



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SEX DISCRIMINATION CASES: SEXUAL HISTORY INFORMATION

House Bill 4186

Sponsor: Rep. Deborah Cherry
Committee: Family and Civil Rights

Complete to 3-1-99

A SUMMARY OF HOUSE BILL 4186 AS INTRODUCED 2-9-99

The bill would amend the Elliott-Larsen Civil Rights Act to specify evidentiary standards with regard to a plaintiff's sexual history in sex discrimination cases. In a civil action that alleged sex discrimination under the act, a defendant would be prohibited from attempting to prove a plaintiff's consent or an absence of injury to the plaintiff (unless the plaintiff had alleged a loss of consortium) through the use of opinion evidence, reputation evidence, evidence of specific instances of plaintiff's sexual conduct, or any similar evidence. However, these restrictions would not apply to evidence of the plaintiff's sexual conduct with the alleged perpetrator.

If a plaintiff introduced evidence (including testimony of a witness or the plaintiff himself or herself) regarding his or her sexual conduct, the defendant could cross-examine the witness who had offered the testimony and offer relevant evidence that was limited specifically to rebutting the plaintiff's evidence.

The bill would specify that the limitations on the admissibility of evidence regarding a plaintiff's sexual conduct do not make any evidence offered to attack the plaintiff's credibility inadmissible. In addition, the bill would specify procedures for how such evidence could be introduced in a sex discrimination case to attack the plaintiff's credibility. First, a written motion would have to be made by the defendant to the court and the plaintiff's attorney stating that the defendant has an offer of proof of evidence of the plaintiff's sexual conduct that the defendant proposes to present; this written motion would have to be accompanied by an affidavit stating the offer of proof. If the court found that the offer of proof was sufficient, it would order a hearing out of the presence of the jury (if any), at which hearing the court then would allow the plaintiff to be questioned regarding the defendant's offer of proof. If the court found that the defendant's proposed evidence regarding the plaintiff's sexual conduct was relevant, it could issue an order stating the evidence that could be introduced by the defendant and the nature of the questions the defendant would be allowed to ask. The defendant could then offer evidence under the court order.

MCL 37.2801a and 37.2801b

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.