

# HOUSE BILL No. 4186

February 9, 1999, Introduced by Reps. Cherry, LaForge, Bogardus, Martinez, Jacobs, Baird, Vaughn, DeHart, Reeves and Brater and referred to the Committee on Family and Civil Law.

A bill to amend 1976 PA 453, entitled  
"Elliott-Larsen civil rights act,"  
(MCL 37.2101 to 37.2804) by amending the title, as amended by  
1992 PA 258, and by adding sections 801a and 801b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

### TITLE

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An act to define civil rights; to prohibit discriminatory

3 practices, policies, and customs in the exercise of those rights

4 based upon religion, race, color, national origin, age, sex,

5 height, weight, familial status, or marital status; to preserve

6 the confidentiality of records regarding arrest, detention, or

7 other disposition in which a conviction does not result; to pre-

8 scribe the powers and duties of the civil rights commission and

9 the department of civil rights; TO PROVIDE EVIDENTIARY STANDARDS;

1 to provide remedies and penalties; to provide for fees; and to  
2 repeal ~~certain~~ acts and parts of acts.

3 SEC. 801A. (1) IN A CIVIL ACTION BROUGHT UNDER THIS ACT  
4 ALLEGING SEX DISCRIMINATION, THE FOLLOWING EVIDENCE IS INADMISSI-  
5 BLE TO SHOW CONSENT OR THE ABSENCE OF INJURY TO THE PLAINTIFF  
6 UNLESS THE INJURY ALLEGED BY THE PLAINTIFF IS LOSS OF  
7 CONSORTIUM:

8 (A) OPINION EVIDENCE.

9 (B) REPUTATION EVIDENCE.

10 (C) EVIDENCE OF SPECIFIC INSTANCES OF PLAINTIFF'S SEXUAL  
11 CONDUCT.

12 (D) EVIDENCE SIMILAR TO EVIDENCE DESCRIBED IN SUBDIVISIONS  
13 (A) TO (C).

14 (2) SUBSECTION (1) DOES NOT APPLY 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 THAT EVIDENCE RELATES TO THE PLAINTIFF'S SEXUAL CONDUCT, THEN  
19 THE DEFENDANT MAY CROSS-EXAMINE THE WITNESS WHO GAVE THE TESTI-  
20 MONY AND OFFER RELEVANT EVIDENCE LIMITED SPECIFICALLY TO THE  
21 REBUTTAL OF THE PLAINTIFF'S EVIDENCE OF THE PLAINTIFF'S SEXUAL  
22 CONDUCT.

23 (4) THIS SECTION DOES NOT MAKE INADMISSIBLE ANY EVIDENCE  
24 OFFERED TO ATTACK THE CREDIBILITY OF THE PLAINTIFF AS PROVIDED IN  
25 SECTION 801B.

26 SEC. 801B. THE COURT SHALL FOLLOW THE FOLLOWING PROCEDURES  
27 IN A 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) THE DEFENDANT SHALL MAKE A WRITTEN MOTION TO THE COURT  
4 AND THE PLAINTIFF'S ATTORNEY STATING THAT THE DEFENSE HAS AN  
5 OFFER OF PROOF OF EVIDENCE OF THE SEXUAL CONDUCT OF THE PLAINTIFF  
6 THAT THE DEFENDANT PROPOSES TO PRESENT.

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

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 DEFENDANT'S OFFER OF PROOF.

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