

HB 17: NON-DISCRIMINATION BASED ON SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION

32nd Legislature 2022

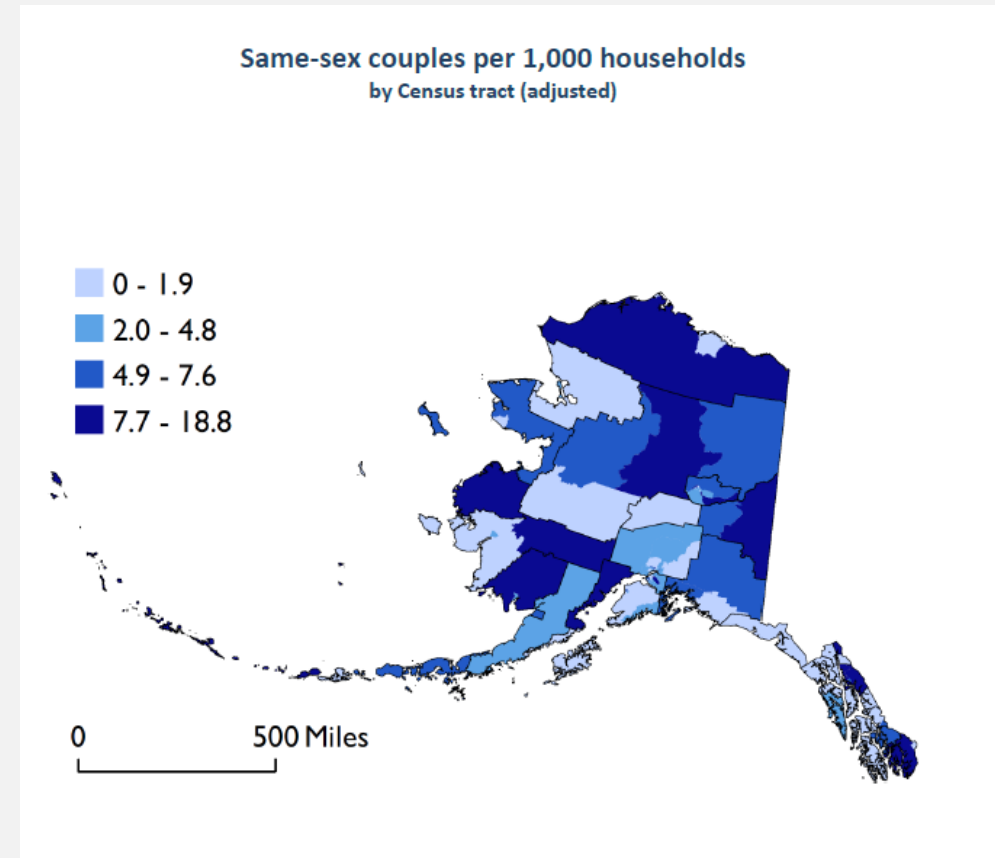
CIVIL RIGHTS LAW IN ALASKA

- In 1945 the Territorial Legislature passed the Anti-Discrimination Act.
- They addressed discrimination in public accommodations almost 20 years before the national Civil Rights Act of 1964.
- Today:
 - Race, religion, color, national ancestry, physical or mental disability, age, sex, marital status, changes in marital status, pregnancy, or parenthood are protected classes from discrimination.
 - Discrimination is prohibited in the areas of employment, credit and financing, public accommodations, and sale, lease, or rental of property.



LGBTQ DISCRIMINATION IN ALASKA

- 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

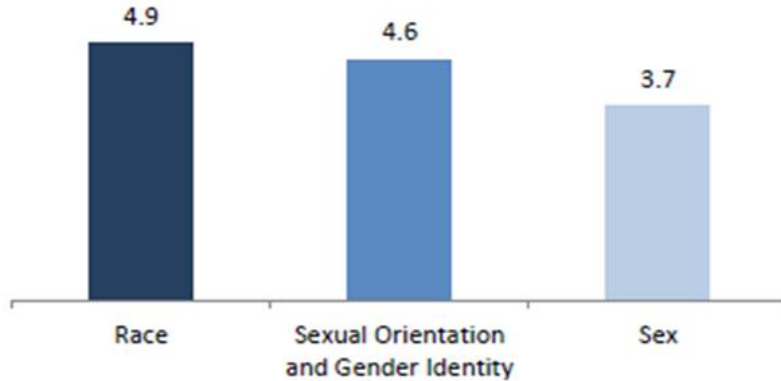


Alaska Census Snapshot (The Williams Institute, 2010)

NATIONAL RATES

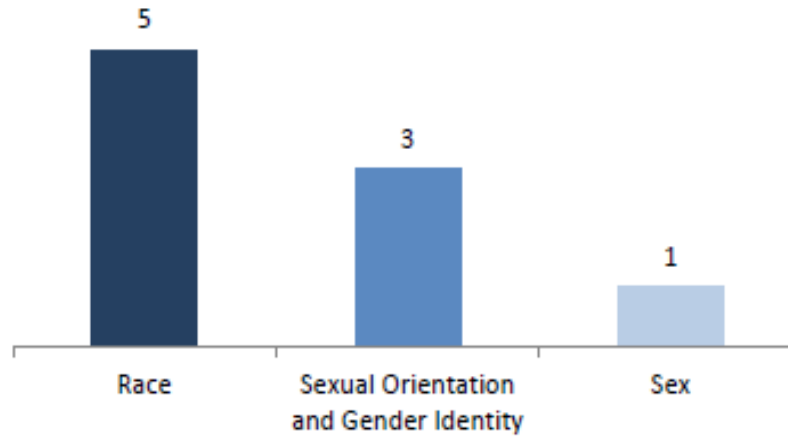
Employment Discrimination

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



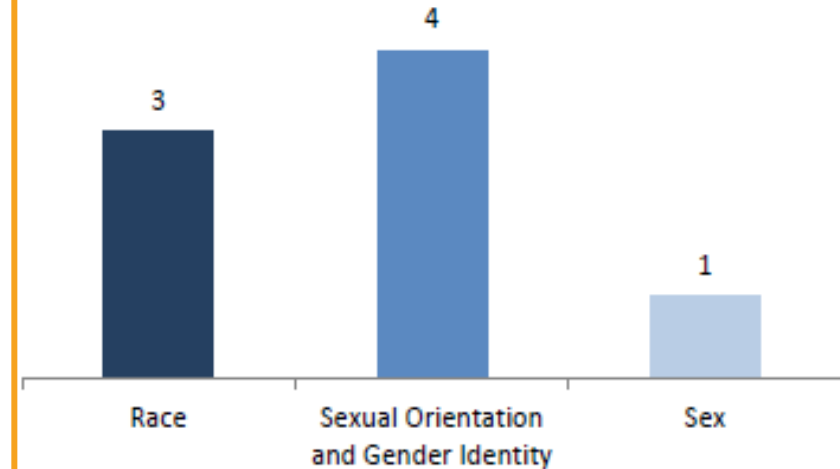
Housing Discrimination

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

CURRENT LAW

- The state's policy is to eliminate and prevent discrimination based on "race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy, or parenthood." AS 18.80.200(b)
- Due to a ruling from the U.S. Supreme Court in 2020, the Human Rights Commission includes sexual orientation and gender identity under the definition of "sex."

BOSTOCK V. CLAYTON COUNTY, GA

- “Today we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”
- - Justice Neil Gorsuch’s Opinion in *Bostock v. Clayton County*

HB 17

- HB 17 **codifies** the practice of the Human Rights Commission in the wake of the *Bostock* Supreme Court decision.

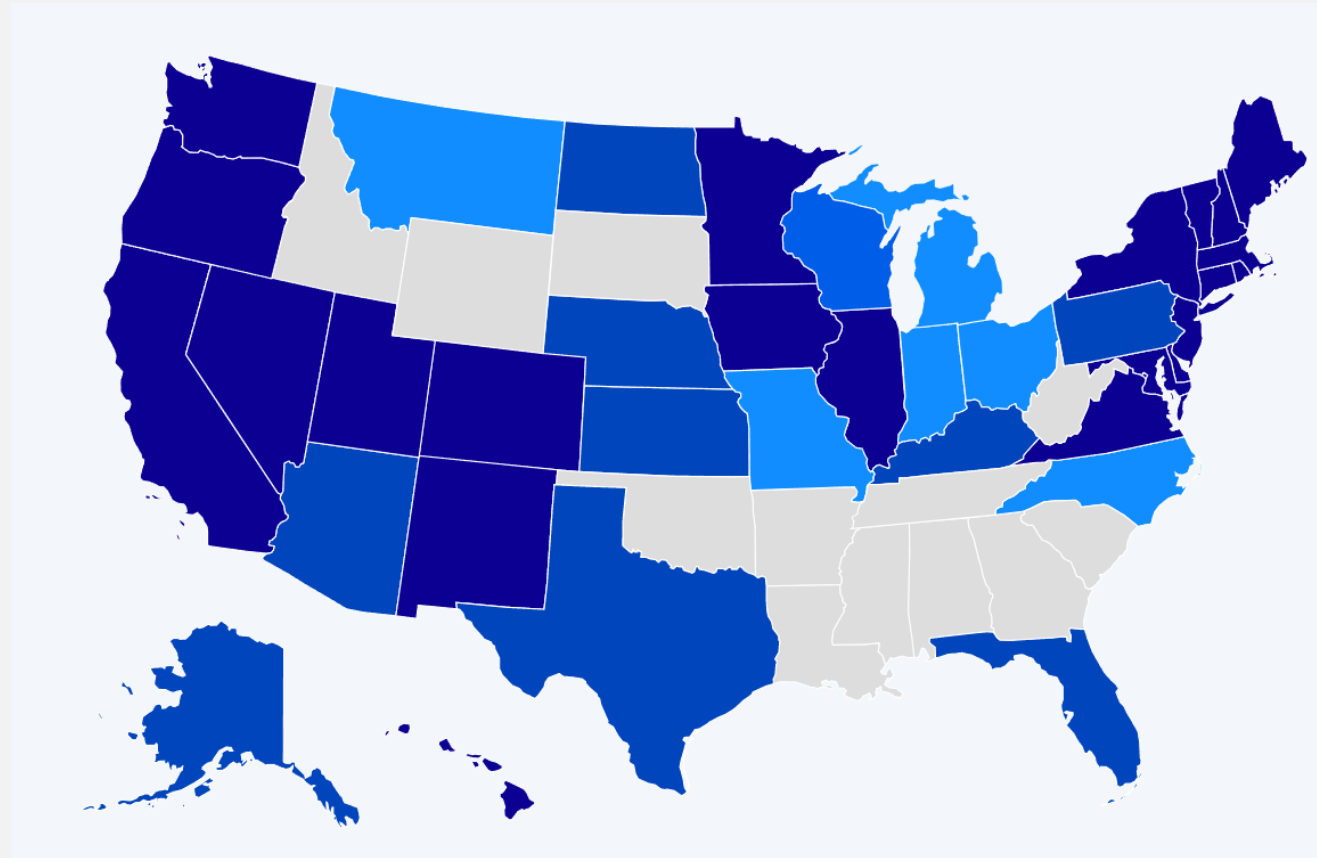
AROUND ALASKA AND THE COUNTRY

MUNICIPAL ORDINANCES

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



Employment Discrimination Laws Across the Nation



- Prohibit discrimination against public employees based on sexual orientation only
6 States
- Prohibit discrimination based on sexual orientation only
1 State
- Prohibit discrimination based on sexual orientation and gender identity
22 States & DC
- Enforcement authorities are accepting complaints on the basis of sexual orientation and gender identity because the state has adopted the Bostock rationale into state law*
9 States

Source:
<https://www.hrc.org/resources/state-equality-index>

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
- Federal bureaucracy is difficult to navigate
- EEOC and ASHRC have a workshare agreement, co-file cases

LGBT NON-DISCRIMINATION POLICIES: GOOD FOR COMMERCE

- 96% of top Fortune 500 companies include sexual orientation in their non-discrimination policies.
- 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



SECTIONAL

SECTIONS 1-3

- **Every section adds “sexual orientation, gender identity or expression” to an existing statute relating to the State Commission on Human Rights.**
- **Section 1:** Lists the discriminatory factors under the discretion of the Commission.
- **Section 2:** Legislative finding that discrimination of the listed factors are of a public concern and menace the general welfare of the state.
- **Section 3:** It is the policy of the state to eliminate discrimination in the areas of credit and financing, public accommodation, and the housing market.

SECTIONS 4-5

- **Section 4:** Defines civil rights.
- **Section 5: Bars employers from:**
 - 1. Discrimination if the demands of the employment do not already require “reasonable” distinctions based on one of the discriminatory factors.
 - 2. Labor unions cannot expel or discriminate based on the listed factors.
 - 3. Inquiring into specifications based on the listed factors unless the job has “a bona fide occupational qualification” that would make such an inquiry necessary.
 - 4. Retaliating against an employee for complaining about discrimination.
 - 5. Discriminating through wages between men and women for comparable work.

SECTION 6

- Prohibits unlawful practices in public accommodations:
 - Refusal or denial of any services, goods, or facilities.
 - Circulation of discriminatory advertisements or communications.
- AS 18.80.300(16) defines public accommodations.
 - **“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

- Prohibits unlawful practices in the sale or rental of real property:
 - Refusal or discrimination when selling, leasing, or renting property, when otherwise qualified;
 - Inquiring into of the listed factors;
 - Falsifying availability of housing;
 - Blockbusting;
 - Publishing statements that indicate preferences within the listed factors.

SECTIONS 8-9

- **Section 8:** Prohibits unlawful practices in financing and accreditation:
 - Discriminate in applications for financial assistance or credit;
 - Discriminate relating to the obtainment or use of the institution's financial assistance or credit;
 - Inquire into an applicants' status within the listed factors.
- **Section 9:** Prohibits unlawful practices by the state:
 - 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:** Prohibits blockbusting or similar deceptive practices:
 - *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.”