

HOUSE BILL No. 4338

February 25, 1999, Introduced by Reps. Martinez, Brater, Baird, Jacobs, Lemmons, Price, Tesanovich, Scott, DeHart, Bogardus, Cherry, Jamnick, Garza, Clark, Reeves, Hardman, Quarles, Dennis, Hale, Schermesser, Gielegem, Rison, Rivet, Kilpatrick, Woodward, Lockwood and Thomas and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1976 PA 453, entitled "Elliott-Larsen civil rights act," by amending sections 102, 103, and 202 (MCL 37.2102, 37.2103, and 37.2202), sections 102 and 103 as amended by 1992 PA 124 and section 202 as amended by 1991 PA 11.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. (1) The opportunity to obtain employment, housing
2 and other real estate, and the full and equal utilization of
3 public accommodations, public service, and educational facilities
4 without discrimination because of religion, race, color, national
5 origin, age, sex, height, weight, familial status, or marital
6 status as prohibited by this act ~~—~~ is recognized and declared
7 to be a civil right.

8 (2) This section ~~shall not be construed to~~ DOES NOT
9 prevent an individual from bringing or continuing an action

1 arising out of sex discrimination before July 18, 1980 ~~which~~ IF
2 THE action is based on conduct similar to or identical to
3 harassment.

4 (3) This section ~~shall not be construed to~~ DOES NOT pre-
5 vent an individual from bringing or continuing an action arising
6 out of discrimination based on familial status before ~~the effec-~~
7 ~~tive date of the amendatory act that added this subsection~~ JUNE
8 29, 1992, which action is based on conduct similar to or identi-
9 cal to discrimination because of the age of persons residing with
10 the individual bringing or continuing the action.

11 (4) THIS SECTION DOES NOT PREVENT AN INDIVIDUAL FROM BRING-
12 ING OR CONTINUING AN ACTION ARISING OUT OF DISCRIMINATION BECAUSE
13 OF RELIGION, RACE, COLOR, NATIONAL ORIGIN, AGE, SEX, HEIGHT,
14 WEIGHT, OR MARITAL STATUS BEFORE THE EFFECTIVE DATE OF THE AMEN-
15 DATORY ACT THAT ADDED THIS SUBSECTION IF THE ACTION IS BASED ON
16 CONDUCT SIMILAR OR IDENTICAL TO CONDUCT PROHIBITED IN SECTION
17 202(1)(D).

18 Sec. 103. As used in this act:

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

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

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

25 (D) "COMPENSATION" MEANS ALL EARNINGS OF AN EMPLOYEE,
26 INCLUDING WAGES AND BENEFITS, WHETHER DETERMINED ON THE BASIS OF

1 TIME, TASK, PIECE, COMMISSION, OR OTHER METHOD OF CALCULATION FOR
2 LABOR, SERVICES, OR WORK PERFORMED.

3 (E) ~~(d)~~ "Department" means the department of civil rights
4 or its employees.

5 (F) ~~(e)~~ "Familial status" means 1 or more individuals
6 under the age of 18 residing with a parent or other person having
7 custody or in the process of securing legal custody of the indi-
8 vidual or individuals or residing with the designee of the parent
9 or other person having or securing custody, with the written per-
10 mission of the parent or other person. For purposes of this
11 ~~definition~~ SUBDIVISION, "parent" includes a person who is
12 pregnant.

13 (G) ~~(f)~~ "National origin" includes the national origin of
14 an ancestor.

15 (H) ~~(g)~~ "Person" means an individual, agent, association,
16 corporation, joint apprenticeship committee, joint stock company,
17 labor organization, legal representative, mutual company, part-
18 nership, receiver, trust, trustee in bankruptcy, unincorporated
19 organization, the state or a political subdivision of the state
20 or an agency of the state, or any other legal or commercial
21 entity.

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

25 (J) ~~(i)~~ "Discrimination because of sex" includes sexual
26 harassment which means unwelcome sexual advances, requests for

1 sexual favors, and other verbal or physical conduct or
2 communication of a sexual nature ~~when~~ IF:

3 (i) Submission to ~~such~~ THE conduct or communication is
4 made a term or condition either explicitly or implicitly to
5 obtain employment, public accommodations, ~~or~~ public services,
6 education, or housing.

7 (ii) Submission to or rejection of ~~such~~ THE conduct or
8 communication by an individual is used as a factor in decisions
9 affecting ~~such~~ THE individual's employment, public
10 accommodations, ~~or~~ public services, education, or housing.

11 (iii) ~~Such~~ THE conduct or communication has the purpose or
12 effect of substantially interfering with an individual's employ-
13 ment, public accommodations, ~~or~~ public services, education, or
14 housing, or creating an intimidating, hostile, or offensive
15 employment, public accommodations, public services, educational,
16 or housing environment.

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

19 (a) Fail or refuse to hire, ~~or~~ recruit, discharge, or oth-
20 erwise discriminate against an individual with respect to employ-
21 ment, compensation, or a term, condition, or privilege of employ-
22 ment ~~—~~ because of religion, race, color, national origin, age,
23 sex, height, weight, or marital status.

24 (b) Limit, segregate, or classify an employee or applicant
25 for employment in a way that deprives or tends to deprive the
26 employee or applicant of an employment opportunity ~~—~~ or
27 otherwise adversely affects the status of an employee or

1 applicant because of religion, race, color, national origin, age,
2 sex, height, weight, or marital status.

3 (c) Segregate, classify, or otherwise discriminate against
4 ~~a person~~ AN INDIVIDUAL on the basis of sex with respect to a
5 term, condition, or privilege of employment, including, but not
6 limited to, a benefit plan or system.

7 ~~(d) Until January 1, 1994, require an employee of an insti-~~
8 ~~tution of higher education who is serving under a contract of~~
9 ~~unlimited tenure, or similar arrangement providing for unlimited~~
10 ~~tenure, to retire from employment on the basis of the employee's~~
11 ~~age. As used in this subdivision, "institution of higher~~
12 ~~education" means a public or private university, college, commu-~~
13 ~~nity college, or junior college located in this state.~~

14 (D) FAIL OR REFUSE TO PROVIDE COMPENSATION EQUALLY FOR WORK
15 OF COMPARABLE VALUE IN TERMS OF THE COMPOSITE SKILL, RESPONSIBIL-
16 ITY, EFFORT, HOURS WORKED, EXPERIENCE, SENIORITY, EDUCATION OR
17 TRAINING, AND WORKING CONDITIONS BECAUSE OF RELIGION, RACE,
18 COLOR, NATIONAL ORIGIN, AGE, SEX, HEIGHT, WEIGHT, OR MARITAL
19 STATUS.

20 (2) This section ~~shall not be construed to~~ DOES NOT pro-
21 hibit the establishment or implementation of a bona fide retire-
22 ment policy or system that is not a subterfuge to evade the pur-
23 poses of this section.

24 (3) THE COMMISSION ON PAY EQUITY IS CREATED IN THE MICHIGAN
25 DEPARTMENT OF CIVIL RIGHTS AND SHALL BE RESPONSIBLE FOR THE
26 DEVELOPMENT OF DEFINITIONS OF COMPARABLE WAGES, USING THE
27 CRITERIA ESTABLISHED IN THIS SECTION.

1 (4) THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED BY THE
2 GOVERNOR AND SHALL INCLUDE THE FOLLOWING MEMBERS:

3 (A) THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF CIVIL RIGHTS
4 OR HIS OR HER DESIGNEE.

5 (B) THE DIRECTOR OF THE MICHIGAN JOBS COMMISSION OR HIS OR
6 HER DESIGNEE.

7 (C) A REPRESENTATIVE OF THE MICHIGAN WOMEN'S COMMISSION.

8 (D) A REPRESENTATIVE OF THE MICHIGAN CHAMBER OF COMMERCE.

9 (E) A REPRESENTATIVE OF THE MICHIGAN AFL-CIO.

10 (F) A REPRESENTATIVE OF THE UNITED AUTO WORKERS.

11 (G) A REPRESENTATIVE OF THE MICHIGAN SMALL BUSINESS
12 ASSOCIATION.

13 (H) A REPRESENTATIVE OF THE NATIONAL ORGANIZATION FOR WOMEN,
14 MICHIGAN.

15 (I) A REPRESENTATIVE OF THE MICHIGAN WOMEN'S STUDIES
16 ASSOCIATION.

17 (5) THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF CIVIL RIGHTS
18 SHALL SERVE AS THE CHAIRPERSON OF THE COMMISSION ON PAY EQUITY
19 AND SHALL HAVE RESPONSIBILITY FOR CONVENING THE MEETINGS OF THE
20 COMMISSION, SETTING THE AGENDA FOR ALL MEETINGS, AND PREPARING
21 ALL MINUTES AND REPORTS OF THE WORK OF THE COMMISSION.

22 (6) THE COMMISSION ON PAY EQUITY SHALL HOLD SUCH MEETINGS
23 AND HEARINGS AS NECESSARY TO DEVELOP DEFINITIONS, MODELS, AND
24 GUIDELINES FOR EMPLOYERS AND EMPLOYEES ON PAY EQUITY.

25 (7) THE COMMISSION SHALL PRESENT ITS FINDINGS AND RECOMMEN-
26 DATIONS TO THE LEGISLATURE, THE GOVERNOR, AND THE PUBLIC BY A

1 DATE NOT LATER THAN 1 YEAR AFTER THE GOVERNOR APPOINTS ITS
2 MEMBERS.

3 (8) SUBSECTION (1)(D) DOES NOT TAKE EFFECT UNTIL THE LEGIS-
4 LATURE ENACTS A DEFINITION, MODEL, AND GUIDELINES RELATING TO PAY
5 EQUITY BASED ON THE DEFINITIONS, MODELS, AND GUIDELINES DESCRIBED
6 IN SUBSECTION (7).

7 (9) ALL MEETINGS OF THE COMMISSION SHALL BE SUBJECT TO THE
8 OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275, AND THE
9 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

10 (10) ~~(3)~~ This section does not apply to the employment of
11 an individual by his or her parent, spouse, or child.

12 (11) BEFORE ANY RECOMMENDATIONS ARE ENACTED INTO LAW, THE
13 DIRECTOR SHALL RECEIVE A HOUSE RESOLUTION CERTIFYING THAT THE
14 HOUSE OF REPRESENTATIVES HAS IMPLEMENTED A SYSTEM OF MEASURING
15 COMPARABLE WORTH BETWEEN JOBS AND THAT COMPENSATION LEVELS HAVE
16 BEEN ADJUSTED TO COMPLY WITH THIS ACT. THE RESOLUTION MUST BE
17 ACCOMPANIED BY A COPY OF A RECORD ROLL CALL VOTE OF MEMBERS
18 ELECTED TO AND SERVING IN THE HOUSE OF REPRESENTATIVES.

19 Enacting section 1. This amendatory act does not take
20 effect unless Senate Bill No. _____ or House Bill No. _____
21 (request no. 00708'99) of the 90th Legislature is enacted into
22 law.