

HOUSE BILL 388

Introduced by Stickney, et al.

1/24	Introduced
1/24	Referred to Judiciary
1/25	First Reading
1/31	Hearing
2/06	Committee Report--Bill Passed
2/09	2nd Reading Passed
2/12	3rd Reading Passed
	Transmitted to Senate
2/13	First Reading
2/13	Referred to Judiciary
3/05	Hearing
3/16	Tabled in Committee

*HOUSE* BILL NO. *388*

INTRODUCED BY *[Signature]*  
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE TERM "SEX" AS USED IN LAWS PROHIBITING DISCRIMINATION TO INCLUDE PREGNANCY, CHILDBIRTH, AND RELATED MEDICAL CONDITIONS; AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination against any person on account of sex; and

WHEREAS, the Legislature has, in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices, previously provided protections in certain areas against sex discrimination; and

WHEREAS, the Legislature has not provided a definition for the term "sex"; and

WHEREAS, federal law prohibiting discrimination defines the term "sex" to include pregnancy, childbirth, and related medical conditions; and

WHEREAS, the lack of a definition has resulted in confusion for persons who must comply with and enforce the

law; and

WHEREAS, this act clarifies existing law rather than enacting new law.

THEREFORE, it is appropriate for the Legislature to enact a statutory definition to clarify the meaning of the term "sex" and to provide protection against discrimination because of pregnancy, childbirth, and related medical conditions.

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

**Section 1.** Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right



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1 to incur and defer debt which is secured by residential real  
2 property.

3 (4) "Credit transaction" means any invitation to apply  
4 for credit, application for credit, extension of credit, or  
5 credit sale.

6 (5) "Creditor" means a person who, regularly or as a  
7 part of his business, arranges for the extension of credit  
8 for which the payment of a financial charge or interest is  
9 required, whether in connection with loans, sale of property  
10 or services, or otherwise.

11 (6) "Educational institution" means a public or private  
12 institution and includes an academy; college; elementary or  
13 secondary school; extension course; kindergarten; nursery;  
14 school system; university; business, nursing, professional,  
15 secretarial, technical, or vocational school; or agent of an  
16 educational institution.

17 (7) "Employee" means any individual employed by an  
18 employer.

19 (8) "Employer" means an employer of one or more persons  
20 but does not include a fraternal, charitable, or religious  
21 association or corporation if the association or corporation  
22 is not organized either for private profit or to provide  
23 accommodations or services that are available on a  
24 nonmembership basis.

25 (9) "Employment agency" means a person undertaking to

1 procure employees or opportunities to work.

2 (10) "Financial institution" means a commercial bank,  
3 trust company, savings bank, finance company, savings and  
4 loan association, investment company, or insurance company.

5 (11) "Housing accommodation" means a building or portion  
6 of a building, whether constructed or to be constructed,  
7 which is or will be used as the sleeping quarters of its  
8 occupants.

9 (12) "Labor organization" means an organization or an  
10 agent of an organization organized for the purpose, in whole  
11 or in part, of collective bargaining, of dealing with  
12 employers concerning grievances or terms or conditions of  
13 employment, or of other mutual aid and protection of  
14 employees.

15 (13) "Mental handicap" means any mental disability  
16 resulting in subaverage intellectual functioning or impaired  
17 social competence.

18 (14) "National origin" means ancestry.

19 (15) "Person" means one or more individuals, labor  
20 unions, partnerships, associations, corporations, legal  
21 representatives, mutual companies, joint-stock companies,  
22 trusts, unincorporated employees' associations, employers,  
23 employment agencies, or labor organizations.

24 (16) "Physical handicap" means a physical disability,  
25 infirmity, malformation, or disfigurement which is caused by

1 bodily injury, birth defect, or illness, including epilepsy.  
 2 It includes without limitation any degree of paralysis;  
 3 amputation; lack of physical coordination; blindness or  
 4 visual impediment; deafness or hearing impediment; muteness  
 5 or speech impediment; or physical reliance on a guide dog  
 6 for the blind, a wheelchair, or any other remedial appliance  
 7 or device.

8 (17) (a) "Public accommodation" means a place which  
 9 caters or offers its services, goods, or facilities to the  
 10 general public subject only to the conditions and  
 11 limitations established by law and applicable to all persons  
 12 alike. It includes without limitation a public inn,  
 13 restaurant, eating house, hotel, roadhouse, place where food  
 14 or alcoholic beverages or malt liquors are sold for  
 15 consumption, motel, soda fountain, soft drink parlor,  
 16 tavern, nightclub, trailer park, resort, campground,  
 17 barbershop, beauty parlor, bathroom, resthouse, theater,  
 18 swimming pool, skating rink, golf course, cafe, ice cream  
 19 parlor, transportation company, or hospital and all other  
 20 public amusement and business establishments.

21 (b) Public accommodation does not include an  
 22 institution, club, or place of accommodation that proves  
 23 that it is by its nature distinctly private. An institution,  
 24 club, or place of accommodation may not be considered by its  
 25 nature distinctly private if it has more than 100 members,

1 provides regular meal service, and regularly receives  
 2 payment for dues, fees, use of space, facilities, services,  
 3 meals, or beverages, directly or indirectly, from or on  
 4 behalf of nonmembers, for the furtherance of trade or  
 5 business. For the purposes of this subsection ~~(17)~~(18), any  
 6 lodge of a recognized national fraternal organization is  
 7 considered by its nature distinctly private.

8 (18) "Sex" means gender and includes but is not limited  
 9 to pregnancy, childbirth, and related medical conditions.

10 ~~(18)~~(19) "Staff" or "commission staff" means the staff  
 11 of the commission for human rights."

12 **Section 2.** Section 49-3-101, MCA, is amended to read:

13 "49-3-101. Definitions. As used in this chapter, the  
 14 following definitions apply:

15 (1) "Age" means number of years since birth. It does  
 16 not mean level of maturity or ability to handle  
 17 responsibility, which may represent legitimate  
 18 considerations as reasonable grounds for discrimination  
 19 without reference to age.

20 (2) "Commission" means the commission for human rights  
 21 provided for in 2-15-1706.

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 7 for the blind, a wheelchair, or any other remedial appliance  
 8 or device.

9 (5) "Qualifications" means such qualifications as are  
 10 genuinely related to competent performance of the particular  
 11 occupational task.

12 (6) "Sex" means gender and includes but is not limited  
 13 to pregnancy, childbirth, and related medical conditions.

14 ~~(5)(7)~~ "State or local governmental agency" means:

15 (a) any branch, department, office, board, bureau,  
 16 commission, agency, university unit, college, or other  
 17 instrumentality of state government; or

18 (b) a county, city, town, school district, or other  
 19 unit of local government and any instrumentality of local  
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21 ~~(6)--"Qualifications"--means--such--qualifications--as--are~~  
 22 ~~genuinely-related-to-competent-performance-of-the-particular~~  
 23 ~~occupational-task."~~

24 NEW SECTION. Section 3. Retroactive applicability.

25 [This act] applies retroactively, within the meaning of

1 1-2-109, to discrimination complaints that have occurred  
 2 prior to [the effective date of this act].

3 NEW SECTION. Section 4. Effective date. [This act] is  
 4 effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

*HOUSE* BILL NO. *388*

INTRODUCED BY *Jonian Hickey, Dan Brun*  
BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE TERM "SEX"  
AS USED IN LAWS PROHIBITING DISCRIMINATION TO INCLUDE  
PREGNANCY, CHILDBIRTH, AND RELATED MEDICAL CONDITIONS;  
AMENDING SECTIONS 49-2-101 AND 49-3-101, MCA; AND PROVIDING  
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WHEREAS, Article II, section 4, of the Montana  
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WHEREAS, the Legislature has, in the Montana Human  
Rights Act and the Montana Governmental Code of Fair  
Practices, previously provided protections in certain areas  
against sex discrimination; and

WHEREAS, the Legislature has not provided a definition  
for the term "sex"; and

WHEREAS, federal law prohibiting discrimination defines  
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medical conditions; and

WHEREAS, the lack of a definition has resulted in  
confusion for persons who must comply with and enforce the

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WHEREAS, this act clarifies existing law rather than  
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THEREFORE, it is appropriate for the Legislature to  
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 19 parlor, transportation company, or hospital and all other  
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25 [This act] applies retroactively, within the meaning of

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 2 INTRODUCED BY *Juanita K. ...*  
 3 BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

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