



**I MOVE THAT THE MICHIGAN CIVIL RIGHTS COMMISSION ADOPT THE FOLLOWING RESOLUTION AS INTERPRETIVE STATEMENT 2018-1 REGARDING THE MEANING OF "SEX" IN THE ELLIOTT-LARSEN CIVIL RIGHTS ACT (ACT 453 OF 1976) AND GIVE IT IMMEDIATE EFFECT.**

**WHEREAS**, the Michigan Civil Rights Commission finds the language "discrimination because of ... sex ..." as used in the Elliott Larsen Civil Rights Act ambiguous, leaving the MI Department of Civil Rights without clear authority to accept complaints of discrimination based on "gender identity" and "sexual orientation", the Commission issues Interpretive Statement 2018-1.

**WHEREAS**, the Michigan Civil Rights Commission finds that the definition of "discrimination because of ... sex" under Michigan law has to date been interpreted to be less inclusive than the definitions of other protected classes, and in a way that is contrary to the plain meaning of the language in this context.

**WHEREAS**, The Michigan Civil Rights Commission finds that both discrimination because of gender identity and discrimination because of sexual orientation are forms of discrimination because of sex.

**WHEREAS**, the U.S. 6th Circuit Court of Appeals on March 7, 2018 ruled in the case of EEOC v R.G. & G.R. Harris Funeral Homes Inc. that the same language "discrimination because of ... sex" when used in federal civil rights law protected a transgender Michigan woman who was gender stereotyped and discriminated against for not behaving like a male, and adding Michigan where gender identity and sexual orientation are already federally protected under the definition of "discrimination because of sex."

**WHEREAS**, The Michigan Civil Rights Commission finds that continuing to interpret the protections afforded by the phrase "discrimination because of ... sex" more restrictively by continuing to exclude individuals for reasons of their gender identity or sexual orientation, would itself be discriminatory.

**WHEREAS** the Michigan Constitution of 1963 provides that "no person shall be denied the equal protection of the laws" and directs that "It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person ... and to secure the equal protection of such civil rights without such discrimination ... The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures ... and to issue appropriate orders."

**WHEREAS**, the Administrative Procedures Act (MCL 24.207(h)) defines the interpretive statement as a category of agency action which in itself does not have the force and effect of law but is merely explanatory to be followed by the agency.

**AND, WHEREAS**, The Michigan Supreme Court has ruled in *Clonlara, Inc. v. State Board of Education*, 442 Mich. (1993). that "agencies have the authority to interpret the statutes they are bound to administer and enforce." And that Interpretive statements "state the interpretation of ambiguous or doubtful statutory language which will be followed by the agency unless and until the statute is otherwise authoritatively interpreted by the courts."

**THEREFORE, IT IS RESOLVED**, The Michigan Civil Rights Commission hereby resolves, and adopts as Interpretive Statement 2018-1, that, as used in the Elliott Larsen Civil Rights Act "discrimination because of... sex" includes discrimination because of gender identity and discrimination because of sexual orientation.

**IT IS FURTHER RESOLVED**, that the Department of Civil Rights shall therefore process all complaints alleging discrimination on account of gender identity and sexual orientation as complaints of discrimination because of sex, and therefore discrimination prohibited under the Elliott Larsen Civil Rights Act.

The Commission directs that Interpretive Statement 2018-1 shall be distributed to all Department of Civil Rights' offices, be filed with any other office as required by the Administrative Procedures Act.

**ADOPTED MAY 21, 2018**

**MOTION:** To adopt interpretive statement on meaning of "discrimination because of ... sex" and grant immediate effect; Commission determines the terminology in ELCRA is ambiguous and restricts department ability to accept complaints; discrimination because of sex affords that protected class less protection than all other protected classes contrary to plain meaning of "sex"; commission finds that discrimination because of gender identity and sexual orientation are forms of discrimination because of sex. That Harris decision under federal law provides more inclusive protections than ELCRA; the commission finds that continuing to interpret sex more restrictively is in itself discrimination; that the MI Constitution provides that "no person shall be denied the equal protection of the laws" and directs the commission to secure the equal protection of such civil rights without such discrimination and grants powers to protect those rights by promulgating rules and regulations for its own procedures... and to issue appropriate orders." The 'APA defines the interpretive statement as a category of agency action which in itself does not have the force and effect of law but is merely explanatory to be followed by the agency; the supreme court ruled agencies have the authority to make such statements which govern the agency unless/until otherwise authoritatively interpreted by the courts therefore commission adopts Interpretive Statement 2018-1 and the department shall process complaints under it; the department shall publish to appropriate offices.

<b>ROLL</b>	<b>AYE</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>PASS</b>
Commissioner Clayton	✓			
Commissioner Combs			✓	
Commissioner Demashkieh	✓			
Commissioner Haque	✓			
Commissioner Kopack	✓			
Commissioner Resio				
Commissioner Sakwa				
Commissioner Smith	✓			
<b>TOTAL</b>	<b>5</b>	<b>0</b>	<b>1</b>	