

**From:** [Jonathan Kreiss-Tomkins](#)  
**To:** [Grace Kubitz](#); [Reid Harris](#)  
**Cc:** [Rep. Zack Fields](#)  
**Subject:** Fwd: FW: HB 82 (Anti-Discrimination) NEW DRAFT WITH ATTACHMENTS  
**Date:** Tuesday, April 2, 2019 9:10:17 AM  
**Attachments:** [ASDguidelines.pdf](#)  
[Alaska's new policy for transgender prep athletes - Anchorage Daily News.pdf](#)  
[3.14.18-Discrimination complaint against downtown Anchorage women's shelter opens up political front - Anchorage Daily News.pdf](#)  
[11.1.18-Women's shelter files suit over Anchorage's LGBT non-discrimination law - Anchorage Daily News.pdf](#)  
[11.12.18-No quick resolution expected in shelter's lawsuit over Anchorage's LGBT non-discrimination law - Anchorage Daily News.pdf](#)  
[11.14.18- Judge agrees to trial date in Anchorage transgender case - Anchorage Daily News.pdf](#)

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From: **Rep. Andy Josephson** <[Rep.Andy.Josephson@akleg.gov](mailto:Rep.Andy.Josephson@akleg.gov)>  
Date: Mon, Apr 1, 2019 at 11:54  
Subject: FW: HB 82 (Anti-Discrimination) NEW DRAFT WITH ATTACHMENTS  
To: Elise Sorum-Birk <[Elise.Sorum-Birk@akleg.gov](mailto:Elise.Sorum-Birk@akleg.gov)>, Rep. Jonathan Kreiss-Tomkins <[Rep.Jonathan.Kreiss-Tomkins@akleg.gov](mailto:Rep.Jonathan.Kreiss-Tomkins@akleg.gov)>, Rep. Zack Fields <[Rep.Zack.Fields@akleg.gov](mailto:Rep.Zack.Fields@akleg.gov)>, Rep. Gabrielle LeDoux <[Rep.Gabrielle.LeDoux@akleg.gov](mailto:Rep.Gabrielle.LeDoux@akleg.gov)>

Dear Co-Chairs Kreiss-Tomkins and Fields:

During the hearing on March 28, 2019 regarding House Bill 82 (Anti-Discrimination), **we were asked two questions about the application of the bill**—were it to become law—to two fact patterns or situations. **The first concerned K-12 sports programs. The second concerned domestic violence shelters.**

**HOW DOES THE MUNICIPALITY OF ANCHORAGE (for example) HANDLE or ADDRESS TRANSGENDER SITUATIONS IN ATHLETIC COMPETITION?**

As to the former case, we are attaching an article detailing the Alaska School Activities Association (ASAA) policy on transgender students. ASAA has determined that it will not make gender-identity determinations and will require individual school districts to have policies in place if they wish for transgender student athletes to participate in statewide sporting event.

Anchorage School District's policy on transgender and gender non-conforming students and employees, which includes a clear policy on transgender student athletes, is attached. ASD policy allows students to participate in both intramural and interscholastic sports in a manner consistent with their gender identity.

We believe that complicated law relating to Title IX and the U.S. Constitution's Fourteenth Amendment Equal Protection Clause would become relevant to fully understanding possibilities in this area. At the federal level, there is currently a conflict between Obama era guidance suggesting that gender identity or expression is protected under "sex" discrimination and the withdrawal of this guidance by the Trump administration. Additionally, several federal court cases have addressed this issue, with mixed outcomes. However, much of House Bill 82 concerns housing, lending, and employment, and would not necessarily impact the policies of Anchorage School District.

### **WHAT PENDING CASES CONCERN TRANSGENDER SITUATIONS IN THE CONTEXT OF DOMESTIC VIOLENCE OR HOMELESS SHELTERS?**

As to the latter case, there is a pending federal lawsuit brought by a women's homeless shelter called "Hope Center". That lawsuit was filed against the Municipality of Anchorage and the Anchorage Equal Rights Commission. Essentially, a person claiming to be transgender was denied entry to Hope Center last year. Hope Center was investigated by the AERC when the claimant complained to the AERC that "she" was denied entry to Hope Center based on "her" gender identity.

The MOA is asking the federal court to "abstain" under an "abstention doctrine", alleging that federal law requires it to stay uninvolved in resolution of the matter until such time as the AERC has completed its investigation.

Meanwhile, we are attaching a series of Anchorage Daily News articles that help explain the context of the Hope Center case, outlined above.

Further, the House State Affairs Committee may want to be aware of the definition of "public accommodations" that would be applied to this bill:

**"Public accommodations** means 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, gold course, café, 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.” (AS 18.80.300(16)).

There is an argument that Hope Center’s position that it is not a “public accommodation” is correct under the doctrine of *ejusdem generis*, defined below. Certainly, one might argue that there is nothing descriptive of a homeless or domestic violence shelter in the definition. On the other hand, the AERC might argue that these accommodations are merely illustrative and not dispositive.

<a href="#"><u>ejusdem generis</u></a>	of the same class	Known as a "canon of construction", it states that when a limited list of specific things also includes a more general class, that the scope of that more general class shall be limited to other items more like the specific items in the list.
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A court may also find that, as a faith-based shelter, the Hope Center might enjoy the religious exemption written into House Bill 82 at **[Section 6]**. Noteworthy, the Anchorage Daily News’s article of March 14, 2018, notes that “[t]he city’s other two emergency women’s shelters, one of which is run by Catholic Social Services, do take in transgender women.” The same ADN article also notes that “the other two emergency women’s shelters say transgender people have used the facilities for years without problems.” Continuing, AWAIC reported that it has served transgender women for at least 15 years, without problems. (ADN, quoting executive director Suzi Pearson). Catholic Social Services’ shelter is called Clare House, and also allows transgender persons.

Note that in the context of the Hope Center litigation, a different definition (broader) is being applied. Instead of our own AS 18.80.300(16), that litigation is using a definition found in Anchorage Municipal Ordinance (AMO) 5.20.010-Definitions. It reads: “Public Accommodations: means any business or professional activity that is open to, accepts or solicits the patronage of, or caters or offers goods or services to the general public, subject only to the conditions and limitations established by law and applicable alike to all persons.”

Further, Anchorage law requires that the person prove (where questioned, presumably, or otherwise challenged), through medical history and evidence of care or treatment of their gender identify, that their gender identify is “sincerely held, core to a person’s gender-related self identity, and not being asserted for an improper purpose.” The State Affairs Committee could entertain modifying House Bill 82 consistent with this language.

Finally, I believe that the language of the bill is broad. It will be for the courts to decide in each case whether there is something actionable to be brought in court (that is, where a lawsuit could be filed from either side). In my own view, it would take at least several generations to answer dispositively, how a court may or may not rule. Noteworthy here, for example, is the issue of affirmative action, an ever-evolving area of practice.

I hope this proves helpful to the committee.

Sincerely,

Andy Josephson, Esq., Alaska State House, District 17