

HB 184: NON-DISCRIMINATION BASED ON SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION

30th Legislature, 2018



CONTEXT

CIVIL RIGHTS LAW IN ALASKA

- In 1945, Alaska adopted the first civil rights act of its kind in the country
 - Addressed discrimination in public accommodations almost 20 years before the national act in '64
- Today:
 - Protected classes: race, religion, color, national ancestry, physical or mental disability, age, sex, marital status, changes in marital status, pregnancy, or parenthood
 - Discrimination prohibitions in the areas of employment, credit and financing, public accommodations, and sale, lease, or rental or property.

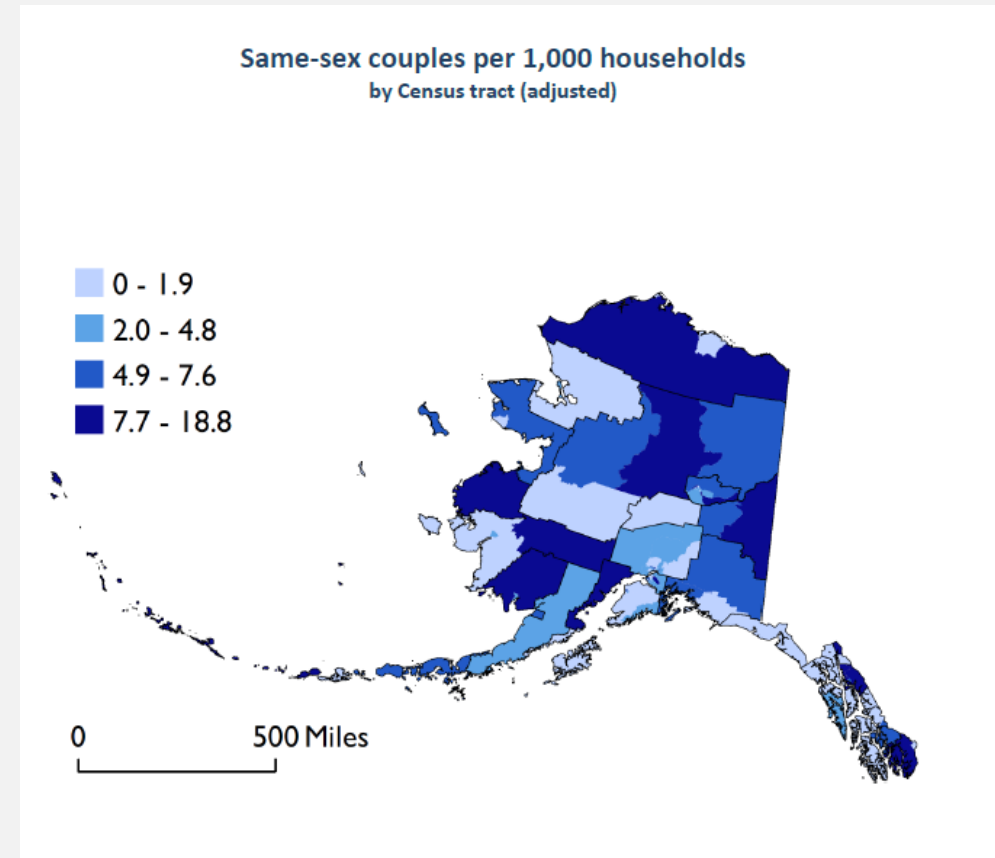


ALASKA STATE HUMAN RIGHTS COMMISSION (ASHRC) RESOLUTION & RECENT ACTION

- ASHRC does not process complaints of discrimination on the basis of sexual orientation, gender identity or expression
 - Alaska Supreme Court determined that “sex” does not include sexual orientation, gender identity or expression
- ASHRC passed a resolution in 2016 urging the state legislature to pass legislation identical to HB 184, and worked with the Department of Law to apply the EEOC’s definition of sex
 - Supreme and other federal courts have defined sex discrimination as being inclusive of discrimination based on sexual orientation, gender identity or expression, as they are inherently “sex-based”.
- ASHRC recently voted down the proposed regulations, stating that this issue needs to be remediated through the legislature

LGBTQ DISCRIMINATION IN ALASKA

- Lack of statewide data – ASHRC doesn't process these complaints
- 2011 Anchorage Survey
 - 10% denied a lease when otherwise qualified
 - 21% turned down for a job when otherwise qualified
 - 73% hide orientation/identity to avoid employment discrimination
 - 10% stopped by police without justification
 - 8% denied service in a restaurant or bar
 - All rates significantly higher for Transgender Alaskans
 - Findings in this survey are similar to national rates

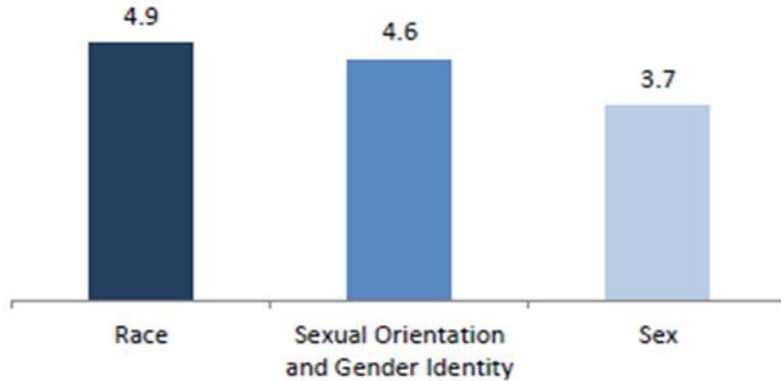


Alaska Census Snapshot (The Williams Institute, 2010)

NATIONAL RATES

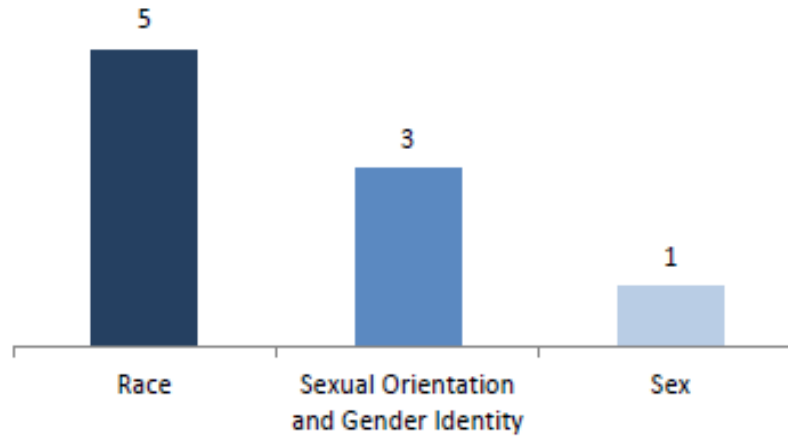
Employment Discrimination

National Population-Adjusted Complaint Rates (per 10,000)



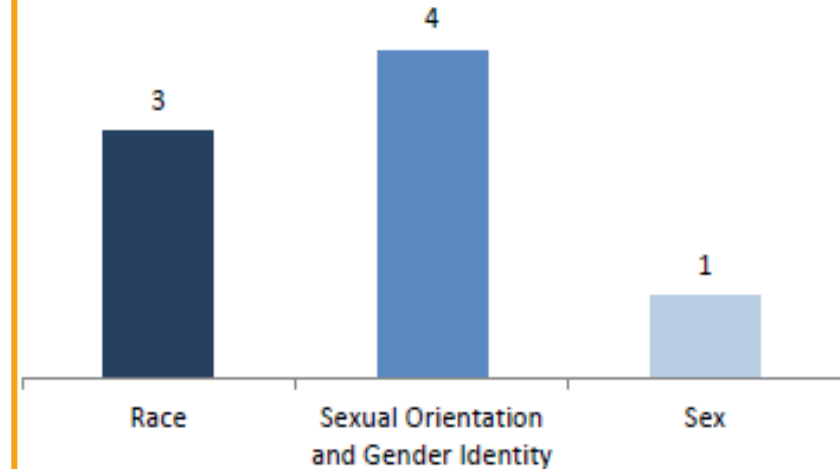
Housing Discrimination

National Population-Adjusted Complaint Rates (per 100,000)



Public Accommodations Discrimination

National Population-Adjusted Complaint Rates (per 100,000)

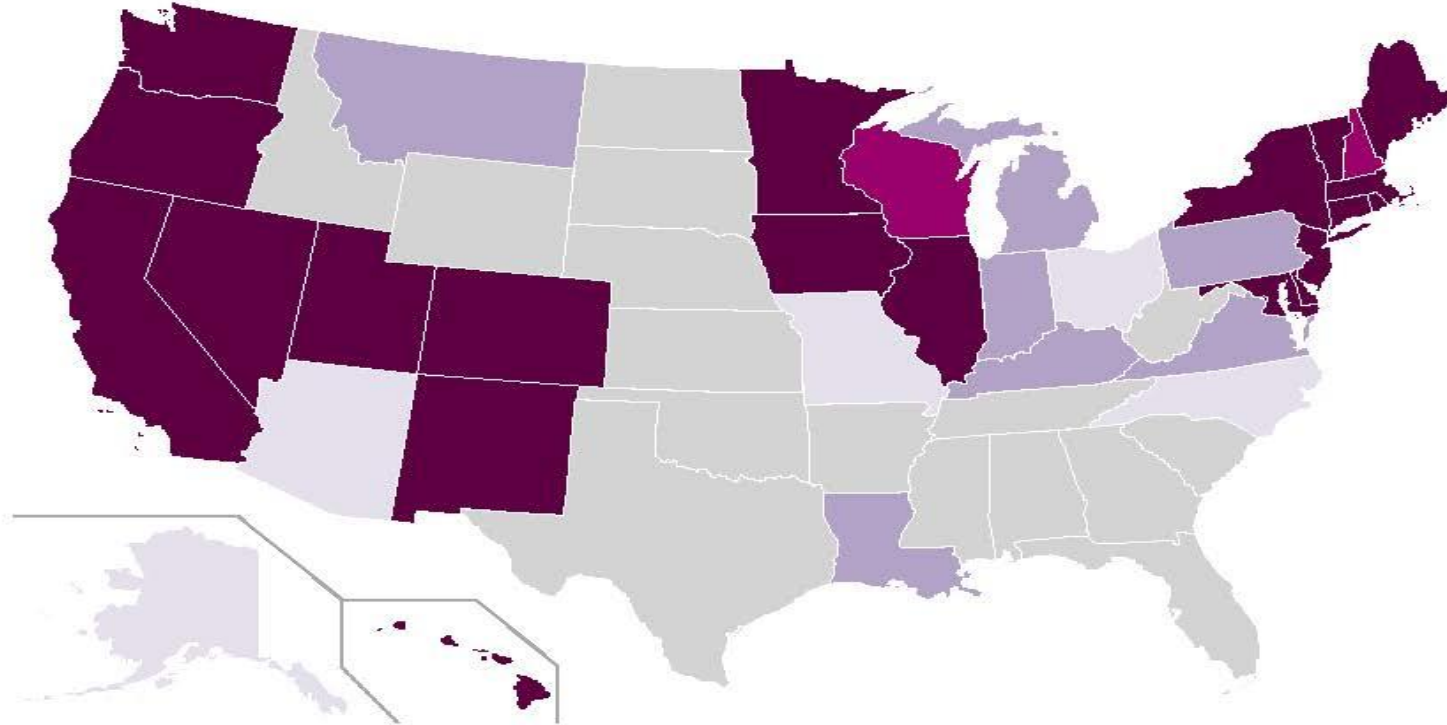


Employment, housing, & public accommodations discrimination based on sexual orientation & gender identity, national aggregation: 2008-2014 (The Williams Institute, 2015)

EXISTING PROTECTIONS



STATEWIDE EMPLOYMENT LAWS & POLICIES



- 20 states and D.C. prohibit discrimination based on sexual orientation & gender identity
- 2 states prohibit discrimination based on sexual orientation only
- 7 states prohibit discrimination against public employees based on sexual orientation & gender identity
- 5 states, **including Alaska**, prohibit discrimination against public employees based on sexual orientation only

MUNICIPAL ORDINANCES

- Anchorage
- Juneau
- Sitka
- Bethel
 - *Specific to employment*



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)



- Interprets discrimination based on sex to include discrimination based on an individual's sexual orientation, gender identity or expression
- First attempts informal mediation, then has authority to file suit in federal court
- Limited to employment discrimination
- Limited ability to investigate
- Federal bureaucracy is difficult to navigate
- EEOC and ASHRC have a workshare agreement, co-file cases

WHERE'S THE GAP?

- Unless an LGBTQ Alaskan resident of a protected municipality:
 - **No protections in areas of housing, financing & accrediting, public accommodations, & unlawful practices by the state or it's political subdivisions**
 - **Unequal protections in area of employment**

ECONOMIC MOTIVATIONS



LGBT NON-DISCRIMINATION POLICIES: GOOD FOR COMMERCE

- 96% of top Fortune 500 companies include sexual orientation in their non-discrimination policies and 70% include gender identity
- 53% of the top 50 federal government contractors link internal policies prohibiting this form of discrimination to improving their bottom line
- Economic benefits include:
 - Higher recruitment & retention
 - Increased generation of ideas & innovation
 - Diversified consumer base
 - Increased employee productivity
 - Securing more public sector clients
 - Improved employee relations & morale

Economic Motives for Adopting LGBT-Related Workplace Policies (The Williams Institute, 2011)



SECTIONAL

SECTIONS 1-3

- **Section 1:** Adds “sexual orientation, gender identity or expression” to the list of protected categories that currently include race, religion, color, national ancestry, physical or mental disability, age, sex, marital status, changes in marital status, pregnancy, or parenthood.
- **Section 2:** Adds "sexual orientation, gender identity or expression" to the list of discriminations which are cause for public concern, and asserts the need for the state to prevent such discrimination in employment, credit and financing practices, public accommodations and sale, lease or rental of real property.
- **Section 3:** Adds "sexual orientation, gender identity or expression" to the categories of protected civil rights.

SECTION 4

- Adds "sexual orientation, gender identity or expression" to the prohibitions against unlawful employment practices.
 - Refusal of employment because of SOGI, when demands of the position do not require distinction on the basis of SOGI.
 - Labor organizations cannot expel or refuse membership due to an individual's SOGI
 - Employers cannot circulate discriminatory statements
 - Employers may not fire a person for filing a complaint

SECTION 5

- Ministerial exemption
 - Hosanna-Tabor v. EEOC, Supreme Court case, ruled that federal discrimination laws do not apply to religious organization's selection of religious leaders
 - Language does not affect the implementation of this legislation, as it is a federal interpretation that would be applied regardless.
- AS 18.80.300(5), definition of employer
 - “A person, including the state and a political subdivision of the state, who has one or more employees in the state **but does not include a club that is exclusively social, or a fraternal, charitable, educational, or religious association or corporation, if the club, association, or corporation is not organized for private profit.**”

SECTION 6

- Adds “sexual orientation, gender identity or expression” to the prohibitions against unlawful practices in public accommodations
 - Refusal or denial of any services, goods, facilities, advantages or privileges because of SOGI
 - Circulation of discriminatory communication
 - Excludes physical fitness facilities which may place limits based on sex
- AS 18.80.300(16) public accommodations definition
 - **“a place that caters or offers its services, goods, or facilities to the general public** and includes a public inn, restaurant, eating house, hotel, motel, soda fountain, soft drink parlor, tavern, night club, roadhouse, place where food or spiritous or malt liquors are sold for consumption, trailer park, resort, campground, barber shop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, **and all other public amusement and business establishments**, subject only to the conditions and limitations established by law and applicable alike to all persons.”

SECTION 7

- Adds “sexual orientation, gender identity or expression” to the prohibitions against unlawful practices in the sale or rental of real property
 - Refusal to sell, lease, or rent property because of SOGI when otherwise qualified
 - Discrimination because of SOGI in a term, condition, or privilege relating to the use, sale, lease, or rental of real property
 - Making a written inquiry of SOGI
 - Falsify availability of property
 - Blockbusting
 - Publishing statements that indicate preference in regard to SOGI

SECTIONS 8-9

- **Section 8:** adds “sexual orientation, gender identity or expression” to the prohibitions against unlawful practices in financing and accreditation
 - Discriminate because in applications for financial assistance or credit
 - Discriminate in a term, condition, or privilege relating to the obtainment or use of the institution’s financial assistance or credit
 - Make or cause written inquiry of applicant’s protected classes
- **Section 9:** adds “sexual orientation, gender identity or expression” to the prohibitions against unlawful practices by the state or its political subdivisions
 - Refusal or denial of any local, state, or federal funds, services, goods, facilities, advantages, or privileges
 - Circulation of discriminatory communication implying refusal or denial of services

SECTIONS 10-11

- **Section 10:** adds “sexual orientation, gender identity or expression” to the prohibitions against unlawful practices in blockbusting, or practices by real estate agents to close a transaction
 - *Blockbusting:* the practice of persuading owners to sell property cheaply because of the fear of people of another race or class moving into the neighborhood, thus profiting by reselling at a higher price.
- **Section 11:** defines “sexual orientation” and “gender identity or expression”
 - *sexual orientation:* means heterosexuality, homosexuality, and bisexuality.
 - *Gender identity or expression:* means having or being perceived as having or expressing a gender, self-image, appearance, or behavior, regardless of whether that gender, self-image, appearance, or behavior is different from that traditionally associated with the sex assigned to that person at birth.

QUESTIONS?