

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 440

BY MCCROSTIE

AN ACT

1 RELATING TO CIVIL RIGHTS; AMENDING SECTION 67-5901, IDAHO CODE, TO PROVIDE
2 THAT FREEDOM FROM DISCRIMINATION BECAUSE OF SEXUAL ORIENTATION OR GEN-
3 DER IDENTITY IS A CIVIL RIGHT; AMENDING SECTION 67-5902, IDAHO CODE,
4 TO DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
5 67-5909, IDAHO CODE, TO PROHIBIT DISCRIMINATION AGAINST A PERSON BE-
6 CAUSE OF SEXUAL ORIENTATION OR GENDER IDENTITY AND TO MAKE TECHNICAL
7 CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE
8 DATE.
9

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

11 SECTION 1. That Section 67-5901, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 67-5901. PURPOSE OF CHAPTER. The general purposes of this chapter are:
14 (1) To provide for execution within the state of the policies embodied
15 herein and in the federal Civil Rights Act of 1964, as amended, and the Age
16 Discrimination in Employment Act of 1967, as amended, and Titles I and III of
17 the Americans with Disabilities Act.

18 (2) To secure for all individuals within the state freedom from dis-
19 crimination because of race, color, religion, sex, sexual orientation, gen-
20 der identity, ~~or~~ national origin, or disability in connection with employ-
21 ment, public accommodations, and real property transactions, discrimina-
22 tion because of race, color, religion, sex, sexual orientation, gender iden-
23 tity, or national origin in connection with education, discrimination be-
24 cause of age in connection with employment, and thereby to protect their in-
25 terest in personal dignity, to make available to the state their full produc-
26 tive capacities, to secure the state against domestic strife and unrest, to
27 preserve the public safety, health, and general welfare, and to promote the
28 interests, rights and privileges of individuals within the state.

29 SECTION 2. That Section 67-5902, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 67-5902. DEFINITIONS. In this chapter, unless the context otherwise
32 requires:

33 (1) "Commission" means the commission on human rights created by this
34 chapter~~.~~

35 (2) "Commissioner" means a member of the commission~~.~~

36 (3) "Discriminatory practice" means a practice designated as discrimi-
37 natory under the terms of this chapter~~.~~

38 (4) "National origin" includes the national origin of an ancestor~~.~~

39 (5) "Person" includes an individual, association, corporation, joint
40 apprenticeship committee, joint-stock company, labor union, legal repre-

1 representative, mutual company, partnership, any other legal or commercial en-
2 tity, the state, or any governmental entity or agency~~7~~.

3 (6) "Employer" means a person, wherever situated, who hires five (5)
4 or more employees for each working day in each of twenty (20) or more calen-
5 dar weeks in the current or preceding calendar year whose services are to be
6 partially or wholly performed in the state of Idaho, except for domestic ser-
7 vants hired to work in and about the person's household. The term also means:

8 (a) A person who as contractor or subcontractor is furnishing material
9 or performing work for the state;

10 (b) Any agency of or any governmental entity within the state; and

11 (c) Any agent of such employer.

12 (7) "Employment agency" means a person regularly undertaking with or
13 without compensation to procure employees for an employer or to procure for
14 employees opportunities to work for an employer and includes an agent of such
15 a person~~7~~.

16 (8) "Labor organization" includes:

17 (a) An organization of any kind, an agency or employee representation
18 committee, group, association, or plan in which employees participate
19 and which exists for the purpose, in whole or in part, of dealing with
20 employers concerning grievance, labor disputes, wages, rates of pay,
21 hours, or other terms or conditions of employment;

22 (b) A conference, general committee, joint or system board, or joint
23 council which is subordinate to a national or international labor or-
24 ganization; or

25 (c) An agent of a labor organization.

26 (9) "Place of public accommodation" means a business, accommodation,
27 refreshment, entertainment, recreation, or transportation facility of any
28 kind, whether licensed or not, whose goods, services, facilities, privi-
29 leges, advantages or accommodations are extended, offered, sold, or other-
30 wise made available to the public~~7~~.

31 (10) "Educational institution" means a public or private institution
32 and includes an academy, college, elementary or secondary school, extension
33 course, kindergarten, nursery, school system, or university and a business,
34 nursing, professional, secretarial, technical, or vocational school and in-
35 cludes an agent of an educational institution~~7~~.

36 (11) "Real property" includes buildings, structures, real estate,
37 lands, tenements, leaseholds, interests in real estate cooperatives, con-
38 dominiums, and hereditaments, corporeal and incorporeal or any interest
39 therein~~7~~.

40 (12) "Real estate transaction" includes the sale, exchange, rental or
41 lease of real property~~7~~.

42 (13) "Housing accommodation" includes any improved or unimproved real
43 property, or part thereof, ~~which~~ that is used or occupied~~7~~ or ~~as~~ is the home
44 or residence of one (1) or more individuals~~7~~.

45 (14) "Real estate broker or salesman" means a person, whether licensed
46 or not, who, for or with the expectation of receiving a consideration, lists,
47 sells, purchases, exchanges, rents, or leases real property, or who negoti-
48 ates or attempts to negotiate any of these activities, or who holds himself
49 out as engaged in these activities, or who negotiates or attempts to negoti-
50 ate a loan secured or to be secured by mortgage or other encumbrance upon real

1 property, or who is engaged in the business of listing real property in a pub-
 2 lication~~τ~~, or a person employed by or acting on behalf of any of these~~τ~~.

3 (15) "Disability" means a physical or mental condition of a person,
 4 whether congenital or acquired, ~~which that~~ constitutes a substantial limi-
 5 tation to that person and is demonstrable by medically accepted clinical or
 6 laboratory diagnostic techniques. A person with a disability is one who:

- 7 (a) ~~Has~~ such a disability~~τ or~~
 8 (b) ~~Has~~ a record of such a disability~~τ~~; or
 9 (c) ~~Is~~ regarded as having such a disability~~τ~~.

10 (16) "Reasonable accommodation" means an adjustment ~~which that~~ does
 11 not:

- 12 (a) ~~Unduly~~ disrupt or interfere with the employer's normal opera-
 13 tions~~τ~~;
 14 (b) ~~Threaten~~ the health or safety of the person with the disability or
 15 others~~τ~~;
 16 (c) ~~Contradict~~ a business necessity of the employer~~τ~~; or
 17 (d) ~~Impose~~ undue hardship on the employer based on the size of the em-
 18 ployer's business, the type of business, the financial resources, and
 19 the estimated cost and extent of the adjustment~~τ~~.

20 (17) "Readily achievable" means easily accomplishable and able to be
 21 carried out without much difficulty or expense. In determining whether an
 22 action is readily achievable, factors to be considered include:

- 23 (a) ~~The~~ nature and cost of the action needed under this chapter~~τ~~;
 24 (b) ~~The~~ overall financial resources of the facility or facilities in-
 25 volved in the action, the number of persons employed at the facility,
 26 the effect on expenses and resources, or the impact otherwise of the ac-
 27 tion upon the operation of the facility~~τ~~;
 28 (c) ~~The~~ overall financial resources of the covered entity, the overall
 29 size of the business of a covered entity with respect to the number of
 30 its employees, the number, type, and location of its facilities~~τ~~; and
 31 (d) ~~The~~ type of operation or operations of the covered entity, in-
 32 cluding the composition, structure, and functions of the workforce
 33 of the entity, the geographic separateness, administrative or fiscal
 34 relationship of the facility or facilities in question to the covered
 35 entity.

36 (18) "Gender identity" means a person's actual or perceived gender
 37 identity, appearance, mannerisms, or other characteristics, with or without
 38 regard to the person's sex at birth.

39 (19) "Sexual orientation" means a person's actual or perceived orien-
 40 tation as heterosexual, homosexual, bisexual, or asexual.

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

43 67-5909. ACTS PROHIBITED. It shall be a prohibited act to discriminate
 44 against a person because of, or on a basis of, race, color, religion, sex,
 45 sexual orientation, gender identity, or national origin~~τ~~ in any of the fol-
 46 lowing subsections. It shall be a prohibited act to discriminate against a
 47 person because of, or on the basis of, age in subsections (1), (2), (3) and
 48 (4) of this section. It shall be a prohibited act to discriminate against a
 49 person because of, or on the basis of, disability in subsections (1), (2),

1 (3) and (4) of this section, provided that the prohibition against discrim-
 2 ination because of disability shall not apply if the particular disability,
 3 even with a reasonable accommodation, prevents the performance of the work
 4 required in that job, and in subsections (6), (8), (9), (10) and (11) of this
 5 section. The prohibition to discriminate shall also apply to those individ-
 6 uals without disabilities who are associated with a person with a disabil-
 7 ity.

8 (1) For an employer to fail or refuse to hire, to discharge, or to other-
 9 wise discriminate against an individual with respect to compensation or the
 10 terms, conditions or privileges of employment or to reduce the wage of any
 11 employee in order to comply with this chapter.

12 (2) For an employment agency to fail or refuse to refer for employment,
 13 or otherwise to discriminate against an individual or to classify or refer an
 14 individual for employment.

15 (3) For a labor organization:

16 (a) To exclude or to expel from membership, or to otherwise discrimi-
 17 nate against, a member or applicant for membership;

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

20 1. Which would deprive an individual of employment opportuni-
 21 ties; or

22 2. Which would limit employment opportunities or adversely affect
 23 the status of an employee or of an applicant for employment; or

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

25 (4) For an employer labor organization or employment agency to print
 26 or publish or cause to be printed or published a notice or advertisement re-
 27 lating to employment by the employer or membership in or a classification or
 28 referral for employment by the labor organization, or relating to a clas-
 29 sification or referral for employment by an employment agency, indicating
 30 a preference, limitation, specification or discrimination; but a notice or
 31 advertisement may indicate a preference limitation, specification, or dis-
 32 crimination when such is a bona fide occupational qualification for employ-
 33 ment.

34 (5) For a person:

35 (a) To deny an individual the full and equal enjoyment of the goods,
 36 services, facilities, privileges, advantages and accommodations of a
 37 place of public accommodation; or

38 (b) To print, circulate, post, or mail or otherwise cause to be pub-
 39 lished a statement, advertisement or sign which indicates that the full
 40 and equal enjoyment of the goods, services, facilities, privileges, ad-
 41 vantages of a place of public accommodation will be refused, withheld
 42 from, or denied an individual or that an individual's patronage of or
 43 presence at a place of public accommodation is objectionable, unwel-
 44 come, unacceptable, or undesirable.

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

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

1 (b) To impose or apply eligibility criteria that screen out or tend to
 2 screen out an individual with a disability or any class of individuals
 3 with disabilities from fully and equally enjoying any goods, services,
 4 facilities, privileges, advantages or accommodations of a place of pub-
 5 lic accommodation, unless such criteria can be shown to be necessary for
 6 the provision of the goods, services, facilities, privileges, advan-
 7 tages or accommodations being offered;

8 (c) To fail to make reasonable modifications in policies, practices, or
 9 procedures when such modifications are necessary to afford such goods,
 10 services, facilities, privileges, advantages, or accommodations to
 11 individuals with disabilities, unless the entity can demonstrate that
 12 making such modifications would fundamentally alter the nature of such
 13 goods, services, facilities, privileges, advantages or accommoda-
 14 tions;

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

22 (e) To fail to remove architectural barriers and communication barriers
 23 that are structural in nature, in existing facilities and trans-
 24 portation barriers in existing vehicles used by an establishment for
 25 transporting individuals (not including barriers that can ~~only~~ be re-
 26 moved only through retrofitting of vehicles), where such removal is
 27 readily achievable; or

28 (f) Where an entity can demonstrate that the removal of a barrier under
 29 paragraph (e) of this subsection is not readily achievable, to fail to
 30 make such goods, services, facilities, privileges, advantages or ac-
 31 commodatons available through alternative methods, if such methods
 32 are readily achievable.

33 (7) For an educational institution:

34 (a) To exclude, expel, limit, or otherwise discriminate against an in-
 35 dividual seeking admission as a student or an individual enrolled as a
 36 student in the terms, conditions, and privileges of the institution, ~~or~~;
 37

38 (b) To make or use a written or oral inquiry or form of application for
 39 admission that elicits or attempts to elicit information, or to make or
 40 keep a record, of an applicant for admission, except as permitted by the
 41 regulations of the commission;

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

45 (d) To announce or follow a policy of denial or limitation through a
 46 quota or otherwise of educational opportunities of a group or its mem-
 47 bers.

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

50 (a) To refuse to engage in a real estate transaction with a person;

1 (b) To discriminate against a person in the terms, conditions or privi-
 2 leges of a real estate transaction or in the furnishing of facilities or
 3 services in connection therewith τ i

4 (c) To refuse to receive or to fail to transmit a bona fide offer to en-
 5 gage in a real estate transaction from a person τ i

6 (d) To refuse to negotiate a real estate transaction with a person τ i

7 (e) To represent to a person that real property is not available for in-
 8 spection, sale, rental, or lease when in fact it is so available, or to
 9 fail to bring a property listing to his attention, or to refuse to permit
 10 him to inspect real property τ i

11 (f) To print, circulate, post or mail or cause to be so published a
 12 statement, advertisement or sign, or to use a form of application for a
 13 real estate transaction, or to make a record or inquiry in connection
 14 with a prospective real estate transaction τ which indicates, directly
 15 or indirectly, an intent to make a limitation, specification, or dis-
 16 crimination with respect thereto τ i

17 (g) To offer, solicit, accept, use or retain a listing of real property
 18 with the understanding that a person may be discriminated against in a
 19 real estate transaction or in the furnishing of facilities or services
 20 in connection therewith τ i or

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

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

35 (a) To discriminate against the applicant τ ; or

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

40 (10) To insert in a written instrument relating to real property a pro-
 41 vision which purports to forbid or restrict the conveyance, encumbrance, oc-
 42 cupancy or lease thereof τ .

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

45 (a) To represent that a change has occurred or will or may occur in the
 46 composition of the owners or occupants in the block, neighborhood, or
 47 area in which the real property is located τ i or

48 (b) To represent that this change will or may result in the lowering of
 49 property values, an increase in criminal or antisocial behavior, or a

1 decline in the quality of schools in the block, neighborhood, or area in
2 which the real property is located.

3 SECTION 4. An emergency existing therefor, which emergency is hereby
4 declared to exist, this act shall be in full force and effect on and after
5 July 1, 2022.