 financing or make or keep a record or inquiry in connection with an
26 application for financial assistance or financing ~~which~~ **THAT**
27 indicates, directly or indirectly, a preference, limitation,

1 specification, or discrimination as to the religion, race, color,
2 national origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
3 **EXPRESSION**, familial status, or marital status of the applicant or
4 a person residing with the applicant.

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

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

19 Sec. 505. (1) A condition, restriction, or prohibition,
20 including a right of entry or possibility of reverter, that
21 directly or indirectly limits the use or occupancy of real property
22 on the basis of religion, race, color, national origin, age, sex,
23 **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION**, familial status,
24 or marital status is void, except a limitation of use as provided
25 in section 503(1)(c) or on the basis of religion relating to real
26 property held by a religious institution or organization, or by a
27 religious or charitable organization operated, supervised, or

1 controlled by a religious institution or organization, and used for
2 religious or charitable purposes.

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

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

SENATE BILL No. 1063

April 17, 2012, Introduced by Senators WARREN, YOUNG, BIEDA, WHITMER and ANDERSON and referred to the Committee on Government Operations.

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 2009 PA 190, 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

An act to define civil rights; to prohibit discriminatory
practices, policies, and customs in the exercise of those rights

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

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

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

20 (3) This section ~~shall~~ **DOES** not ~~be construed to~~ prevent an
21 individual from bringing or continuing an action arising out of
22 discrimination based on familial status before ~~the effective date~~
23 ~~of the amendatory act that added this subsection which~~ **JUNE 29,**
24 **1992 FOR AN** action **THAT** is based on conduct similar to or identical
25 to discrimination because of the age of persons residing with the
26 individual bringing or continuing the action.

27 Sec. 103. As used in this act:

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

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

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

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

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

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

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

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

27 (I) ~~(h)~~ "Political subdivision" means a county, city, village,

1 township, school district, or special district or authority of the
2 state.

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

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

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

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

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

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

25 (a) Fail or refuse to hire or recruit, discharge, or otherwise
26 discriminate against an individual with respect to employment,
27 compensation, or a term, condition, or privilege of employment,

1 because of religion, race, color, national origin, age, sex, **SEXUAL**
2 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight, or
3 marital status.

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

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

14 (d) Treat an individual affected by pregnancy, childbirth, or
15 a related medical condition differently for any employment-related
16 purpose from another individual who is not so affected but similar
17 in ability or inability to work, without regard to the source of
18 any condition affecting the other individual's ability or inability
19 to work. For purposes of this subdivision, a medical condition
20 related to pregnancy or childbirth does not include nontherapeutic
21 abortion not intended to save the life of the mother.

22 (2) This section does not prohibit the establishment or
23 implementation of a bona fide retirement policy or system that is
24 not a subterfuge to evade the purposes of this section.

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

27 Sec. 203. An employment agency shall not fail or refuse to

1 procure, refer, recruit, or place for employment, or otherwise
2 discriminate against, an individual because of religion, race,
3 color, national origin, age, sex, **SEXUAL ORIENTATION, GENDER**
4 **IDENTITY OR EXPRESSION**, height, weight, or marital status; or
5 classify or refer for employment an individual on the basis of
6 religion, race, color, national origin, age, sex, **SEXUAL**
7 **ORIENTATION, GENDER IDENTITY OR EXPRESSION**, height, weight, or
8 marital status.

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

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

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

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

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

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

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

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

27 (a) Make or use a written or oral inquiry or form of

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

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

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

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

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

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

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

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

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

24 Sec. 302a. (1) This section applies to a private club that is
25 defined as a place of public accommodation ~~pursuant to~~ **UNDER**
26 section 301(a).

27 (2) If a private club allows use of its facilities by 1 or

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

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

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

20 Sec. 402. An educational institution shall not do any of the
21 following:

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

27 (b) Exclude, expel, limit, or otherwise discriminate against

1 an individual seeking admission as a student or an individual
2 enrolled as a student in the terms, conditions, or privileges of
3 the institution, because of religion, race, color, national origin,
4 ~~or~~ sex, **SEXUAL ORIENTATION, OR GENDER IDENTITY OR EXPRESSION.**

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

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

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

23 Sec. 502. (1) A person engaging in a real estate transaction,
24 or a real estate broker or salesman, shall not on the basis of
25 religion, race, color, national origin, age, sex, **SEXUAL**
26 **ORIENTATION, GENDER IDENTITY OR EXPRESSION,** familial status, or
27 marital status of a person or a person residing with that person DO

1 **ANY OF THE FOLLOWING:**

2 (a) Refuse to engage in a real estate transaction with a
3 person.

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

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

10 (d) Refuse to negotiate for a real estate transaction with a
11 person.

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

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

25 (g) Offer, solicit, accept, use, or retain a listing of real
26 property with the understanding that a person may be discriminated
27 against in a real estate transaction or in the furnishing of

1 facilities or services in connection therewith ~~WITH A REAL ESTATE~~
2 **TRANSACTION.**

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

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

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

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

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

24 (b) Use a form of application for financial assistance or
25 financing or make or keep a record or inquiry in connection with an
26 application for financial assistance or financing ~~which~~ **THAT**
27 indicates, directly or indirectly, a preference, limitation,

1 specification, or discrimination as to the religion, race, color,
2 national origin, age, sex, **SEXUAL ORIENTATION, GENDER IDENTITY OR**
3 **EXPRESSION**, familial status, or marital status of the applicant or
4 a person residing with the applicant.

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

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

19 Sec. 505. (1) A condition, restriction, or prohibition,
20 including a right of entry or possibility of reverter, that
21 directly or indirectly limits the use or occupancy of real property
22 on the basis of religion, race, color, national origin, age, sex,
23 **SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION**, familial status,
24 or marital status is void, except a limitation of use as provided
25 in section 503(1)(c) or on the basis of religion relating to real
26 property held by a religious institution or organization, or by a
27 religious or charitable organization operated, supervised, or

1 controlled by a religious institution or organization, and used for
2 religious or charitable purposes.

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

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

HOUSE BILL No. 4850

June 17, 2003, Introduced by Reps. Kolb, McConico, Meisner, Tobocman, Minore, Gielegem, Rivet, O'Neil, Condino, Lipsey, Gleason, Jamnick, Clack, Zelenko, Woodward, Accavitti, Paletko, Cheeks, Whitmer, Anderson, Farrah and Hardman 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

An act to define civil rights; to prohibit discriminatory
practices, policies, and customs in the exercise of those rights

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

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

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

21 (3) This section ~~shall~~ **does** not ~~be construed to~~ prevent
22 an individual from bringing or continuing an action arising out
23 of discrimination based on familial status before the effective
24 date of the amendatory act that added this subsection ~~which~~ **for**
25 **an** 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.

Sec. 103. As used in this act:

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

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

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

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

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

(f) "Gender identity or expression" means having or being perceived as having a gender-related self-identity or expression whether or not associated with an individual's assigned sex at birth.

(g) ~~-(f)-~~ "National origin" includes the national origin of an ancestor.

(h) ~~-(g)-~~ "Person" means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, the state or a political subdivision

1 of the state or an agency of the state, or any other legal or
2 commercial entity.

3 *(i)* ~~—(h)—~~ "Political subdivision" means a county, city,
4 village, township, school district, or special district or
5 authority of the state.

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

11 *(i)* Submission to the conduct or communication is made a term
12 or condition either explicitly or implicitly to obtain
13 employment, public accommodations or public services, education,
14 or housing.

15 *(ii)* Submission to or rejection of the conduct or
16 communication by an individual is used as a factor in decisions
17 affecting the individual's employment, public accommodations or
18 public services, education, or housing.

19 *(iii)* The conduct or communication has the purpose or effect
20 of substantially interfering with an individual's employment,
21 public accommodations or public services, education, or housing,
22 or creating an intimidating, hostile, or offensive employment,
23 public accommodations, public services, educational, or housing
24 environment.

25 *(k)* "Sexual orientation" means having an orientation for
26 heterosexuality, homosexuality, or bisexuality or having a
27 history of such an orientation or being identified with such an

1 **orientation.**

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

4 (a) Fail or refuse to hire or recruit, discharge, or
5 otherwise discriminate against an individual with respect to
6 employment, compensation, or a term, condition, or privilege of
7 employment, because of religion, race, color, national origin,
8 age, sex, **sexual orientation, gender identity or expression,**
9 height, weight, or marital status.

10 (b) Limit, segregate, or classify an employee or applicant
11 for employment in a way that deprives or tends to deprive the
12 employee or applicant of an employment opportunity, or otherwise
13 adversely affects the status of an employee or applicant because
14 of religion, race, color, national origin, age, sex, **sexual**
15 **orientation, gender identity or expression,** height, weight, or
16 marital status.

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

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

1 (2) This section ~~shall~~ **does** not ~~be construed to~~ prohibit
2 the establishment or implementation of a bona fide retirement
3 policy or system that is not a subterfuge to evade the purposes
4 of this section.

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

7 Sec. 203. An employment agency shall not fail or refuse to
8 procure, refer, recruit, or place for employment, or otherwise
9 discriminate against, an individual because of religion, race,
10 color, national origin, age, sex, **sexual orientation, gender**
11 **identity or expression**, height, weight, or marital status; or
12 classify or refer for employment an individual on the basis of
13 religion, race, color, national origin, age, sex, **sexual**
14 **orientation, gender identity or expression**, height, weight, or
15 marital status.

16 Sec. 204. A labor organization shall not **do any of the**
17 **following**:

18 (a) Exclude or expel from membership, or otherwise
19 discriminate against, a member or applicant for membership
20 because of religion, race, color, national origin, age, sex,
21 **sexual orientation, gender identity or expression**, height,
22 weight, or marital status.

23 (b) Limit, segregate, or classify membership or applicants
24 for membership, or classify or fail or refuse to refer for
25 employment an individual in a way ~~which~~ **that** would deprive or
26 tend to deprive that individual of an employment opportunity, or
27 ~~which~~ **that** would limit an employment opportunity, or ~~which~~

1 **that** would adversely affect wages, hours, or employment
2 conditions, or otherwise adversely affect the status of an
3 employee or an applicant for employment, because of religion,
4 race, color, national origin, age, sex, **sexual orientation,**
5 **gender identity or expression,** height, weight, or marital
6 status.

7 (c) Cause or attempt to cause an employer to violate this
8 article.

9 (d) Fail to fairly and adequately represent a member in a
10 grievance process because of religion, race, color, national
11 origin, age, sex, **sexual orientation, gender identity or**
12 **expression,** height, weight, or marital status.

13 Sec. 205. An employer, labor organization, or joint
14 labor-management committee controlling an apprenticeship, on the
15 job, or other training or retraining program, shall not
16 discriminate against an individual because of religion, race,
17 color, national origin, age, sex, **sexual orientation, gender**
18 **identity or expression,** height, weight, or marital status, in
19 admission to, or employment or continuation in, a program
20 established to provide apprenticeship on the job, or other
21 training or retraining.

22 Sec. 206. (1) An employer, labor organization, or
23 employment agency shall not print, circulate, post, mail, or
24 otherwise cause to be published a statement, advertisement,
25 notice, or sign relating to employment by the employer, or
26 relating to membership in or a classification or referral for
27 employment by the labor organization, or relating to a

1 classification or referral for employment by the employment
2 agency, ~~which~~ **that** indicates a preference, limitation,
3 specification, or discrimination, based on religion, race, color,
4 national origin, age, sex, **sexual orientation, gender identity or**
5 **expression**, height, weight, or marital status.

6 (2) Except as permitted by rules promulgated by the
7 commission or by applicable federal law, an employer or
8 employment agency shall not **do any of the following**:

9 (a) Make or use a written or oral inquiry or form of
10 application that elicits or attempts to elicit information
11 concerning the religion, race, color, national origin, age, sex,
12 **sexual orientation, gender identity or expression**, height,
13 weight, or marital status of a prospective employee.

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

16 (c) Make or use a written or oral inquiry or form of
17 application that expresses a preference, limitation,
18 specification, or discrimination based on religion, race, color,
19 national origin, age, sex, **sexual orientation, gender identity or**
20 **expression**, height, weight, or marital status of a prospective
21 employee.

22 Sec. 207. An individual seeking employment shall not
23 publish or cause to be published a notice or advertisement that
24 specifies or indicates the individual's religion, race, color,
25 national origin, age, sex, **sexual orientation, gender identity or**
26 **expression**, height, weight, or marital status, or expresses a
27 preference, specification, limitation, or discrimination as to

1 the religion, race, color, national origin, age, height, weight,
2 sex, **sexual orientation, gender identity or expression**, or
3 marital status of a prospective employer.

4 Sec. 209. A contract to which ~~the~~ **this** state, a political
5 subdivision, or an agency ~~thereof~~ **of this state or a political**
6 **subdivision** is a party shall contain a covenant by the contractor
7 and his **or her** subcontractors not to discriminate against an
8 employee or applicant for employment with respect to hire,
9 tenure, terms, conditions, or privileges of employment, or a
10 matter directly or indirectly related to employment, because of
11 race, color, religion, national origin, age, sex, **sexual**
12 **orientation, gender identity or expression**, height, weight, or
13 marital status. Breach of this covenant may be regarded as a
14 material breach of the contract.

15 Sec. 302. Except where permitted by law, a person shall not
16 **do any of the following:**

17 (a) Deny an individual the full and equal enjoyment of the
18 goods, services, facilities, privileges, advantages, or
19 accommodations of a place of public accommodation or public
20 service because of religion, race, color, national origin, age,
21 sex, **sexual orientation, gender identity or expression**, or
22 marital status.

23 (b) Print, circulate, post, mail, or otherwise ~~cause to be~~
24 ~~published~~ **publish** a statement, advertisement, notice, or sign
25 ~~which~~ **that** indicates that the full and equal enjoyment of the
26 goods, services, facilities, privileges, advantages, or
27 accommodations of a place of public accommodation or public

1 service will be refused, withheld from, or denied an individual
2 because of religion, race, color, national origin, age, sex,
3 **sexual orientation, gender identity or expression**, or marital
4 status, or that an individual's patronage of or presence at a
5 place of public accommodation is objectionable, unwelcome,
6 unacceptable, or undesirable because of religion, race, color,
7 national origin, age, sex, **sexual orientation, gender identity or**
8 **expression**, or marital status.

9 Sec. 302a. (1) This section applies to a private club that
10 is defined as a place of public accommodation ~~pursuant to~~ **under**
11 section 301(a).

12 (2) If a private club allows use of its facilities by 1 or
13 more adults per membership, the use must be equally available to
14 all adults entitled to use the facilities under the membership.
15 All classes of membership shall be available without regard to
16 race, color, gender, **sexual orientation, gender identity or**
17 **expression**, religion, marital status, or national origin.
18 Memberships that permit use during restricted times may be
19 allowed only if the restricted times apply to all adults using
20 that membership.

21 (3) A private club that has food or beverage facilities or
22 services shall allow equal access to those facilities and
23 services for all adults in all membership categories at all
24 times. This subsection shall not require service or access to
25 facilities to persons that would violate any law or ordinance
26 regarding sale, consumption, or regulation of alcoholic
27 beverages.

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

8 Sec. 402. An educational institution shall not do any of
9 the following:

10 (a) Discriminate against an individual in the full
11 utilization of or benefit from the institution, or the services,
12 activities, or programs provided by the institution because of
13 religion, race, color, national origin, ~~or~~ sex, **sexual**
14 **orientation, or gender identity or expression.**

15 (b) Exclude, expel, limit, or otherwise discriminate against
16 an individual seeking admission as a student or an individual
17 enrolled as a student in the terms, conditions, or privileges of
18 the institution, because of religion, race, color, national
19 origin, ~~or~~ sex, **sexual orientation, or gender identity or**
20 **expression.**

21 (c) For purposes of admission only, make or use a written or
22 oral inquiry or form of application that elicits or attempts to
23 elicit information concerning the religion, race, color, national
24 origin, age, sex, **sexual orientation, gender identity or**
25 **expression,** or marital status of a person, except as permitted by
26 rule of the commission or as required by federal law, rule, or
27 regulation, or pursuant to an affirmative action program.

1 (d) Print or publish or cause to be printed or published a
2 catalog, notice, or advertisement indicating a preference,
3 limitation, specification, or discrimination based on the
4 religion, race, color, national origin, ~~or~~ sex, **sexual**
5 **orientation, or gender identity or expression**, of an applicant
6 for admission to the educational institution.

7 (e) Announce or follow a policy of denial or limitation
8 through a quota or otherwise of educational opportunities of a
9 group or its members because of religion, race, color, national
10 origin, ~~or~~ sex, **sexual orientation, or gender identity or**
11 **expression**.

12 Sec. 502. (1) A person engaging in a real estate
13 transaction, or a real estate broker or salesman, shall not on
14 the basis of religion, race, color, national origin, age, sex,
15 **sexual orientation, gender identity or expression**, familial
16 status, or marital status of a person or a person residing with
17 that person **do any of the following**:

18 (a) Refuse to engage in a real estate transaction with a
19 person.

20 (b) Discriminate against a person in the terms, conditions,
21 or privileges of a real estate transaction or in the furnishing
22 of facilities or services in connection with a real estate
23 transaction.

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

26 (d) Refuse to negotiate for a real estate transaction with a
27 person.

1 (e) Represent to a person that real property is not available
2 for inspection, sale, rental, or lease when in fact it is so
3 available, or knowingly fail to bring a property listing to a
4 person's attention, or refuse to permit a person to inspect real
5 property, or otherwise make unavailable or deny real property to
6 a person.

7 (f) ~~Make, print~~ **Print**, circulate, post, mail, or otherwise
8 ~~cause to be made or published~~ **make or publish** a statement,
9 advertisement, notice, or sign, or use a form of application for
10 a real estate transaction, or make a record of inquiry in
11 connection with a prospective real estate transaction, ~~which~~
12 **that** indicates, directly or indirectly, an intent to make a
13 preference, limitation, specification, or discrimination with
14 respect to the real estate transaction.

15 (g) Offer, solicit, accept, use, or retain a listing of real
16 property with the understanding that a person may be
17 discriminated against in a real estate transaction or in the
18 furnishing of facilities or services in connection ~~therewith~~
19 **with a real estate transaction.**

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

22 (2) A person shall not deny a person access to, or membership
23 or participation in, a multiple listing service, real estate
24 brokers' organization or other service, organization, or facility
25 relating to the business of selling or renting real property or
26 to discriminate against him or her in the terms or conditions of
27 that access, membership, or participation because of religion,

1 race, color, national origin, age, sex, **sexual orientation,**
2 **gender identity or expression,** familial status, or marital
3 status.

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

5 Sec. 504. (1) A person to whom application is made for
6 financial assistance or financing in connection with a real
7 estate transaction or in connection with the construction,
8 rehabilitation, repair, maintenance, or improvement of real
9 property, or a representative of that person, shall not **do any of**
10 **the following:**

11 (a) Discriminate against the applicant because of the
12 religion, race, color, national origin, age, sex, **sexual**
13 **orientation, gender identity or expression,** familial status, or
14 marital status of the applicant or a person residing with the
15 applicant.

16 (b) Use a form of application for financial assistance or
17 financing or make or keep a record or inquiry in connection with
18 an application for financial assistance or financing ~~which~~ **that**
19 indicates, directly or indirectly, a preference, limitation,
20 specification, or discrimination as to the religion, race, color,
21 national origin, age, sex, **sexual orientation, gender identity or**
22 **expression,** familial status, or marital status of the applicant
23 or a person residing with the applicant.

24 (2) A person whose business includes engaging in real estate
25 transactions shall not discriminate against a person because of
26 religion, race, color, national origin, age, sex, **sexual**
27 **orientation, gender identity or expression,** familial status, or

1 marital status, in the purchasing of loans for acquiring,
2 constructing, improving, repairing, or maintaining a dwelling or
3 the making or purchasing of loans or the provision of other
4 financial assistance secured by residential real estate.

5 (3) Subsection (1)(b) does not apply to a form of application
6 for financial assistance prescribed for the use of a lender
7 regulated as a mortgagee under the national housing act,
8 chapter 847, 48 Stat. 1246, or by a regulatory board or officer
9 acting under the statutory authority of this state or the United
10 States.

11 Sec. 505. (1) A condition, restriction, or prohibition,
12 including a right of entry or possibility of reverter, that
13 directly or indirectly limits the use or occupancy of real
14 property on the basis of religion, race, color, national origin,
15 age, sex, **sexual orientation, gender identity or expression,**
16 familial status, or marital status is void, except a limitation
17 of use as provided in section 503(1)(c) or on the basis of
18 religion relating to real property held by a religious
19 institution or organization, or by a religious or charitable
20 organization operated, supervised, or controlled by a religious
21 institution or organization, and used for religious or charitable
22 purposes.

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

26 Sec. 506. A person shall not represent, for the purpose of
27 inducing a real estate transaction from which the person may

1 benefit financially, that a change has occurred or will or may
2 occur in the composition with respect to religion, race, color,
3 national origin, age, sex, **sexual orientation, gender identity or**
4 **expression**, familial status, or marital status of the owners or
5 occupants in the block, neighborhood, or area in which the real
6 property is located, or represent that this change will or may
7 result in the lowering of property values, an increase in
8 criminal or antisocial behavior, or a decline in the quality of
9 schools in the block, neighborhood, or area in which the real
10 property is located.



HOUSE BILL No. 5107

November 9, 1999, Introduced by Reps. Godchaux, Martinez, Schauer, Thomas, Scranton, Brater, Woodward, LaForge, Price, Hansen, Garza, Bogardus, Jacobs, Minore and Stallworth and referred to the Committee on Constitutional Law and Ethics.

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, 103, 502, 504, 505, and 506 as amended by
1992 PA 124, 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
2 An act to define civil rights; to prohibit discriminatory
3 practices, policies, and customs in the exercise of those rights
4 based upon religion, race, color, national origin, age,
5 DISABILITY, sex, SEXUAL ORIENTATION, height, weight, familial
6 status, or marital status; to preserve the confidentiality of
7 records regarding arrest, detention, or other disposition in
8 which a conviction does not result; to prescribe the powers and
9 duties of the civil rights commission and the department of civil
10 rights; to provide remedies and penalties; to provide for fees;
11 and to repeal ~~certain~~ acts and parts of acts.

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

19 (2) This section shall not be construed to prevent an indi-
20 vidual from bringing or continuing an action arising out of sex
21 discrimination before July 18, 1980 which action is based on con-
22 duct similar to or identical to harassment.

23 (3) This section shall not be construed to prevent an indi-
24 vidual from bringing or continuing an action arising out of dis-
25 crimination based on familial status before the effective date of
26 the amendatory act that added this subsection which action is
27 based on conduct similar to or identical to discrimination

1 because of the age of persons residing with the individual
2 bringing or continuing the action.

3 Sec. 103. As used in this act:

4 (a) "Age" means chronological age except as otherwise pro-
5 vided by law.

6 (b) "Commission" means the civil rights commission estab-
7 lished by section 29 of article ~~5~~ V of the state constitution
8 of 1963.

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

10 (d) "Department" means the department of civil rights or its
11 employees.

12 (E) "DISABILITY" MEANS ANY OF THE FOLLOWING:

13 (i) A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY
14 LIMITS 1 OR MORE OF THE MAJOR LIFE ACTIVITIES OF AN INDIVIDUAL.

15 (ii) A RECORD OF AN IMPAIRMENT DESCRIBED IN SUBPARAGRAPH
16 (i).

17 (iii) BEING REGARDED AS HAVING AN IMPAIRMENT DESCRIBED IN
18 SUBPARAGRAPH (i).

19 (F) ~~(e)~~ "Familial status" means 1 or more individuals
20 under the age of 18 residing with a parent or other person having
21 custody or in the process of securing legal custody of the indi-
22 vidual or individuals or residing with the designee of the parent
23 or other person having or securing custody, with the written per-
24 mission of the parent or other person. For purposes of this def-
25 inition, "parent" includes a person who is pregnant.

26 (G) ~~(f)~~ "National origin" includes the national origin of
27 an ancestor.

1 (H) ~~(g)~~ "Person" means an individual, agent, association,
2 corporation, joint apprenticeship committee, joint stock company,
3 labor organization, legal representative, mutual company, part-
4 nership, receiver, trust, trustee in bankruptcy, unincorporated
5 organization, the state or a political subdivision of the state
6 or an agency of the state, or any other legal or commercial
7 entity.

8 (I) ~~(h)~~ "Political subdivision" means a county, city, vil-
9 lage, township, school district, or special district or authority
10 of the state.

11 (J) ~~(i)~~ Discrimination because of sex includes sexual
12 harassment, which means unwelcome sexual advances, requests for
13 sexual favors, and other verbal or physical conduct or communica-
14 tion of a sexual nature when:

15 (i) Submission to such conduct or communication is made a
16 term or condition either explicitly or implicitly to obtain
17 employment, public accommodations or public services, education,
18 or housing.

19 (ii) Submission to or rejection of such conduct or communi-
20 cation by an individual is used as a factor in decisions affect-
21 ing such individual's employment, public accommodations or public
22 services, education, or housing.

23 (iii) Such conduct or communication has the purpose or
24 effect of substantially interfering with an individual's employ-
25 ment, public accommodations or public services, education, or
26 housing, or creating an intimidating, hostile, or offensive

1 employment, public accommodations, public services, educational,
2 or housing environment.

3 (K) "SEXUAL ORIENTATION" MEANS HAVING AN EMOTIONAL, PHYSI-
4 CAL, OR SEXUAL ATTACHMENT TO ANOTHER PERSON WITHOUT REGARD TO THE
5 SEX OF THAT PERSON OR HAVING OR BEING PERCEIVED AS HAVING AN ORI-
6 ENTATION FOR SUCH ATTACHMENT, OR HAVING OR BEING PERCEIVED AS
7 HAVING A SELF-IMAGE OR IDENTITY NOT TRADITIONALLY ASSOCIATED WITH
8 ONE'S BIOLOGICAL SEX. SEXUAL ORIENTATION DOES NOT INCLUDE A
9 PHYSICAL OR SEXUAL ATTACHMENT TO CHILDREN BY AN ADULT.

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

12 (a) Fail or refuse to hire or recruit, discharge, or other-
13 wise discriminate against an individual with respect to employ-
14 ment, compensation, or a term, condition, or privilege of employ-
15 ment, because of religion, race, color, national origin, age,
16 DISABILITY, sex, SEXUAL ORIENTATION, height, weight, or marital
17 status.

18 (b) Limit, segregate, or classify an employee or applicant
19 for employment in a way that deprives or tends to deprive the
20 employee or applicant of an employment opportunity, or otherwise
21 adversely affects the status of an employee or applicant because
22 of religion, race, color, national origin, age, DISABILITY, sex,
23 SEXUAL ORIENTATION, height, weight, or marital status.

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

~~1 (d) Until January 1, 1994, require an employee of an~~
~~2 institution of higher education who is serving under a contract~~
~~3 of unlimited tenure, or similar arrangement providing for unlim-~~
~~4 ited tenure, to retire from employment on the basis of the~~
~~5 employee's age. As used in this subdivision, "institution of~~
~~6 higher education" means a public or private university, college,~~
~~7 community college, or junior college located in this state.~~

8 (2) This section shall not be construed to prohibit the
9 establishment or implementation of a bona fide retirement policy
10 or system that is not a subterfuge to evade the purposes of this
11 section.

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

14 Sec. 203. An employment agency shall not fail or refuse to
15 procure, refer, recruit, or place for employment, or otherwise
16 discriminate against, an individual because of religion, race,
17 color, national origin, age, DISABILITY, sex, SEXUAL ORIENTATION,
18 height, weight, or marital status; or classify or refer for
19 employment an individual on the basis of religion, race, color,
20 national origin, age, DISABILITY, sex, SEXUAL ORIENTATION,
21 height, weight, or marital status.

22 Sec. 204. A labor organization shall not:

23 (a) Exclude or expel from membership, or otherwise discrimi-
24 nate against, a member or applicant for membership because of
25 religion, race, color, national origin, age, DISABILITY, sex,
26 SEXUAL ORIENTATION, height, weight, or marital status.

1 (b) Limit, segregate, or classify membership or applicants
2 for membership, or classify or fail or refuse to refer for
3 employment an individual in a way ~~which~~ THAT would deprive or
4 tend to deprive that individual of an employment opportunity, or
5 ~~which~~ THAT would limit an employment opportunity, or ~~which~~
6 THAT would adversely affect wages, hours, or employment condi-
7 tions, or otherwise adversely affect the status of an employee or
8 an applicant for employment, because of religion, race, color,
9 national origin, age, DISABILITY, sex, SEXUAL ORIENTATION,
10 height, weight, or marital status.

11 (c) Cause or attempt to cause an employer to violate this
12 article.

13 (d) Fail to fairly and adequately represent a member in a
14 grievance process because of religion, race, color, national
15 origin, age, DISABILITY, sex, SEXUAL ORIENTATION, height, weight,
16 or marital status.

17 Sec. 205. An employer, labor organization, or joint
18 labor-management committee controlling an apprenticeship, on the
19 job, or other training or retraining program, shall not discrimi-
20 nate against an individual because of religion, race, color,
21 national origin, age, DISABILITY, sex, SEXUAL ORIENTATION,
22 height, weight, or marital status, in admission to, or employment
23 or continuation in, a program established to provide apprentice-
24 ship on the job, or other training or retraining.

25 Sec. 206. (1) An employer, labor organization, or employ-
26 ment agency shall not print, circulate, post, mail, or otherwise
27 cause to be published a statement, advertisement, notice, or sign

1 relating to employment by the employer, or relating to membership
2 in or a classification or referral for employment by the labor
3 organization, or relating to a classification or referral for
4 employment by the employment agency, which indicates a prefer-
5 ence, limitation, specification, or discrimination, based on
6 religion, race, color, national origin, age, DISABILITY, sex,
7 SEXUAL ORIENTATION, height, weight, or marital status.

8 (2) Except as permitted by rules promulgated by the commis-
9 sion or by applicable federal law, an employer or employment
10 agency shall not:

11 (a) Make or use a written or oral inquiry or form of appli-
12 cation that elicits or attempts to elicit information concerning
13 the religion, race, color, national origin, age, DISABILITY, sex,
14 SEXUAL ORIENTATION, height, weight, or marital status of a pro-
15 spective employee.

16 (b) Make or keep a record of information described in subdi-
17 vision (a) or ~~to~~ disclose that information.

18 (c) Make or use a written or oral inquiry or form of appli-
19 cation that expresses a preference, limitation, specification, or
20 discrimination based on religion, race, color, national origin,
21 age, DISABILITY, sex, SEXUAL ORIENTATION, height, weight, or mar-
22 ital status of a prospective employee.

23 Sec. 207. An individual seeking employment shall not pub-
24 lish or cause to be published a notice or advertisement that
25 specifies or indicates the individual's religion, race, color,
26 national origin, age, DISABILITY, sex, SEXUAL ORIENTATION,
27 height, weight, or marital status, or expresses a preference,

1 specification, limitation, or discrimination as to the religion,
2 race, color, national origin, age, DISABILITY, height, weight,
3 sex, SEXUAL ORIENTATION, or marital status of a prospective
4 employer.

5 Sec. 209. A contract to which the state, a political subdi-
6 vision, or an agency ~~thereof~~ OF THE STATE OR A POLITICAL
7 SUBDIVISION is a party shall contain a covenant by the contractor
8 and his OR HER subcontractors not to discriminate against an
9 employee or applicant for employment with respect to hire,
10 tenure, terms, conditions, or privileges of employment, or a
11 matter directly or indirectly related to employment, because of
12 race, color, religion, national origin, age, DISABILITY, sex,
13 SEXUAL ORIENTATION, height, weight, or marital status. Breach of
14 this covenant may be regarded as a material breach of the
15 contract.

16 Sec. 302. Except where permitted by law, a person shall
17 not:

18 (a) Deny an individual the full and equal enjoyment of the
19 goods, services, facilities, privileges, advantages, or accommo-
20 dations of a place of public accommodation or public service
21 because of religion, race, color, national origin, age,
22 DISABILITY, sex, SEXUAL ORIENTATION, or marital status.

23 (b) Print, circulate, post, mail, or otherwise cause to be
24 published a statement, advertisement, notice, or sign ~~which~~
25 THAT indicates that the full and equal enjoyment of the goods,
26 services, facilities, privileges, advantages, or accommodations
27 of a place of public accommodation or public service will be

1 refused, withheld from, or denied an individual because of
2 religion, race, color, national origin, age, DISABILITY, sex,
3 SEXUAL ORIENTATION, or marital status, or that an individual's
4 patronage of or presence at a place of public accommodation is
5 objectionable, unwelcome, unacceptable, or undesirable because of
6 religion, race, color, national origin, age, DISABILITY, sex,
7 SEXUAL ORIENTATION, or marital status.

8 Sec. 302a. (1) This section applies to a private club that
9 is defined as a place of public accommodation pursuant to
10 section 301(a).

11 (2) If a private club allows use of its facilities by 1 or
12 more adults per membership, the use must be equally available to
13 all adults entitled to use the facilities under the membership.
14 All classes of membership shall be available without regard to
15 race, color, gender, DISABILITY, SEXUAL ORIENTATION, religion,
16 marital status, or national origin. Memberships that permit use
17 during restricted times may be allowed only if the restricted
18 times apply to all adults using that membership.

19 (3) A private club that has food or beverage facilities or
20 services shall allow equal access to those facilities and serv-
21 ices for all adults in all membership categories at all times.
22 This subsection shall not require service or access to facilities
23 to persons that would violate any law or ordinance regarding
24 sale, consumption, or regulation of alcoholic beverages.

25 (4) This section does not prohibit a private club from spon-
26 soring or permitting sports schools or leagues for children less
27 than 18 years of age that are limited by age or to members of 1

1 sex, if comparable and equally convenient access to the club's
2 facilities is made available to both sexes and if these activi-
3 ties are not used as a subterfuge to evade the purposes of this
4 article.

5 Sec. 402. An educational institution shall not do any of
6 the following:

7 (a) Discriminate against an individual in the full utiliza-
8 tion of or benefit from the institution, or the services, activi-
9 ties, or programs provided by the institution because of reli-
10 gion, race, color, national origin, ~~or~~ DISABILITY, sex, OR
11 SEXUAL ORIENTATION.

12 (b) Exclude, expel, limit, or otherwise discriminate against
13 an individual seeking admission as a student or an individual
14 enrolled as a student in the terms, conditions, or privileges of
15 the institution, because of religion, race, color, national
16 origin, ~~or~~ DISABILITY, sex, OR SEXUAL ORIENTATION.

17 (c) For purposes of admission only, make or use a written or
18 oral inquiry or form of application that elicits or attempts to
19 elicit information concerning the religion, race, color, national
20 origin, age, DISABILITY, sex, SEXUAL ORIENTATION, or marital
21 status of a person, except as permitted by rule of the commission
22 or as required by federal law, rule, or regulation, or pursuant
23 to an affirmative action program.

24 (d) Print or publish or cause to be printed or published a
25 catalog, notice, or advertisement indicating a preference, limi-
26 tation, specification, or discrimination based on the religion,
27 race, color, national origin, ~~or~~ DISABILITY, sex, OR SEXUAL

1 ORIENTATION of an applicant for admission to the educational
2 institution.

3 (e) Announce or follow a policy of denial or limitation
4 through a quota or otherwise of educational opportunities of a
5 group or its members because of THAT GROUP'S OR ITS MEMBERS'
6 religion, race, color, national origin, ~~or~~ DISABILITY, sex, OR
7 SEXUAL ORIENTATION.

8 Sec. 502. (1) A person engaging in a real estate transac-
9 tion, or a real estate broker or salesman, shall not on the basis
10 of religion, race, color, national origin, age, DISABILITY, sex,
11 SEXUAL ORIENTATION, familial status, or marital status of a
12 person or a person residing with that person:

13 (a) Refuse to engage in a real estate transaction with a
14 person.

15 (b) Discriminate against a person in the terms, conditions,
16 or privileges of a real estate transaction or in the furnishing
17 of facilities or services in connection with a real estate
18 transaction.

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

21 (d) Refuse to negotiate for a real estate transaction with a
22 person.

23 (e) Represent to a person that real property is not avail-
24 able for inspection, sale, rental, or lease when in fact it is so
25 available, or knowingly fail to bring a property listing to a
26 person's attention, or refuse to permit a person to inspect real

1 property, or otherwise make unavailable or deny real property to
2 a person.

3 (f) Make, print, circulate, post, mail, or otherwise cause
4 to be made or published a statement, advertisement, notice, or
5 sign, or use a form of application for a real estate transaction,
6 or make a record of inquiry in connection with a prospective real
7 estate transaction, ~~which~~ THAT indicates, directly or indirect-
8 ly, an intent to make a preference, limitation, specification, or
9 discrimination with respect to the real estate transaction.

10 (g) Offer, solicit, accept, use, or retain a listing of real
11 property with the understanding that a person may be discrimi-
12 nated against in a real estate transaction or in the furnishing
13 of facilities or services in connection ~~therewith~~ WITH A REAL
14 ESTATE TRANSACTION.

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

17 (2) A person shall not deny a person access to, or member-
18 ship or participation in, a multiple listing service, real estate
19 brokers' organization or other service, organization, or facility
20 relating to the business of selling or renting real property or
21 to discriminate against him or her in the terms or conditions of
22 that access, membership, or participation because of religion,
23 race, color, national origin, age, DISABILITY, sex, SEXUAL
24 ORIENTATION, familial status, or marital status.

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

26 Sec. 504. (1) A person to whom application is made for
27 financial assistance or financing in connection with a real

1 estate transaction or in connection with the construction,
2 rehabilitation, repair, maintenance, or improvement of real prop-
3 erty, or a representative of that person, shall not:

4 (a) Discriminate against the applicant because of the reli-
5 gion, race, color, national origin, age, DISABILITY, sex, SEXUAL
6 ORIENTATION, familial status, or marital status of the applicant
7 or a person residing with the applicant.

8 (b) Use a form of application for financial assistance or
9 financing or make or keep a record or inquiry in connection with
10 an application for financial assistance or financing ~~which~~ THAT
11 indicates, directly or indirectly, a preference, limitation,
12 specification, or discrimination as to the religion, race, color,
13 national origin, age, DISABILITY, sex, SEXUAL ORIENTATION, famil-
14 ial status, or marital status of the applicant or a person resid-
15 ing with the applicant.

16 (2) A person whose business includes engaging in real estate
17 transactions shall not discriminate against a person because of
18 religion, race, color, national origin, age, DISABILITY, sex,
19 SEXUAL ORIENTATION, familial status, or marital status, in the
20 purchasing of loans for acquiring, constructing, improving,
21 repairing, or maintaining a dwelling or the making or purchasing
22 of loans or the provision of other financial assistance secured
23 by residential real estate.

24 (3) Subsection (1)(b) does not apply to a form of applica-
25 tion for financial assistance prescribed for the use of a lender
26 regulated as a mortgagee under the national housing act,
27 chapter 847, 48 Stat. 1246, or by a regulatory board or officer

1 acting under the statutory authority of this state or the United
2 States.

3 Sec. 505. (1) A condition, restriction, or prohibition,
4 including a right of entry or possibility of reverter, that
5 directly or indirectly limits the use or occupancy of real prop-
6 erty on the basis of religion, race, color, national origin, age,
7 DISABILITY, sex, SEXUAL ORIENTATION, familial status, or marital
8 status is void, except a limitation of use as provided in section
9 503(1)(c) or on the basis of religion relating to real property
10 held by a religious institution or organization, or by a reli-
11 gious or charitable organization operated, supervised, or con-
12 trolled by a religious institution or organization, and used for
13 religious or charitable purposes.

14 (2) A person shall not insert in a written instrument relat-
15 ing to real property a provision that is void under this section
16 or honor such a provision in the chain of title.

17 Sec. 506. A person shall not represent, for the purpose of
18 inducing a real estate transaction from which the person may ben-
19 efit financially, that a change has occurred or will or may occur
20 in the composition with respect to religion, race, color,
21 national origin, age, DISABILITY, sex, SEXUAL ORIENTATION, famil-
22 ial status, or marital status of the owners or occupants in the
23 block, neighborhood, or area in which the real property is
24 located, or represent that this change will or may result in the
25 lowering of property values, an increase in criminal or antiso-
26 cial behavior, or a decline in the quality of schools in the

16

1 block, neighborhood, or area in which the real property is
2 located.



I MOVE THAT THE MICHIGAN CIVIL RIGHTS COMMISSION ADOPT THE FOLLOWING RESOLUTION AS INTERPRETIVE STATEMENT 2018-1 REGARDING THE MEANING OF "SEX" IN THE ELLIOTT-LARSEN CIVIL RIGHTS ACT (ACT 453 OF 1976) AND GIVE IT IMMEDIATE EFFECT.

WHEREAS, the Michigan Civil Rights Commission finds the language "discrimination because of ... sex ..." as used in the Elliott Larsen Civil Rights Act ambiguous, leaving the MI Department of Civil Rights without clear authority to accept complaints of discrimination based on "gender identity" and "sexual orientation", the Commission issues Interpretive Statement 2018-1.

WHEREAS, the Michigan Civil Rights Commission finds that the definition of "discrimination because of ... sex" under Michigan law has to date been interpreted to be less inclusive than the definitions of other protected classes, and in a way that is contrary to the plain meaning of the language in this context.

WHEREAS, The Michigan Civil Rights Commission finds that both discrimination because of gender identity and discrimination because of sexual orientation are forms of discrimination because of sex.

WHEREAS, the U.S. 6th Circuit Court of Appeals on March 7, 2018 ruled in the case of EEOC v R.G. & G.R. Harris Funeral Homes Inc. that the same language "discrimination because of ... sex" when used in federal civil rights law protected a transgender Michigan woman who was gender stereotyped and discriminated against for not behaving like a male, and adding Michigan where gender identity and sexual orientation are already federally protected under the definition of "discrimination because of sex."

WHEREAS, The Michigan Civil Rights Commission finds that continuing to interpret the protections afforded by the phrase "discrimination because of ... sex" more restrictively by continuing to exclude individuals for reasons of their gender identity or sexual orientation, would itself be discriminatory.

WHEREAS the Michigan Constitution of 1963 provides that "no person shall be denied the equal protection of the laws" and directs that "It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person ... and to secure the equal protection of such civil rights without such discrimination ... The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures ... and to issue appropriate orders."

WHEREAS, the Administrative Procedures Act (MCL 24.207(h)) defines the interpretive statement as a category of agency action which in itself does not have the force and effect of law but is merely explanatory to be followed by the agency.

AND, WHEREAS, The Michigan Supreme Court has ruled in *Clonlara, Inc. v. State Board of Education*, 442 Mich. (1993). that "agencies have the authority to interpret the statutes they are bound to administer and enforce." And that Interpretive statements "state the interpretation of ambiguous or doubtful statutory language which will be followed by the agency unless and until the statute is otherwise authoritatively interpreted by the courts."

THEREFORE, IT IS RESOLVED, The Michigan Civil Rights Commission hereby resolves, and adopts as Interpretive Statement 2018-1, that, as used in the Elliott Larsen Civil Rights Act "discrimination because of... sex" includes discrimination because of gender identity and discrimination because of sexual orientation.

IT IS FURTHER RESOLVED, that the Department of Civil Rights shall therefore process all complaints alleging discrimination on account of gender identity and sexual orientation as complaints of discrimination because of sex, and therefore discrimination prohibited under the Elliott Larsen Civil Rights Act.

The Commission directs that Interpretive Statement 2018-1 shall be distributed to all Department of Civil Rights' offices, be filed with any other office as required by the Administrative Procedures Act.

ADOPTED MAY 21, 2018

MOTION: To adopt interpretive statement on meaning of "discrimination because of ... sex" and grant immediate effect; Commission determines the terminology in ELCRA is ambiguous and restricts department ability to accept complaints; discrimination because of sex affords that protected class less protection than all other protected classes contrary to plain meaning of "sex"; commission finds that discrimination because of gender identity and sexual orientation are forms of discrimination because of sex. That Harris decision under federal law provides more inclusive protections than ELCRA; the commission finds that continuing to interpret sex more restrictively is in itself discrimination; that the MI Constitution provides that "no person shall be denied the equal protection of the laws" and directs the commission to secure the equal protection of such civil rights without such discrimination and grants powers to protect those rights by promulgating rules and regulations for its own procedures... and to issue appropriate orders." The 'APA defines the interpretive statement as a category of agency action which in itself does not have the force and effect of law but is merely explanatory to be followed by the agency; the supreme court ruled agencies have the authority to make such statements which govern the agency unless/until otherwise authoritatively interpreted by the courts therefore commission adopts Interpretive Statement 2018-1 and the department shall process complaints under it; the department shall publish to appropriate offices.

ROLL	AYE	NO	ABSTAIN	PASS
Commissioner Clayton	✓			
Commissioner Combs			✓	
Commissioner Demashkieh	✓			
Commissioner Haque	✓			
Commissioner Kopack	✓			
Commissioner Resio				
Commissioner Sakwa				
Commissioner Smith	✓			
TOTAL	5	0	1	

Rep. Hollister moved that the bill be given immediate effect.

The motion prevailed, two-thirds of the members serving voting therefor.

The bill was referred to the Clerk for enrollment printing and presentation to the Governor.

The House returned to the consideration of

House Bill No. 4055, entitled

A bill to define civil rights; to prohibit discriminatory practices, policies, and customs in the exercise of those rights based upon religion, race, color, national origin, age, sex, physical handicap, or marital status; to prescribe the powers and duties of the civil rights commission; to provide penalties; and to repeal certain acts and parts of acts.

(The amendments made to the bill by the Senate were not concurred in, motion made to reconsider and postponed earlier today, see p. 3698.)

The question being on the motion by Rep. Gerald,

Rep. Wierzbicki demanded the yeas and nays.

The demand was supported.

The question being on the motion by Rep. Gerald,

Rep. Wierzbicki was recognized to speak on the motion, and the Chair ruled that the speaker was not confining his remarks to the motion, and, therefore, was out of order.

Rep. Wierzbicki appealed the decision of the Chair.

The question being, "Shall the judgment of the Chair stand as the judgment of the House?"

The judgment of the Chair did not stand as the judgment of the House, a majority of the members present not voting therefor, by yeas and nays, as follows:

Roll Call No. 1339

Yeas—43

Anderson	Gerald	Kehres	Padden
Bonior	Griffin	Larsen	Porter
Bullard	Harrison	Legel	Powell
Busch	Hasper	Mahalak	Rocca
Buth	Hertel	Markes	Ryan
Clodfelter	Holcomb	Mathieu	Sheridan
Collins	Hollister	Maynard	Spaniola
Edwards, G.H.	Hood, R.W.	McNeely	Vaughn
Elliott	Jacobetti	Monsma	Young, J.F.
Ferguson	Jondahl	Montgomery	O'Neill
Forbes	Jowett	Owen	

Nays—43

Angel	Engler, C.H.	Kok	Smith, R.
Armbruster	Engler, J.M.	McCollough	Stopczynski, S.
Brotherton	Fessler	Mowat	Stopczynski, T.C.
Brown	Fredricks	Nash	Strang
Bryant	Gast	Novak	Symons
Cawthorne	Geerlings	Ogonowski	Trim
Conlin	Hayward	Ostling	Van Singel
Defebaugh	Hoffman	Sackett	Varnum
De Stigter	Holmes	Sharpe	Welborn
DiNello	Hunsinger	Sietsema	Wierzbicki
Dutko	Kennedy	Smith, J.F.	

The question being on the motion by Rep. Gerald,

Rep. Wierzbicki was again recognized to speak on the motion and was ruled out of order.

Rep. Wierzbicki appealed the decision of the Chair.

The question being, "Shall the judgment of the Chair stand as the judgment of the House?"

The judgment of the Chair stood as the judgment of the House, a majority of the members present voting therefor, by yeas and nays, as follows:

Roll Call No. 1340**Yeas—66**

Anderson	Forbes	Larsen	Powell
Angel	Geerlings	Legel	Rocca
Armbruster	Geralds	Mahalak	Ryan
Binsfeld	Gingrass	Markes	Sackett
Bonior	Griffin	Mathieu	Sharpe
Brown	Harrison	Maynard	Sietsema
Bullard	Hasper	McNeely	Smith, J.F.
Busch	Hayward	Monsma	Smith, R.
Buth	Hertel	Montgomery	Spaniola
Clodfelter	Holcomb	Mowat	Stevens
Collins	Hollister	Nash	Trim
Conlin	Hood, R.W.	Novak	Van Singel
Defebaugh	Jacobetti	Ostling	Varnum
De Stigter	Jondahl	Owen	Vaughn
Edwards, C.H.	Jowett	Padden	Young, J.F.
Elliott	Kehres	Porter	O'Neill
Ferguson	Kok		

Nays—20

Brotherton	Fessler	Hunsinger	Stopczynski, S.
Briant	Fredricks	Kennedy	Stopczynski, T.C.
DiNello	Gast	McCollough	Strang
Engler, C.H.	Hoffman	Ogonowski	Welborn
Engler, J.M.	Holmes	Sheridan	Wierzbicki

The question being on the motion by Rep. Geralds,
Rep. Symons demanded the yeas and nays.

The demand was supported.

The question being on the motion by Rep. Geralds,

The motion prevailed, a majority of the members voting therefor, by yeas and nays, as follows:

Roll Call No. 1341**Yeas—63**

Anderson	Engler, J.M.	Kehres	Porter
Angel	Ferguson	Kok	Powell
Armbruster	Fessler	Larsen	Rocca
Binsfeld	Forbes	Legel	Ryan
Bonior	Geerlings	Mahalak	Sharpe
Briant	Geralds	Markes	Sietsema
Bullard	Harrison	Mathieu	Smith, J.F.
Busch	Hasper	McNeely	Smith, R.
Buth	Hayward	Monsma	Spaniola
Cawthorne	Hertel	Montgomery	Stevens
Clodfelter	Holcomb	Mowat	Van Singel
Collins	Hollister	Nash	Varnum

Defebaugh
De Stigter
Edwards, C.H.
Elliott

Hood, R.W.
Jacobetti
Jondahl
Jowett

Novak
Ostling
Owen
Padden

Vaughn
Young, J.F.
O'Neill

Nays—22

Brown
Conlin
Engler, C.H.
Fredricks
Gast
Griffin

Hoffman
Holmes
Hunsinger
Kennedy
McCollough
Mittan

Ogonowski
Sackett
Sheridan
Stopczynski, S.
Stopczynski, T.C.

Strang
Symons
Trim
Welborn
Wierzbicki

Rep. Wierzbicki, having previously reserved the right to explain his nay vote, made the following statement:
"Mr. Speaker and members of the House:

House Bill No. 4055, the so-called 'Civil Rights' bill, contains a significant discriminatory section which, in effect, would prohibit certain private clubs from holding any type of liquor license—even a 24 hour license. Section 303 of this bill reads as follows:

'Section 303. This article shall not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages or accommodations of the private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation or is licensed by the state under Act No. 8 of the Public Acts of 1933, being sections 436.1 through 436.58 of the Michigan Compiled Laws.'

Act No. 8 of the Public Acts of 1933 which is referred to in this Section is the Liquor Act under which most private organizations hold club liquor licenses. Therefore, in my opinion, Section 303 of House Bill No. 4055 could be interpreted to deny liquor licenses to such organizations as the Knights of Columbus, German-American Club, Italian-American Club, Polish Roman Catholic Union and other organizations whose basis for existence is to render a service to persons of specific religious, ethnic or other backgrounds.

I strongly oppose this type of reverse discrimination and therefore I voted against this House action which facilitates the passage of the highly discriminatory provision in House Bill No. 4055.

Thank you."

Rep. Hunsinger, having previously reserved the right to explain her nay vote, made the following statement:
"Mr. Speaker and members of the House:

I voted no on House Bill No. 4055 for the same reasons Rep. Frank Wierzbicki voted no."

The question being on concurring in the adoption of the amendments made to the bill by the Senate,
The amendments were concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

Roll Call No. 1342

Yeas—65

Anderson
Angel
Armbruster
Binsfeld
Bonior
Brotherton
Bryant
Bullard
Busch
Buth
Cawthorne
Clodfelter
Collins

Elliott
Engler, C.H.
Engler, J.M.
Ferguson
Fessler
Forbes
Geerlings
Gerald
Harrison
Hasper
Hayward
Hertel
Holcomb

Jondahl
Jowett
Kehres
Kok
Larsen
Legel
Mahalak
Markes
Mathieu
McNeely
Monsma
Montgomery
Mowat

Owen
Padden
Porter
Powell
Rocca
Ryan
Scott
Sietsema
Smith, J.F.
Smith, R.
Spaniola
Van Singel
Varnum

Conlin
Driebaugh
De Stigter
Edwards, G.H.

Hollister
Hood, R.W.
Jacobetti

Nash
Novak
Ostling

Vaughn
Young, J.F.
O'Neill

Nays—23

Brown
DiNello
Fredricks
Gast
Griffin
Hottman

Holmes
Hunsinger
Keith
Kennedy
McCollough
Mittan

Ogonowski
Sackett
Sharpe
Sheridan
Stopczynski, S.
Stopczynski, T.C.

Strang
Symons
Trim
Welborn
Wierzbicki

Rep. George H. Edwards moved that the bill be known as "The Daisy Elliott-Melvin Larsen Civil Rights Bill".

The motion prevailed.

The bill was referred to the Clerk for enrollment printing and presentation to the Governor.

Rep. Wierzbicki, having previously reserved the right to explain his nay vote, made the following statement:

"Mr. Speaker and members of the House:

House Bill No. 4055, the so-called 'Civil Rights' bill, contains a significant discriminatory section which, in effect, would prohibit certain private clubs from holding any type of liquor license—even a 24 hour license. Section 303 of this bill reads as follows:

'Section 303. This article shall not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages or accommodations of the private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation or is licensed by the state under Act No. 8 of the Public Acts of 1933, being sections 436.1 through 436.58 of the Michigan Compiled Laws.'

Act No. 8 of the Public Acts of 1933 which is referred to in this Section is the Liquor Act under which most private organizations hold club liquor licenses. Therefore, in my opinion, Section 303 of House Bill No. 4055 could be interpreted to deny liquor licenses to such organizations as the Knights of Columbus, German-American Club, Italian-American Club, Polish Roman Catholic Union and other organizations whose basis for existence is to render a service to persons of specific religious, ethnic or other backgrounds.

I strongly oppose this type of reverse discrimination and therefore I voted against this House action which facilitates the passage of the highly discriminatory provision in House Bill No. 4055.

Thank you."

Rep. Hunsinger, having previously reserved the right to explain her nay vote, made the following statement:

"Mr. Speaker and members of the House:

I voted no on House Bill No. 4055 for the same reasons Rep. Frank Wierzbicki voted no."

Rep. Raymond W. Hood moved that Reps. Raymond W. Hood, Ostling and Thaddeus Stopczynski be granted temporary leaves of absence from today's session.

The motion prevailed.

Rep. Forbes moved that Reps. Jacobetti, Owen and Jowett be granted temporary leaves of absence from today's session.

The motion prevailed.

Second Reading of Bills

Senate Bill No. 609, entitled

A bill to amend sections 45 and 46 of Act No. 306 of the Public Acts of 1969, entitled "Administrative