

HOUSE BILL NO. 6091

November 13, 2024, Introduced by Reps. Dievendorf, Rheingans, Brenda Carter, MacDonell, McKinney, Edwards, Hood, Morgan, Neeley, O'Neal and Young and referred to the Committee on Government Operations.

A bill to amend 1976 PA 453, entitled "Elliott-Larsen civil rights act," by amending sections 401 and 402 (MCL 37.2401 and 37.2402), section 402 as amended by 2023 PA 6.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 401. As used in this article: ~~,"educational institution"~~
2 **(a) "Educational institution"** means a public or private
3 institution, or a separate school or department thereof, and
4 includes an academy, college, elementary or secondary school,
5 extension course, kindergarten, nursery, local school system,

1 university, or a business, nursing, professional, secretarial,
2 technical, or vocational school; and includes an agent of an
3 educational institution.

4 (b) Discrimination because of religion, race, color, national
5 origin, sexual orientation, or gender identity or expression
6 includes harassment.

7 (c) "Harassment" means either of the following:

8 (i) Unwelcome communication or conduct on the basis of a
9 person's actual or perceived characteristic or an individual's
10 association with another individual's actual or perceived
11 characteristic, regardless of whether the communication or conduct
12 is direct or indirect or verbal or nonverbal, including, but not
13 limited to, communication or conduct that is undertaken in whole or
14 in part through the use of electronic messaging services,
15 commercial mobile services, electronic communications, or other
16 technology, that is intended to or in fact does substantially
17 interfere with an individual's ability to participate in or receive
18 any aid, benefit, service, or opportunity from an education program
19 or activity, or that creates an intimidating, hostile, or offensive
20 environment.

21 (ii) An agent, employee, or other person authorized by an
22 educational institution to provide an aid, benefit, service, or
23 opportunity under the educational institution's education program
24 or activity, including, but not limited to, a vendor, contractor,
25 school board member, volunteer, or guest speaker, explicitly or
26 impliedly conditioning the provision of, or threatening a detriment
27 to, the aid, benefit, service, or opportunity on an individual's
28 participation in sexual conduct, regardless of whether the
29 individual submits to or rejects the sexual conduct.

1 Sec. 402. **(1)** An educational institution shall not do any of
2 the following:

3 (a) Discriminate against an individual in the full utilization
4 of or benefit from the institution, or the services, activities, or
5 programs provided by the institution because of religion, race,
6 color, national origin, sex, sexual orientation, or gender identity
7 or expression.

8 (b) Exclude, expel, limit, or otherwise discriminate against
9 an individual seeking admission as a student or an individual
10 enrolled as a student in the terms, conditions, or privileges of
11 the institution, because of religion, race, color, national origin,
12 sex, sexual orientation, or gender identity or expression.

13 (c) For purposes of admission only, make or use a written or
14 oral inquiry or form of application that elicits or attempts to
15 elicit information concerning the religion, race, color, national
16 origin, age, sex, sexual orientation, gender identity or
17 expression, or marital status of an individual, except as permitted
18 by rule of the commission or as required by federal law, rule, or
19 regulation, or pursuant to an affirmative action program.

20 (d) Print or publish or cause to be printed or published a
21 catalog, notice, or advertisement indicating a preference,
22 limitation, specification, or discrimination based on the religion,
23 race, color, national origin, sex, sexual orientation, or gender
24 identity or expression, of an applicant for admission to the
25 educational institution.

26 (e) Announce or follow a policy of denial or limitation
27 through a quota or otherwise of educational opportunities of a
28 group or its members because of religion, race, color, national
29 origin, sex, sexual orientation, or gender identity or expression.

1 (2) Subject to subsection (5), an educational institution
2 violates subsection (1)(a) if its agent, employee, or other person
3 authorized by the educational institution to provide an aid, a
4 benefit, a service, or an opportunity under the educational
5 institution's program or activity, including, but not limited to, a
6 vendor, contractor, school board member, volunteer, or guest
7 speaker, engages in harassment against an individual who
8 participates in or receives an aid, a benefit, a service, or an
9 opportunity from the educational institution's program or activity,
10 or who attempts to do so, regardless of where the harassment
11 occurs, if either of the following applies:

12 (a) The harassment is enabled or assisted by the authority
13 exercised as an agent, employee, or other authorized individual of
14 the educational institution.

15 (b) The harassment is not enabled or assisted by the authority
16 exercised as an agent, employee, or other authorized individual of
17 the educational institution and the educational institution
18 receives notice of the harassment as described in subsection (4).

19 (3) Subject to subsection (5), an educational institution
20 violates subsection (1)(a) if an individual who is not its agent,
21 employee, or other authorized individual engages in harassment
22 against an individual who participates in or receives an aid, a
23 benefit, a service, or an opportunity from the educational
24 institution's program or activity, or who attempts to do so,
25 regardless of where the harassment occurs, if the educational
26 institution receives notice of the harassment as described in
27 subsection (4).

28 (4) An educational institution receives notice of harassment
29 if an agent, employee, or other authorized individual of the

1 educational institution, including, but not limited to, a vendor,
2 contractor, school board member, volunteer, or guest speaker, knew,
3 or in the exercise of reasonable care should have known, about the
4 harassment and both of the following apply:

5 (a) Any of the following apply:

6 (i) The individual has the authority to take action to redress
7 the harassment.

8 (ii) The individual has the responsibility to report to an
9 administrator harassment or similar misconduct by others.

10 (iii) The individual receives a report of the harassment from an
11 individual who could reasonably believe that the agent, employee,
12 or other authorized individual is an individual described in
13 subparagraph (i) or (ii).

14 (b) The individual's communications are not privileged or
15 confidential under law.

16 (5) An educational institution does not violate subsection
17 (1)(a) if the educational institution demonstrates that it
18 exercised reasonable care to prevent the harassment and promptly
19 remedied the effects of the harassment at issue, including through
20 a demonstration by the educational institution that it did all of
21 the following:

22 (a) Established, adequately publicized, and enforced all of
23 the following:

24 (i) A comprehensive harassment prevention policy.

25 (ii) An annual training for all students and all employees on
26 harassment, including, but not limited to, training on sexual
27 harassment for students that includes the information described in
28 section 1508 of the revised school code, 1976 PA 451, MCL 380.1508,
29 and training on sexual harassment for employees as described in

1 section 1526b of the revised school code, 1976 PA 451, MCL
2 380.1526b.

3 (iii) A harassment complaint procedure that is likely to provide
4 redress and to avoid harm without exposing an individual subjected
5 to harassment to unreasonable risk, effort, or expense.

6 (b) Provided supportive measures as that term is defined in 34
7 CFR part 106, that preserve and restore the aggrieved individual's
8 equal access to the educational institution's education program or
9 activity, regardless of whether the individual requests an
10 investigation, not later than 3 school days after receiving notice
11 of the harassment.

12 (c) If requested by an aggrieved individual subjected to
13 harassment or the parent or legal guardian of the individual if the
14 individual is a minor, or if otherwise necessary to protect the
15 aggrieved individual or other individuals in such program or
16 activity from a significant ongoing threat of harm, undertook a
17 prompt, thorough, and impartial investigation of the harassment.

18 (d) If voluntary informed consent is obtained from an
19 aggrieved individual subjected to harassment and from the alleged
20 harasser or the parent or legal guardian of each individual if the
21 individual is a minor, facilitated a process in accordance with
22 restorative practices as that term is defined in section 1310c of
23 the revised school code, 1976 PA 451, MCL 380.1310c.

24 (e) Took other necessary, prompt, and appropriate corrective
25 action designed to stop the harassment, prevent its recurrence, and
26 remedy its effects.

27 (6) For purposes of subsection (5), an educational institution
28 must establish reasonable care as required under subsection (5)
29 even if further harassment did not occur after the educational

1 institution received notice of the initial harassment.