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House BILL NO. 388

INTRODUCED BY

*Ream* *Wittgen*

A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING SEXUAL ORIENTATION IN SOME OF THE PROTECTIONS CONTAINED IN THE HUMAN RIGHTS LAWS; AND AMENDING SECTIONS 49-1-102, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, AND 49-2-602, 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.** (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental disability, age, sexual orientation, 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."

**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, sexual orientation, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, 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

1 in any way against a member of or an applicant to the labor organization or an employer or employee  
2 because of race, creed, religion, color, or national origin or because of age, physical or mental disability,  
3 marital status, sexual orientation, or sex when the reasonable demands of the program do not require an  
4 age, physical or mental disability, marital status, or sex distinction;

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

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

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

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

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

20 (5) It is not a violation of the prohibition against marital status discrimination in this section for an  
21 employer or labor organization to provide greater or additional contributions to a bona fide group insurance  
22 plan for employees with dependents than to those employees without dependents or with fewer  
23 dependents."

24

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

26 **"49-2-304. Discrimination in public accommodations.** (1) Except when the distinction is based on  
27 reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or  
28 employee of a public accommodation:

29 (a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages,  
30 or privileges because of sex, marital status, sexual orientation, race, age, physical or mental disability,

1 creed, religion, color, or national origin;

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

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

12 (3) Nothing in this section prohibits public accommodations from giving or providing special  
13 benefits, incentives, discounts, or promotions for the benefit of individuals based on age."  
14

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

16 **"49-2-305. Discrimination in housing -- exemptions.** (1) It is an unlawful discriminatory practice  
17 for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or  
18 improved or unimproved property or for any other person:

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

22 (b) to discriminate against a person because of sex, marital status, sexual orientation, race, creed,  
23 religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or  
24 privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

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

30 (d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing

1 accommodation or property because of sex, marital status, sexual orientation, race, creed, religion, age,  
2 familial status, physical or mental disability, color, or national origin;

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

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

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

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

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

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

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

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

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

29 (a) refusal to permit, at the expense of the person with a disability, reasonable modifications of  
30 existing premises occupied or to be occupied by the person with a disability if the modifications may be

1 necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental,  
2 the landlord may, ~~where~~ when it is reasonable to do so, condition permission for a modification on the  
3 lessor's or renter's agreement to restore the interior of the premises to the condition that existed before  
4 the modification, except for reasonable wear and tear;

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) a building consisting of four or more dwelling units if the building has one or more elevators;

30 and

1 (b) ground floor units in a building consisting of four or more dwelling units.

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

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

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

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

12 (B) secured by residential real estate; or

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

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

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

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

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

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

29 (c) intended and operated for occupancy by at least one person 55 years of age or older per unit  
30 in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (3) and 24 ~~C.F.R.~~ CFR 100.304, as those

1 sections read on October 1, 1989.

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

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

9

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

11 **"49-2-306. Discrimination in financing and credit transactions.** (1) It is an unlawful discriminatory  
12 practice for a financial institution, upon receiving an application for financial assistance, to permit an official  
13 or employee, during the execution of that person's duties, to discriminate against the applicant because  
14 of sex, marital status, sexual orientation, race, creed, religion, age, physical or mental disability, color, or  
15 national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial  
16 assistance, unless based on reasonable grounds.

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

21

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

23 **"49-2-307. Discrimination in education.** It is an unlawful discriminatory practice for an educational  
24 institution:

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

29 (2) to make or use a written or oral inquiry or form of application for admission that elicits or  
30 attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status,

1 sexual orientation, age, creed, religion, physical or mental disability, or national origin of an applicant for  
2 admission, except as permitted by regulations of the commission;

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

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

10

11 **Section 7.** Section 49-2-602, MCA, is amended to read:

12 **"49-2-602. Intimidation or interference in right to be free from housing discrimination -- penalties.**

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

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

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

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

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

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

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

28 (c) a citizen because the citizen is or has been, or in order to discourage that citizen or any other  
29 citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services,  
30 organizations, or facilities described in this subsection (1) or because the citizen is or has been lawfully



1 participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

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

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

4 (b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than  
5 10 years, or both; or

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

7 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0388, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act including sexual orientation in some of the protections contained in the human rights laws.

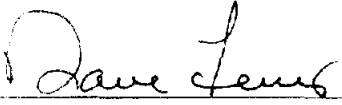
ASSUMPTIONS:

1. The act would increase filings with the Human Rights Commission by approximately 25 to 30 complaints per year.
2. The commission would need an additional 0.50 FTE investigator to address the additional workload and would increase an existing 0.50 FTE employee to full-time. The additional FTE would require increased communication and travel costs of about \$100 per month.
3. The commission also would need to reprint all of its posters and brochures to reflect the change in the law, at a cost of \$2,039.
4. Funding for this legislation would be 100% state general fund.

FISCAL IMPACT:

Department of Labor & Industry  
Human Rights Commission (08)

	<u>FY96</u>	<u>FY97</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	0.50	0.50
Personal services (1000)	15,592	15,592
Operating (2000)	<u>4,316</u>	<u>2,330</u>
Total	19,908	17,922
<u>Funding:</u>		
General Fund (01)	19,908	17,922

 2-7-95  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
BOB REAM, PRIMARY SPONSOR      DATE

Fiscal Note for HB0388, as introduced

**HB 388**