

HOUSE BILL No. 4341

February 18, 1997, Introduced by Reps. Cherry, Schauer, Prusi, Schroer, Willard, Martinez, Schermesser, Murphy, Brater, LaForge, Ciaramitaro, Scott and Wetters and referred to the Committee on Constitutional and Civil Rights.

A bill to amend 1976 PA 453, entitled "Elliott-Larsen civil rights act," (MCL 37.2101 to 37.2804) by amending the title, as amended by 1992 PA 258, and by adding sections 801a and 801b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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, sex,
5 height, weight, familial status, or marital status; to preserve
6 the confidentiality of records regarding arrest, detention, or
7 other disposition in which a conviction does not result; to pre-
8 scribe the powers and duties of the civil rights commission and
9 the department of civil rights; TO PROVIDE EVIDENTIARY STANDARDS;

1 to provide remedies and penalties; to provide for fees; and to
2 repeal ~~certain~~ acts and parts of acts.

3 SEC. 801A. (1) IN ANY CIVIL ACTION BROUGHT PURSUANT TO THIS
4 ACT ALLEGING SEX DISCRIMINATION, OPINION EVIDENCE, REPUTATION
5 EVIDENCE, EVIDENCE OF SPECIFIC INSTANCES OF PLAINTIFF'S SEXUAL
6 CONDUCT, OR ANY SIMILAR EVIDENCE IS NOT ADMISSIBLE BY THE
7 DEFENDANT IN ORDER TO PROVE CONSENT BY THE PLAINTIFF OR THE
8 ABSENCE OF INJURY TO THE PLAINTIFF, UNLESS THE INJURY ALLEGED BY
9 THE PLAINTIFF IS LOSS OF CONSORTIUM.

10 (2) SUBSECTION (1) IS NOT APPLICABLE TO EVIDENCE OF THE
11 PLAINTIFF'S SEXUAL CONDUCT WITH THE ALLEGED PERPETRATOR.

12 (3) IF THE PLAINTIFF INTRODUCES EVIDENCE, INCLUDING TESTI-
13 MONY OF A WITNESS, OR THE PLAINTIFF AS A WITNESS GIVES TESTIMONY
14 AND THE EVIDENCE OR TESTIMONY RELATES TO THE PLAINTIFF'S SEXUAL
15 CONDUCT, THE DEFENDANT MAY CROSS-EXAMINE THE WITNESS WHO GIVES
16 THE TESTIMONY AND OFFER RELEVANT EVIDENCE LIMITED SPECIFICALLY TO
17 THE REBUTTAL OF THE EVIDENCE INTRODUCED BY THE PLAINTIFF OR GIVEN
18 BY THE PLAINTIFF.

19 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO MAKE INAD-
20 MISSIBLE ANY EVIDENCE OFFERED TO ATTACK THE CREDIBILITY OF THE
21 PLAINTIFF AS PROVIDED IN SECTION 801B.

22 SEC. 801B. THE FOLLOWING PROCEDURES SHALL BE FOLLOWED IN
23 ANY CIVIL ACTION BROUGHT UNDER THIS ACT THAT ALLEGES SEX DISCRIM-
24 INATION IF EVIDENCE OF THE PLAINTIFF'S SEXUAL CONDUCT IS OFFERED
25 TO ATTACK HIS OR HER CREDIBILITY:

26 (A) A WRITTEN MOTION SHALL BE MADE BY THE DEFENDANT TO THE
27 COURT AND THE PLAINTIFF'S ATTORNEY STATING THAT THE DEFENSE HAS

1 AN OFFER OF PROOF OF EVIDENCE OF THE SEXUAL CONDUCT OF THE
2 PLAINTIFF THAT THE DEFENDANT PROPOSES TO PRESENT.

3 (B) THE WRITTEN MOTION SHALL BE ACCOMPANIED BY AN AFFIDAVIT
4 IN WHICH THE OFFER OF PROOF SHALL BE STATED.

5 (C) IF THE COURT FINDS THAT THE OFFER OF PROOF IS SUFFI-
6 CIENT, THE COURT SHALL ORDER A HEARING OUT OF THE PRESENCE OF THE
7 JURY, IF ANY, AND AT THE HEARING ALLOW THE QUESTIONING OF THE
8 PLAINTIFF REGARDING THE OFFER OF PROOF MADE BY THE DEFENDANT.

9 (D) AT THE CONCLUSION OF THE HEARING, IF THE COURT FINDS
10 THAT EVIDENCE THE DEFENDANT PROPOSES TO OFFER REGARDING THE
11 SEXUAL CONDUCT OF THE PLAINTIFF IS RELEVANT, THE COURT MAY MAKE
12 AN ORDER STATING WHAT EVIDENCE MAY BE INTRODUCED BY THE DEFENDANT
13 AND THE NATURE OF THE QUESTIONS DEFENDANT WILL BE PERMITTED TO
14 ASK. THE DEFENDANT MAY THEN OFFER EVIDENCE PURSUANT TO THE ORDER
15 OF THE COURT.