



SENATE BILL No. 1081

July 3, 1996, Introduced by Senator A. SMITH and referred to the Committee on Judiciary.

A bill to amend the title of Act No. 453 of the Public Acts of 1976, entitled as amended

"Elliott-Larsen civil rights act,"

as amended, being sections 37.2101 to 37.2804 of the Michigan Compiled Laws; and to add sections 801a and 801b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title of Act No. 453 of the Public Acts of
2 1976, as amended, being sections 37.2101 to 37.2804 of the
3 Michigan Compiled Laws, is amended and sections 801a and 801b are
4 added to read as follows:

TITLE

6 An act to define civil rights; to prohibit discriminatory
7 practices, policies, and customs in the exercise of those rights
8 based upon religion, race, color, national origin, age, sex,
9 height, weight, familial status, or marital status; to preserve

1 the confidentiality of records regarding arrest, detention, or
2 other disposition in which a conviction does not result; to pre-
3 scribe the powers and duties of the civil rights commission and
4 the department of civil rights; TO PROVIDE EVIDENTIARY STANDARDS;
5 to provide remedies and penalties; to provide for fees; and to
6 repeal ~~certain~~ acts and parts of acts.

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

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

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

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

26 SEC. 801B. THE FOLLOWING PROCEDURES SHALL BE FOLLOWED IN
27 ANY CIVIL ACTION BROUGHT UNDER THIS ACT THAT ALLEGES SEX

1 DISCRIMINATION IF EVIDENCE OF THE PLAINTIFF'S SEXUAL CONDUCT IS
2 OFFERED TO ATTACK HIS OR HER CREDIBILITY:

3 (A) A WRITTEN MOTION SHALL BE MADE BY THE DEFENDANT TO THE
4 COURT AND THE PLAINTIFF'S ATTORNEY STATING THAT THE DEFENSE HAS
5 AN OFFER OF PROOF OF EVIDENCE OF THE SEXUAL CONDUCT OF THE PLAIN-
6 TIFF THAT THE DEFENDANT PROPOSES TO PRESENT.

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

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

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