

SENATE BILL NO. 371
INTRODUCED BY C. KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT PROTECTING GENDER IDENTITY OR EXPRESSION AND SEXUAL ORIENTATION UNDER THE LAWS PROHIBITING DISCRIMINATION; DEFINING GENDER IDENTITY OR EXPRESSION AND SEXUAL ORIENTATION; AND AMENDING SECTIONS 49-1-102, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-2-602, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, AND 49-3-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 49-1-102, MCA, is amended to read:

"49-1-102. Freedom from discrimination -- definitions. (1) The right to be free from discrimination because of race, creed, religion, color, sex, gender identity or expression, sexual orientation, physical or mental disability, age, or national origin is recognized as and declared to be a civil right. This right must include but not be limited to:

(a) the right to obtain and hold employment without discrimination; and

(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(3) For purposes of this title, the following definitions apply:

(a) "Gender identity or expression" means a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's sex at birth.

(b) "Sexual orientation" exclusively means actual or perceived heterosexuality, bisexuality, or homosexuality."

Section 2. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, gender identity or expression, sexual orientation, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, gender identity or expression, sexual orientation, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, gender identity or expression, sexual orientation, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, gender identity or expression, sexual orientation, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, gender identity or expression, sexual orientation, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, gender identity or expression, sexual orientation, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference, as provided for in 2-18-111 and 18-1-110, may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section:

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents; or

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse."

Section 3. Section 49-2-304, MCA, is amended to read:

"49-2-304. Discrimination in public accommodations. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, gender identity or expression, sexual orientation, marital status, race, age, physical or mental disability, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement ~~which~~ that states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, gender identity or expression, sexual orientation, marital status, age, physical or mental disability, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, gender identity or expression, sexual orientation, marital status, age, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age."

Section 4. Section 49-2-305, MCA, is amended to read:

"49-2-305. Discrimination in housing -- exemptions. (1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, gender identity or expression, sexual orientation,

marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; of a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or of any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property;

or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

- (a) a building consisting of four or more dwelling units if the building has one or more elevators; and
- (b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (b)(3) through (b)(5), as those provisions read

on March 31, 1996.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Section 5. Section 49-2-306, MCA, is amended to read:

"49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of that person's duties, to discriminate against the applicant because of sex, gender identity or expression, sexual orientation, marital status, race, creed, religion, age, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical disability, sex, gender identity or expression, sexual orientation, or marital status against any person in any credit transaction that is subject to the jurisdiction of any state or federal court of record."

Section 6. Section 49-2-307, MCA, is amended to read:

"49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, gender identity or expression, sexual orientation, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, gender identity or expression, sexual orientation, marital status, age, creed, religion, physical or mental disability, or national origin of an

applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental disability, sex, gender identity or expression, sexual orientation, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, gender identity or expression, sexual orientation, marital status, age, creed, religion, physical or mental disability, or national origin."

Section 7. Section 49-2-308, MCA, is amended to read:

"49-2-308. Discrimination by the state. (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, gender identity or expression, sexual orientation, marital status, color, age, physical or mental disability, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement ~~which~~ that states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, gender identity or expression, sexual orientation, marital status, color, age, physical or mental disability, or national origin or that the patronage of a person of a particular race, creed, religion, sex, gender identity or expression, sexual orientation, marital status, color, age, or national origin or possessing a physical or mental disability is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of that person's political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 8. Section 49-2-403, MCA, is amended to read:

"49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) through (5) and 49-3-201(5), sex, gender identity or expression, sexual orientation, marital status, age, physical or mental disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 9. Section 49-2-602, MCA, is amended to read:

"49-2-602. Intimidation or interference in right to be free from housing discrimination -- penalties.

(1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, gender identity or expression, sexual orientation, race, creed, religion, age, familial status, physical or mental disability, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because that person is or has been:

(i) participating, without discrimination because of sex, gender identity or expression, sexual orientation, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because the citizen is or has been, or in order to discourage that citizen or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because the citizen is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than 10 years,

or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life."

Section 10. Section 49-3-201, MCA, is amended to read:

"49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, gender identity or expression, sexual orientation, age, marital status, physical or mental disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to ~~assure~~ ensure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section."

Section 11. Section 49-3-202, MCA, is amended to read:

"49-3-202. Employment referrals and placement services. (1) All state and local governmental agencies, including educational institutions, that provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, gender identity or expression, sexual orientation, age, marital status, physical or mental disability, or national origin must be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing the programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and

promotion of equal employment opportunities."

Section 12. Section 49-3-203, MCA, is amended to read:

"49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, gender identity or expression, sexual orientation, age, marital status, physical or mental disability, or national origin. The programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of persons who are culturally deprived or who are educationally or economically disadvantaged. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest."

Section 13. Section 49-3-204, MCA, is amended to read:

"49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, gender identity or expression, sexual orientation, age, marital status, physical or mental disability, or national origin. Each state or local governmental agency shall take appropriate action in the exercise of its licensing or regulatory power ~~as will assure to ensure~~ equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of public health and human services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, gender identity or expression, sexual orientation, age, marital status, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization."

Section 14. Section 49-3-205, MCA, is amended to read:

"49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, gender identity or expression, sexual orientation, age, marital status, physical or mental disability, or national origin.

(2) A state or local facility may not be used in the furtherance of any discriminatory practice; ~~nor may a~~. A state or local governmental agency may not become a party to an agreement, arrangement, or plan that has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section."

Section 15. Section 49-3-206, MCA, is amended to read:

"49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, gender identity or expression, sexual orientation, age, marital status, physical or mental disability, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; ~~nor may state~~. State agencies may not provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations ~~which~~ that engage in discriminatory practices."

Section 16. Section 49-3-207, MCA, is amended to read:

"49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services must contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, gender identity or expression, sexual orientation, age, marital status, physical or mental disability, or national origin by the persons performing the contract."

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