

IN THE SENATE

SENATE BILL NO. 1033

BY MALEPEAI

AN ACT

1 RELATING TO THE HUMAN RIGHTS COMMISSION; AMENDING SECTION 18-7301, IDAHO  
2 CODE, TO PROVIDE THAT DISCRIMINATION AGAINST SEXUAL ORIENTATION OR  
3 GENDER IDENTITY IS A CRIMINAL OFFENSE; AMENDING SECTION 67-5901, IDAHO  
4 CODE, TO PROVIDE THAT FREEDOM FROM DISCRIMINATION BECAUSE OF SEXUAL  
5 ORIENTATION AND GENDER IDENTITY IS A CIVIL RIGHT; AND AMENDING SECTION  
6 67-5909, IDAHO CODE, TO PROHIBIT DISCRIMINATION AGAINST A PERSON BE-  
7 CAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY WITH EXCEPTIONS.  
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 18-7301, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 18-7301. FREEDOM FROM DISCRIMINATION CONSTITUTES A CIVIL RIGHT. The  
13 right to be free from discrimination because of race, creed, color, sex,  
14 sexual orientation, gender identity or national origin is recognized as and  
15 declared to be a civil right. This right shall include, but not be limited  
16 to:

- 17 (1) The right to obtain and hold employment without discrimination.  
18 (2) The right to the full enjoyment of any of the accommodations, facil-  
19 ities or privileges of any place of public resort, accommodation, assemblage  
20 or amusement.

21 SECTION 2. That Section 67-5901, Idaho Code, be, and the same is hereby  
22 amended to read as follows:

23 67-5901. PURPOSE OF CHAPTER. The general purposes of this chapter are:  
24 (1) To provide for execution within the state of the policies embodied  
25 in the federal Civil Rights Act of 1964, as amended, and the Age Discrimina-  
26 tion in Employment Act of 1967, as amended, and Titles I and III of the Ameri-  
27 cans with Disabilities Act.

28 (2) To secure for all individuals within the state freedom from dis-  
29 crimination because of race, color, religion, sex, sexual orientation, gen-  
30 der identity or national origin or disability in connection with employment,  
31 public accommodations, and real property transactions, discrimination be-  
32 cause of race, color, religion, sex, sexual orientation, gender identity or  
33 national origin in connection with education, discrimination because of age  
34 in connection with employment, and thereby to protect their interest in per-  
35 sonal dignity, to make available to the state their full productive capaci-  
36 ties, to secure the state against domestic strife and unrest, to preserve the  
37 public safety, health, and general welfare, and to promote the interests,  
38 rights and privileges of individuals within the state.

39 SECTION 3. That Section 67-5909, Idaho Code, be, and the same is hereby  
40 amended to read as follows:

1           67-5909. ACTS PROHIBITED. It shall be a prohibited act to discriminate  
2 against a person because of, or on a basis of, race, color, religion, sex,  
3 sexual orientation, gender identity or national origin, in any of the fol-  
4 lowing subsections. It shall be a prohibited act to discriminate against a  
5 person because of, or on the basis of, age in subsections (1), (2), (3) and  
6 (4) of this section. It shall be a prohibited act to discriminate against a  
7 person because of, or on the basis of, disability in subsections (1), (2),  
8 (3) and (4) of this section, provided that the prohibition against discrim-  
9 ination because of disability shall not apply if the particular disability,  
10 even with a reasonable accommodation, prevents the performance of the work  
11 required in that job, and in subsections (6), (8), (9), (10) and (11) of this  
12 section. The prohibition to discriminate shall also apply to those individ-  
13 uals without disabilities who are associated with a person with a disabil-  
14 ity.

15           (1) For an employer to fail or refuse to hire, to discharge, or to other-  
16 wise discriminate against an individual with respect to compensation or the  
17 terms, conditions or privileges of employment or to reduce the wage of any  
18 employee in order to comply with this chapter;

19           (2) For an employment agency to fail or refuse to refer for employment,  
20 or otherwise to discriminate against an individual or to classify or refer an  
21 individual for employment;

22           (3) For a labor organization:

23           (a) To exclude or to expel from membership, or to otherwise discrimi-  
24 nate against, a member or applicant for membership,

25           (b) To limit, segregate or classify membership, or to fail or refuse to  
26 refer for employment an individual in any way,

27               1. Which would deprive an individual of employment opportunities,  
28               or

29               2. Which would limit employment opportunities or adversely affect  
30 the status of an employee or of an applicant for employment, or

31           (c) To cause or attempt to cause an employer to violate this chapter.

32           (4) For an employer labor organization or employment agency to print  
33 or publish or cause to be printed or published a notice or advertisement re-  
34 lating to employment by the employer or membership in or a classification or  
35 referral for employment by the labor organization, or relating to a clas-  
36 sification or referral for employment by an employment agency, indicating  
37 a preference, limitation, specification or discrimination; but a notice or  
38 advertisement may indicate a preference limitation, specification, or dis-  
39 crimination when such is a bona fide occupational qualification for employ-  
40 ment;

41           (5) For a person:

42           (a) To deny an individual the full and equal enjoyment of the goods,  
43 services, facilities, privileges, advantages and accommodations of a  
44 place of public accommodation, or

45           (b) To print, circulate, post, or mail or otherwise cause to be pub-  
46 lished a statement, advertisement or sign which indicates that the full  
47 and equal enjoyment of the goods, services, facilities, privileges, ad-  
48 vantages of a place of public accommodation will be refused, withheld  
49 from, or denied an individual or that an individual's patronage of or

1 presence at a place of public accommodation is objectionable, unwel-  
2 come, unacceptable, or undesirable.

3 (6) For a person who owns, leases or operates a place of public accommo-  
4 dation:

5 (a) To deny an individual on the basis of disability the full and equal  
6 enjoyment of the goods, services, facilities, privileges, advantages  
7 or accommodations of a place of public accommodation;

8 (b) To impose or apply eligibility criteria that screen out or tend to  
9 screen out an individual with a disability or any class of individuals  
10 with disabilities from fully and equally enjoying any goods, services,  
11 facilities, privileges, advantages or accommodations of a place of pub-  
12 lic accommodation, unless such criteria can be shown to be necessary for  
13 the provision of the goods, services, facilities, privileges, advan-  
14 tages or accommodations being offered;

15 (c) To fail to make reasonable modifications in policies, practices, or  
16 procedures when such modifications are necessary to afford such goods,  
17 services, facilities, privileges, advantages, or accommodations to  
18 individuals with disabilities, unless the entity can demonstrate that  
19 making such modifications would fundamentally alter the nature of such  
20 goods, services, facilities, privileges, advantages or accommoda-  
21 tions;

22 (d) To fail to take such steps as may be necessary to ensure that no  
23 individual with a disability is excluded, denied services, segregated  
24 or otherwise treated differently than other individuals because of the  
25 absence of auxiliary aids and services, unless the entity can demon-  
26 strate that taking such steps would fundamentally alter the nature of  
27 the goods, services, facilities, privileges, advantages, or accommoda-  
28 tions being offered or would result in an undue burden;

29 (e) To fail to remove architectural barriers and communication barriers  
30 that are structural in nature, in existing facilities and trans-  
31 portation barriers in existing vehicles used by an establishment for  
32 transporting individuals (not including barriers that can only be re-  
33 moved through retrofitting of vehicles), where such removal is readily  
34 achievable; or

35 (f) Where an entity can demonstrate that the removal of a barrier un-  
36 der paragraph (e) of this subsection is not readily achievable, to fail  
37 to make such goods, services, facilities, privileges, advantages or ac-  
38 commodatons available through alternative methods if such methods are  
39 readily achievable.

40 (7) For an educational institution:

41 (a) To exclude, expel, limit, or otherwise discriminate against an in-  
42 dividual seeking admission as a student or an individual enrolled as a  
43 student in the terms, conditions, and privileges of the institution, or

44 (b) To make or use a written or oral inquiry or form of application for  
45 admission that elicits or attempts to elicit information, or to make or  
46 keep a record, of an applicant for admission, except as permitted by the  
47 regulations of the commission,

48 (c) To print or publish or cause to be printed or published a catalogue  
49 or other notice or advertisement indicating a preference, limitation,  
50 specification, discrimination of an applicant for admission, or

1 (d) To announce or follow a policy of denial or limitation through a  
2 quota or otherwise of educational opportunities of a group or its mem-  
3 bers.

4 (8) For an owner or any other person engaging in a real estate transac-  
5 tion, or for a real estate broker or salesman:

6 (a) To refuse to engage in a real estate transaction with a person,

7 (b) To discriminate against a person in the terms, conditions or privi-  
8 leges of a real estate transaction or in the furnishing of facilities or  
9 services in connection therewith,

10 (c) To refuse to receive or to fail to transmit a bona fide offer to en-  
11 gage in a real estate transaction from a person,

12 (d) To refuse to negotiate a real estate transaction with a person,

13 (e) To represent to a person that real property is not available for in-  
14 spection, sale, rental, or lease when in fact it is so available, or to  
15 fail to bring a property listing to his attention, or to refuse to permit  
16 him to inspect real property,

17 (f) To print, circulate, post or mail or cause to be so published a  
18 statement, advertisement or sign, or to use a form of application for a  
19 real estate transaction, or to make a record or inquiry in connection  
20 with a prospective real estate transaction, which indicates, directly  
21 or indirectly, an intent to make a limitation, specification, or dis-  
22 crimination with respect thereto,

23 (g) To offer, solicit, accept, use or retain a listing of real property  
24 with the understanding that a person may be discriminated against in a  
25 real estate transaction or in the furnishing of facilities or services  
26 in connection therewith, or

27 (h) To refuse to permit, at the expense of a person with a disability,  
28 reasonable modifications of existing premises occupied or to be oc-  
29 cupied by such person if the modifications may be necessary to afford  
30 such person full enjoyment of the premises. Provided, that in the case  
31 of a rental, the landlord may, where it is reasonable to do so, condi-  
32 tion permission for a modification on the renter agreeing to restore  
33 the interior, exterior, or both, of the premises, to the condition that  
34 existed before the modification, reasonable wear and tear excepted.  
35 The provision for restoration shall be included in any lease or rental  
36 agreement.

37 (9) For a person to whom application is made for financial assistance in  
38 connection with a real estate transaction or for the construction, rehabili-  
39 tation, repair, maintenance, or improvement of real property, or a represen-  
40 tative of such a person:

41 (a) To discriminate against the applicant,

42 (b) To use a form of application for financial assistance or to make or  
43 keep a record or inquiry in connection with applications for financial  
44 assistance which indicates directly or indirectly, an intent to make a  
45 limitation, specification, or discrimination.

46 (10) To insert in a written instrument relating to real property a pro-  
47 vision which purports to forbid or restrict the conveyance, encumbrance, oc-  
48 cupancy or lease thereof;

49 (11) For a person for the purpose of inducing a real estate transaction  
50 from which he may benefit financially:

1 (a) To represent that a change has occurred or will or may occur in the  
2 composition of the owners or occupants in the block, neighborhood, or  
3 area in which the real property is located, or

4 (b) To represent that this change will or may result in the lowering of  
5 property values, an increase in criminal or antisocial behavior, or a  
6 decline in the quality of schools in the block, neighborhood, or area in  
7 which the real property is located;

8 (12) The prohibition against discrimination on the basis of sexual ori-  
9 entation or gender identity shall not apply to a religious organization or an  
10 expressive association whose employment of a person protected by this chap-  
11 ter would burden the association's rights of expressive association under  
12 Boy Scouts of America v. Dale, 530 U.S. 640 (2000).