AASP – Equal Rights Campaign

Legislative Advocacy Affiliate of the American Association for Single People

News Advisory
March 8, 1999

Contact: Catherine J. Coleman
(248) 814-9994 / (248) 540-9563

Republican Lawmakers Launch Assault on Single People in Michigan

Bill to Strip Unmarried Couples of their Civil Rights to be Heard in Lansing Tomorrow (Tuesday)

Representative Bisbee and a group of nine other Republican legislators have introduced a bill (HB 4258) to legalize discrimination against unmarried adults in employment, housing, public accommodations, public services, and education. The bill will be heard in the Constitutional Law and Ethics Committee of the House of Representatives at noon on Tuesday, March 9, 1999.

Under current law, the Elliot Larsen Civil Rights Act prohibits government agencies and private businesses from discriminating against employees, tenants, and consumers on the basis of personal characteristics such as race, religion, sex, disability, and marital status. Over the past 15 years, courts in Michigan have ruled that the term "marital status" not only protects individuals and married couples but also provides protection to unmarried couples.

HB 4258 would strip an unmarried adult of civil rights protections if he or she were to cohabit with a person of the opposite sex. Couples who are legally recognized as "common law" spouses will also be affected by the act since they will not be able to produce a marriage certificate if one is demanded by a business owner. However, in an interesting twist, the "marital status" provisions of the Elliot-Larsen Act would continue to prohibit discrimination against gay and lesbian couples.

Representatives of the American Association for Single People will appear at the hearing to protest this wholesale assault on the civil rights of single people in Michigan. Thomas F. Coleman, executive director and legal counsel of AASP Equal Rights Campaign will testify as an expert witness on marital status discrimination. Catherine J. Coleman, president of the Michigan State Chapter of AASP Equal Rights Campaign will also appear at the hearing.

The Census figures show that more than 3 million unmarried adults live in Michigan, including 350,000 single parents, 300,000 unrelated adults who live together, and thousands of seniors and people with disabilities who cohabit because they would be penalized by pension plans and government benefits programs if they were to legally marry.

Both AASP representatives will make a statement to the press prior to the hearing. They will be available to the media in the hallway outside of the hearing room (room 425 of the Capitol Building) at 11:30 a.m. on Tuesday.

AASP – Equal Rights Campaign
Legislative Advocacy Affiliate of the American Association for Single People

For Immediate Release
March 9, 1999

Contact: Thomas F. Coleman
(248) 224-7806 / (213) 344-9580

SINGLES' RIGHTS LEADERS OPPOSE MEASURE TO STRIP MICHIGAN COUPLES OF THEIR CIVIL RIGHTS

Representatives of the American Association for Single People went to the state capitol today to fight a bill that proposes to repeal civil rights protections for any unmarried adult who decides to live with a person of the opposite sex out of wedlock.

House Bill 4258 was introduced this year by Representative Bisbee and nine other Republican legislators. It is being heard today in the Constitutional Law and Ethics Committee of the House of Representatives.

Under current law, unmarried employees, tenants, and consumers, are protected from marital status discrimination by businesses and government agencies. Courts in Michigan have ruled that the term "marital status" protects individuals who are single, divorced, separated, or widowed, as well as married and unmarried couples. HB 4258 would retain these protections for individuals and for married couples but would legalize discrimination against cohabiting unmarried couples of the opposite-sex. The bill does not legalize marital status discrimination against same-sex couples.

Bisbee is a real estate agent from Jackson. In a housing discrimination case arising out of Jackson, the Michigan Supreme Court ruled last December (*McCready v. Hoffius*) that landlords may not discriminate against unmarried couples. The court said that a landlord's religious objections to unmarried cohabitation is not an excuse to violate the state civil rights law. (Continued)

P.O. Box 65756, Los Angeles, CA 90065 • Phone (323) 344-9580 Fax (323) 258-8099
coleman@singlesRIGHTS.com • www.singlesRIGHTS.com

Under the McCready decision, if a landlord does not live on the rental property and advertises a rental unit to the public, then the landlord must obey the nondiscrimination statutes like everyone else. In effect, the court ruled that a for-profit business owner does not have the right to impose a religious test on others and then refuse to do business with someone who fails that test.

The Bisbee bill is an apparent attempt to reverse the McCready decision, although the court's opinion is not even final. The landlord has asked the court to reconsider its decision and the court has not yet ruled on that request.

"HB 4258 is overkill and very premature," said Thomas F. Coleman, executive director and legal counsel of the American Association for Single People. "The ink has not even dried on the Supreme Court's decision and yet Bisbee and his fellow Republicans are using a meat cleaver to perform delicate constitutional surgery."

"HB 4258 is the most punitive civil rights repeal measure in the country," Coleman added. "This should be a wake-up call to single people throughout the nation. It is time for unmarried adults to stand up, speak out, and fight back."

Bills to curtail the rights of single people have also been introduced this year in Indiana and Arizona. The Indiana measure would restrict the right of single adults to adopt children. There are two punitive measures pending in Arizona. One would forbid local government employers in that state from giving health or other benefits to municipal workers living with an unmarried partner. The other would cut off state funding to any foster home where a single parent is cohabiting with another adult.

(Continued)

Lawsuits have also been filed by lawyers funded by the religious right to cancel domestic partner benefits programs operating in Boston, Broward County (FL) Arlington (VA), Chicago, New York, and several other cities. A federal appeals court recently ruled that "religious" landlords in nine western states, including California, should have the right to evict unmarried couples despite state statutes that forbid marital status discrimination. Attorneys General in seven of the states have asked the court to reverse its decision.

"We are seeing a political movement to punish single people throughout the nation," said Catherine J. Coleman, "but the Bisbee bill in Michigan takes the cake." Catherine Coleman is the president of the Michigan State Chapter of the AASP Equal Rights Campaign. "It will be a sad day in the history of the civil rights movement in Michigan if this bill passes," Ms. Coleman added.

"The only good news is that people tend to participate more in the political process when they are being attacked," Ms. Coleman remarked. "I was in the process of organizing single people in Michigan and inviting them to join AASP when the Bisbee bill hit the political radar screen."

"Mr. Bisbee, you just made my job of recruiting members for the American Association for Single People a heck of a lot easier," Ms. Coleman quipped.

AASP – Equal Rights Campaign

Legislative Advocacy Affiliate of the American Association for Single People

March 9, 1999

State of Michigan
House of Representatives
Committee on Constitutional Law and Ethics

Re: Opposition to HB 4258
An Act to Repeal Civil Rights Protections of Unmarried Adults

Dear Chairman and Committee Members:

The Equal Rights Campaign of the American Association for Single People urges you to vote no on HB 4258.

As you can see from the attached analysis of the bill by Spectrum Institute, HB 4258 will have a negative impact on existing civil rights protections of hundreds of thousands of Michigan residents. The author and cosponsors of the bill may not be aware of just how broad their bill is, or that it would adversely affect thousands of couples living in valid common law marriages.

The purpose of AASP — Equal Rights Campaign is to protect the rights of single people and domestic partners with or without children. We are shocked that Republican legislators would attempt to strip unmarried adults of their civil rights if they choose to live with a person of the opposite sex out of wedlock.

Perhaps these legislators do not realize that HB 4258 will harm the majority of adults in Michigan. Reliable studies show that a majority of adults will cohabit at one time or another. Cohabitation is now an ordinary part of the marital decision-making process for most adults, and it is an ongoing family structure for many others.

Although there are probably some Democrats and Republicans who are willing to impose their personal religious beliefs on the entire population of Michigan, we trust that moderate legislators of both parties support the principle of separation of church and state and will oppose HB 4258.

Respectfully submitted:

Thomas F. Coleman

THOMAS F. COLEMAN
Executive Director and Legal Counsel

P.O. Box 65756, Los Angeles, CA 90065 • Phone (323) 344-9580 Fax (323) 258-8099
coleman@singlesRIGHTS.com • www.singlesRIGHTS.com

HOUSE BILL 4258

Analysis by Spectrum Institute[1]

Current Law

The Elliot Larsen Civil Rights Act prohibits discrimination in employment, housing, public accommodations, public services, and education. The act forbids businesses from discriminating against employees, tenants, and consumers on the basis of personal characteristics such as race, religion, color, sex, disability, and marital status.

The term "marital status" was interpreted in 1983 to protect unmarried couples from discrimination. *Whitman v. Mercy Memorial Hospital*, 128 Mich.App. 155, 339 N.W.2d 730 (1983). Thus, for more than 15 years, an unmarried man and woman have had the right to live together without fear of losing their civil rights.

In 1988, the Court of Appeals ruled that a divorced parent does not forfeit his civil right to visitation with his child merely because the parent is cohabiting with a person of the opposite sex. *Snyder v. Snyder*, 170 Mich.App. 801, 429 N.W.2d 234 (1988). The fact that the custodial parent believes that such cohabitation is "immoral" does not override the cohabiting parent's civil rights.

The Michigan Supreme Court recently reaffirmed this longstanding rule of law that the civil rights of cohabiting couples are protected from discrimination. *McCready v. Hoffius*, 459 Mich. 131, 586 N.W.2d 723 (1998).

Demographics

According to the 1990 Census figures, about 3 million unmarried adults live in Michigan. Single, divorced, and widowed persons account for more than 40% of the adult population in the state.

Over 800,000 of these unmarried persons live alone. Nearly 300,000 of the multiple-person households in the state contain one or more unrelated persons.

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[1]Spectrum Institute is the research and policy division of the American Association for Single People.

More than 66% of unmarried couples are persons of the opposite-sex. Nearly 40% of these male-female unmarried couples are raising children.

More than 350,000 households are comprised of a single parent raising his or her minor children.

Nearly 16,000 seniors in Michigan are living together out of wedlock.

About 45% of the households in Michigan do not contain a married couple.

The University of Wisconsin Center for Demography and Ecology reports that more than half of the people who have married in recent years cohabited together beforehand. According to Professor Larry Bumpass who heads the nationally renowned Wisconsin Center and who is the nations' leading authority on the subject of unmarried cohabitation, the majority of people who marry now cohabit together beforehand. Bumpass has concluded that cohabitation is now an integral part of the marital decision-making process for most people.

Effects of HB 4258

House Bill 4258 would redefine the term "marital status" in section 103 of the Elliott-Larsen Civil Rights Act. Section 103 is the definitional section of the Act and governs all of its provisions.

Currently, the term "marital status" includes the status of individuals as married, separated, divorced, widowed, or single. It also includes the status of couples as cohabitants.

HB 4258 would redefine the term "marital status" to exclude a man and a woman who are cohabiting. Unmarried individuals who are not cohabiting in an opposite-sex relationship and married couples would remain covered by the term "marital status."

Since the definitions in section 103 govern all provisions in the Act, the new definition of "marital status" would affect the sections providing civil rights protections in employment, housing, public accommodations, public services, and education.

Employment

Under current law, an employer may not discriminate on the basis of marital status. Since existing law protects unmarried cohabiting couples from discrimination, an employer may not currently refuse to hire an applicant because he or she is cohabiting with a person of the opposite sex outside of wedlock. HB 4258 would authorize such discrimination.

Under current law, an employer may not fire an employee when the employer learns that the employee is cohabiting out of wedlock. If enacted, HB 4258 would authorize the employer to terminate an employee who is cohabiting.

Under current law, an employer may not refuse to promote an otherwise qualified employee merely because the employee is cohabiting out of wedlock. If enacted, HB 4258 would allow an employer to impose employment policies that preclude cohabiting employees from getting a promotion.

Housing

Under current law, a landlord may not refuse to rent to unmarried cohabiting couples. If HB 4258 is enacted, housing discrimination against such couples would be allowed. For example, if the owner of a 100 unit apartment building (who had no objection to unmarried cohabitation) were to sell the building, the new owner could tell unmarried renters either to get rid of their unmarried partners or vacate the premises. The fact that many of these couples may have children in the household would make no difference. As a result, children also would be victimized when landlords refuse to rent to, or decide to evict, unmarried couples.

Under current law, marital status discrimination is illegal in the sale of housing. As a result, sellers, brokers, and real estate agents are prohibited from discriminating against unmarried cohabiting couples. HB 4258 would change that and would authorize such discrimination in real estate transactions.

Public Accommodations

Under current law, businesses may not discriminate against unmarried consumers who are cohabiting out of wedlock.

For example, a hospital may not impose restrictions on an unmarried patient who is cohabiting out of wedlock if such restrictions are not imposed on a married patient. In *Whitman v. Mercy Memorial Hospital, supra*, the Court of Appeal ruled that it was a violation of the Elliot-Larsen Act when a hospital refused to allow an unmarried man to be present in the delivery room for the birth of his child despite the fact that the birth mother wanted her partner to participate in the delivery process. HB 4258 would reverse the *Whitman* decision and would legalize such discrimination.

HB 4258 would allow all other public accommodations to refuse to do business with unmarried cohabiting couples or to impose restrictions on such unmarried consumers that are not imposed on married couples.

Education and Public Services

Because of the sweeping nature of HB 4258, unmarried cohabiting couples could be discriminated against by educational institutions or by government agencies in the delivery of public services.

Same-Sex Couples

Gay and lesbian couples may not legally marry in Michigan. Furthermore, due to the enactment of the Defense of Marriage Act last year, even if another state were to legalize same-sex marriages there, Michigan would not recognize such a marriage. As a result, two people of the same sex could never be considered as a "husband and wife" or "lawfully married" under Michigan law unless the Defense of Marriage Act were repealed or declared unconstitutional.

The current protections of the "marital status" provisions of the Elliott-Larsen Act apply to any two people of either sex, whether married or not. The only class of people who would be excluded from the civil rights protections of current law, if HB 4258 were enacted, would be two people of the opposite sex who are cohabiting together. As a result, if HB 4258 were to become law, two people of the same sex who are living together would continue be protected from marital status discrimination while two people of the opposite sex who are cohabiting would not be protected.

Effect on Married Couples

Prior to 1957, Michigan recognized common law marriages as valid. A common law marriage is a relationship between a man and a woman who are cohabiting as man and wife even though they have not participated in a religious or civil marriage ceremony. Common law spouses were entitled to the same legal rights and protections as couples who had a ceremonial marriage. *Grammas v. Kettle*, 306 Mich. 308, 10 N.W.2d 895 (1943).

The Michigan Legislature abolished common law marriage in 1957. MCLA 551.2, MSA 25.2. However, common law marriages that were entered into in Michigan prior to 1957 remain valid after that date.

Also, under Michigan law, if a couple has legally entered into a common law marriage in another state that recognizes such marriages (and 12 states still do), if the couple moves to Michigan or visits Michigan, their common law marriage remains valid in this state. *In re Brack's Estate*, 121 Mich.App. 585, 329 N.W.2d 432 (1982).

As a result, there are thousands of couples in Michigan who are common law spouses and whose marriages are legally valid even though they do not have a marriage certificate to prove they are married. The civil rights of these married couples are placed in jeopardy by HR 4258.

Business owners who wish to discriminate against unmarried cohabiting couples may choose to demand that an employee, tenant, or consumer provide proof of the marriage. Those who have a marriage certificate issued by the state will have such proof. Married couples who are common law spouses will not have a formal certificate to authenticate the validity of their marriage. As a result, they may suffer discrimination in employment, housing, public accommodations, public services, or education even though they are legally married.

Conclusion

If enacted, HB 4258 would strip 3 million unmarried adults in Michigan of their civil rights protections if they were to cohabit out of wedlock. HB 4258 would require unmarried adults to choose between cohabitation and civil rights protections. If they choose cohabitation, then business owners and government agencies would be permitted to discriminate against cohabiting opposite-sex couples and their children.

HB 4258 also would adversely affect thousands of seniors and people with disabilities who often cohabit rather than marry due to the "marriage penalties" built into pension plans and government benefits programs.

HB 4258 would also penalize the majority of adults in Michigan who have chosen to cohabit as a part of the marital decision-making process.

If HB 4258 were enacted, the only unmarried couples who would continue to be protected by the marital status provisions of the Elliot-Larsen Civil Rights Act would be gay and lesbian domestic partners.

Dated: March 8, 1999

Prepared by:

Spectrum Institute
Research and Policy Division
American Association for Single People

AASP – Equal Rights Campaign

Legislative Advocacy Affiliate of the American Association for Single People

To: Catherine Coleman
President, Michigan State Chapter
AASP Equal Rights Campaign

From: Thomas F. Coleman
National Executive Director

Re: Letters to Representative Michael Bishop
opposing House Bill 4258

Date: March 10, 1999

We need to generate phone calls and letters to Representative Michael Bishop. He is the chairman of the House Committee on Constitutional Law and Ethics. Bishop is a Republican from Rochester.

As you know, HB 4258 would repeal existing civil rights protections for millions of unmarried adults in Michigan during any period of time that they are living with any other person to whom they are not legally married. Since most adults will live with another unmarried adult at one point or another during their lives (even if only for a few months or a few years), this bill will adversely affect the majority of adults in Michigan.

Bishop controls the committee in which this bill is pending. He needs to hear from people who live in Rochester who tell him that they oppose this bill. He needs to hear from married people as well as singles and unmarried couples. He needs to hear from Republicans, Independents, and Democrats.

It would be most effective if people who contact his office are also members of AASP. That is not essential but it would be even better. People can say they are members of AASP even though they have not officially joined yet, so long as they send me or you a check for $10, made payable to AASP, within a week or so.

Bishop's phone number in Lansing is (517) 373-1773. Please get his local address and phone number and fax number and pass it along to anyone you know in Rochester. Ask them to write AND call AND fax him if they can do all three. They should tell him that they live in Rochester and that they oppose HB 4258.

(Continued on next page)

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[illegible]

P.O. Box [illegible], Los Angeles, CA [illegible] - Phone (323) [illegible] Fax (323) [illegible]
[illegible]@singleRIGHTS.com • www.singleRIGHTS.com

If they are married, they should tell his office staff that and say that even though they are not single they still support equal rights for singles and unmarried couples. They should tell Bishop they are very upset that he would be part of a movement to strip any citizen of their civil rights. They should tell him that if he continues to support this bill, they will remember his punitive action when he is up for reelection. If they are willing to join AASP and will send us a check soon (even if they are married they can be a member and support civil rights of singles), they should tell his office that they are members of AASP.

We need to act soon. Calls and letters (best by fax because of the deadline) should be made by MONDAY, March 15 (my birthday). If they write or fax him, they should send a copy of the fax to my office at (323) 258-8099.

It is critical that this bill be killed in committee. All we have to do is convince one republican member of the committee to abstain from voting and we win! Letters from even a dozen people in Rochester could be all that is necessary to preserve the civil rights of single people in Michigan.

Again, the key points that should be raised in the fax and phone call to Bishop:

* I live or work in Rochester.

* I oppose HB 4258.

* I oppose discrimination, and this bill would legalize discrimination against single people.

* Business owners are entitled to their personal religious views, but they should not be imposing them on tenants, employees, or consumers.

* I support the right of privacy and it is nobody's business what goes on behind closed doors.

* If the caller is married, say that you are but that you have friends, family members, neighbors, and coworkers who are single or unmarried couples and you support their civil rights.

* If Bishop supports this bill, you will remember his punitive action when he is up for reelection.

* If the caller is willing to send us $10 and join AASP in the next week or so, tell Bishop that you are a member of AASP.

Cathy, I would like to thank all of our family members and friends and acquaintances for their support. I hope people care enough about equal rights to take a few minutes to make the call and send the fax to Bishop.

The Muskegon Chronicle

MARCH 10, 1999

Bill would let landlords bar unwed couples

Currently, landlords can't discriminate against potential renters based on marital status.

By Judy Putnam
CHRONICLE LANSING BUREAU

LANSING - When landlord John Hoffius refused to rent to an unwed couple, he was sued under a state law prohibiting discrimination based on marital status.

Hoffius believes living out of wedlock is a sin, and renting to such couples violated his religious beliefs. The Michigan Supreme Court ruled against him in December.

So on Tuesday, a legislative committee took up a proposed bill to get around that ruling.

It's being criticized as an all-out attack on the unmarried.

"This is the worst assault on rights of single people I have ever seen in America," California attorney Thomas Coleman told the House Constitutional Law and Ethics Committee Tuesday.

Coleman, a Michigan native who specializes in discrimination based on marital status, recently founded a national group, American Association for Single People. He says it will do for single adults what AARP has done for seniors.

The committee heard heated debate on a bill by Rep. Clark Bisbee, R-Jackson, who said his bill would allow landlords to turn away co-habitating couples if it violates their religious beliefs. Landlords shouldn't be required to rent if they "have to go against religion on a business deal," Bisbee said.

But critics argued the bill is more sweeping than that.

It would change the definition of "marital status" to eliminate protection for live-in couples from the entire 1976 Elliott-Larsen Civil Rights Act, including protection from discrimination in jobs and public accommodations.

Coleman said Bisbee's bill is so broad it would even overturn a 1983 Michigan court decision allowing unmarried fathers into the hospital delivery rooms.

But Hoffius told the committee it was important to him not to lease to unwed couples. He rents out three duplexes and one house in Jackson.

"How can I teach moral values to my child then turn around and accept money from someone who is doing something contrary to our beliefs?" Hoffius asked the committee.

"We're not trying to force our beliefs on anyone, but at the same time I would hope that immoral conduct would not be forced on us."

He teaches Sunday School at the Michigan Center Bible Church, a nondenominational Bible-based church.

Attorney James Fleming of Jackson, who represented Kristal McCready and Keith Kerr, the unmarried couple seeking to rent from Hoffius, argued that those with such religious beliefs shouldn't become landlords.

"What are they doing in the business anyway?" Fleming said.

Committee Chairman Mike Bishop, R-Rochester, said he hopes to better define the issue before passing it out of committee. But, he said, anti-discrimination laws should not protect live-in partners, period.

But Rep. Liz Brater, D-Ann Arbor, said eliminating them from the act is a mistake.

"It's a very frightening bill to me, just to start eroding the Elliott-Larsen Act. If you take away the rights of one class of people, where does it stop?" she said.

Detroit Free Press

Wednesday
March 10, 1999

HOUSE DIVIDED

Bill changes definition of marital status

Measure would allow landlords to exclude unmarried tenants. But foes say it would violate people's rights. Page 3B.

REGIONAL NEWS

House debates redefining 'marital status'

Critics say bill would erode rights; sponsor may alter it

BY CHRIS CHRISTOFF
Lansing Bureau Chief

LANSING — Supporters call it a legal remedy for landlords who want to follow their religious convictions and deny housing to unmarried couples.

But critics say a House bill would strip single people who live together of protection against discrimination.

The proposed bill pits civil rights advocates against those who say state protections against bias based on race, religion, age, national origin, sex, height and weight shouldn't include protections for cohabitating couples.

The bill, debated Tuesday before a House committee, was drafted by Rep. Clark Bisbee, R-Jackson.

It was a response to a state Supreme Court ruling last December that a Jackson apartment owner violated Michigan's civil rights laws by refusing to rent to two unmarried couples.

The landlord, John Hoffius, said cohabitation defies biblical teachings against unmarried men and women living together. Hoffius said renting to unmarried couples would violate his religious beliefs.

The Supreme Court majority ruled that the state's Elliott-Larsen Act of 1976 prohibits discrimination based on marital status, which the court said applies to unmarried couples.

The court ruled that personal religious beliefs are overridden by the need to eradicate discrimination in housing.

"This ruling goes beyond the intent of the civil rights act. This tramples over the rights of landlords throughout the state," Bisbee told the House Constitutional Law and Ethics Committee.

Bisbee's bill would change the definition of "marital status" in the state's civil rights law to eliminate unmarried couples.

Said Hoffius: "We are not trying to force our beliefs on anyone. On the other hand, I would hope someone's immoral conduct could not be forced upon me and my family."

Thomas Coleman, executive director of the American Association for Single People, said that Bisbee's bill would affect about three million Michiganders.

Coleman said the new definition of marital status would apply to all other civil rights protections. He said the change would strip away protections unmarried couples have in their jobs, in schools and access to public services.

"This is the worst assault on the rights of single people I have seen in the entire United States," Coleman said. "It's using a meat cleaver to perform constitutional surgery."

Coleman said Bisbee's bill would eliminate civil rights protections for common-law couples who are considered legally married by the state but have no marriage certificate.

The bill would be used to discriminate against gay and lesbian couples, said Jeff Montgomery, acting executive director of the Triangle Foundation's Michigan chapter, a gay rights organization.

The committee plans to meet again to discuss the bill next week. Bisbee said he will consider revising the bill.

"We kind of got beat up in there," he said after Tuesday's meeting. "We've got another week to look at it to see what we need to do next."

Chris Christoff can be reached at 1-517-372-8660.

freep/news/michigan

House debates redefining 'marital status'

Critics say bill would erode rights; sponsor may alter it

March 10, 1999

BY CHRIS CHRISTOFF
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TO BE HEARD

House Bill 4258 would change the definition of "marital status" in the state civil rights law; protections against discrimination would no longer apply to cohabitating singles.

To express your view, call the bill's sponsor, Rep. Clark Bisbee, R-Jackson, at 1-517-373-1795; Rep. Michael Bishop, R-Rochester, chairman of the constitutional committee, at 1517-373-1773 or vice chairman Rep. Ed Vaughn, D-Detroit, 1-517-373-1008.

It was a response to a state Supreme Court ruling last December that a Jackson apartment owner violated Michigan's civil rights laws by refusing to rent to two unmarried couples.

The landlord, John Hoffius, said cohabitation

Delay = Victory!

At least for now.

Work to be done on Bishop in Rochester!

Need faxes + calls to Bishop

defies biblical teachings against unmarried men and women living together. Hoffius said renting to unmarried couples would violate his religious beliefs.

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House
Legislative
Analysis
Section

Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

NO CIVIL RIGHTS PROTECTION FOR UNMARRIED COUPLES

House Bill 4258
Sponsor: Rep. Clark Bisbee
Committee: Constitutional Law and Ethics

Complete to 3-8-99

A SUMMARY OF HOUSE BILL 4258 AS INTRODUCED 2-11-99

The bill would amend the Elliott-Larsen Civil Rights Act to add definitions of "martial status" and "cohabiting," thereby prohibiting civil rights protection under the act for unmarried couples who lived together "as husband and wife." The bill would define "cohabiting" to mean "living together as husband and wife without being lawfully married," and "marital status" to mean "being lawfully married" or "being unmarried and not cohabiting with another person."

MCL 37.2103

Analyst: S. Ekstrom

HOUSE BILL No. 4258

February 11, 1999, Introduced by Reps. Bisbee, Gilbert, Hager, Garcia, Patterson, Julian, Tabor, Sanborn, Pappageorge and Jansen and referred to the Committee on Constitutional Law and Ethics.

A bill to amend 1976 PA 453, entitled

"Elliott-Larsen civil rights act,"

by amending section 103 (MCL 37.2103), as amended by 1992 PA 124.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 103. As used in this act:

(a) "Age" means chronological age except as otherwise provided by law.

(B) "COHABITING" MEANS LIVING TOGETHER AS HUSBAND AND WIFE WITHOUT BEING LAWFULLY MARRIED.

(C) ~~(b)~~ "Commission" means the civil rights commission established by section 29 of article ~~5~~ V of the state constitution of 1963.

(D) ~~(c)~~ "Commissioner" means a member of the commission.

HOUSE BILL No. 4258

(E) ~~(d)~~ "Department" means the department of civil rights or its employees.

(F) ~~(e)~~ "Familial status" means 1 or more individuals under the age of 18 residing with a parent or other person having custody or in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For purposes of this definition, "parent" includes a person who is pregnant.

(G) "MARITAL STATUS" MEANS EITHER OF THE FOLLOWING:

(*i*) BEING LAWFULLY MARRIED.

(*ii*) BEING UNMARRIED AND NOT COHABITING WITH ANOTHER PERSON.

(H) ~~(f)~~ "National origin" includes the national origin of an ancestor.

(I) ~~(g)~~ "Person" means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, the state or a political subdivision of the state or an agency of the state, or any other legal or commercial entity.

(J) ~~(h)~~ "Political subdivision" means a county, city, village, township, school district, or special district or authority of the state.

(K) ~~(i)~~ Discrimination because of sex includes sexual harassment which means unwelcome sexual advances, requests for

sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

(*i*) Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing.

(*ii*) Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or public services, education, or housing.

(*iii*) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

MICHIGAN
HOUSE OF REPRESENTATIVES
P.O. Box 30014
LANSING, MICHIGAN 48909-7514

Notices

STANDING COMMITTEE MEETING

Committee on CONSTITUTIONAL LAW AND ETHICS

Date: **Tuesday, March 9, 1999**

Time: **12:00 Noon**

Place: **425 - 426 Sate Capitol Building, Lansing**

Rep. Bishop, Chair

Agenda:

HB 4026	Shackleton	CAMPAIGN FINANCE; STATEMENTS AND REPORTS; PRESERVATION OF CAMPAIGN STATEMENTS AND REPORTS BY FILING OFFICIALS; REVISE LENGTH OF TIME. (Substitute H-2 adopted 3- 2-99)
HB 4258	Bisbee	CIVIL RIGHTS; MARITAL DISCRIMINATION; CIVIL RIGHTS PROTECTION TO UNMARRIED COUPLES; PROHIBIT.

AND ANY/OR ALL BUSINESS PROPERLY BEFORE THIS COMMITTEE.

Individuals who wish to bring written testimony need to supply a minimum of thirty copies for distribution.

Handicapped individuals needing special services to participate in the meeting may contact the Chair requesting the necessary assistance.

Mary G Dove, Committee Clerk
Committee on Constitutional Law and Ethics
Phone: (517) 373-1743
Date mailed: 3-4-99 @ 5 p.m.

To check on schedule changes or cancellations, please call 24-hour number (517) 373-8140, Option 3.

64TH DISTRICT
911 ROMNEY BUILDING
STATE CAPITOL
LANSING, MICHIGAN 48913
PHONE: (517) 373-1795
FAX: (517) 373-5175

HOUSE OF REPRESENTATIVES
STATE OF MICHIGAN

CLARK BISBEE

COMMITTEES:
INSURANCE AND FINANCIAL SERVICES, VICE CHAIR
ENERGY AND TECHNOLOGY
GREAT LAKES AND TOURISM
ECONOMIC DEVELOPMENT

STATEMENT OF INTENT: HB 4258

The Michigan Supreme Court in 1998 created new 'civil right' in Michigan by extending civil rights protection to cohabitating, unmarried couples. The ruling was from a case in Jackson where a landlord did not want to rent to an unmarried couple. The couple sued, lost in two circuit courts in Jackson, lost in the Court of Appeals, but won on a 4-2 Michigan Supreme Court decision.

This bill to amends the Elliot-Larsen Civil Rights Act to correct this ambiguity in the law. It defines 'cohabitating' and 'martial status' to prevent unmarried, cohabitation protection under the Civil Rights Act.

CLARK E. BISBEE
STATE REPRESENTATIVE

① AASP-ERC — national / Mich chapter 1960

② Purpose of AASP-ERC single + OP w/wo child

③ Oppose HB 5058 (all civil rights)

④ 25 years experience in MS DIS LAW

⑤ Filed Brief in Mich Sup. Ct in McCready v Hoffius

⑥ Wonder if (all) co-Authors are aware of Rank of the Dissent ALLC (most punitive in USA)

⑦ HANDOUT Cover letter, Analysis + info on AASP's Res + Pol on Spec Inst.

⑧ STATEMENT of INTENT. — INCORRECT ASSUMPTIONS
New civil right

⑨ We are shocked THAT some legislators would strip 3 million unmarried adults of EXISTING civil rights Protections

CURRENT LAW — Wisconsin 1983
Snyder 1988
McCready 1998

Demographics — 3 million unmarried / Hundreds of Thousands of cohabiting
MOST ADULTS cohabit AT some time

EFFECTS — Employment, Housing (leads), Hospitals, whitman / Marriage Counsel Analysis IS BOGUS
✓ Common law married couples / Same sex couples

SUBSTITUTE FOR

HOUSE BILL NO. 4258

A bill to amend 1976 PA 453, entitled

"Elliott-Larsen civil rights act,"

by amending section 103 (MCL 37.2103), as amended by 1992 PA 124.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 103. As used in this act:

(a) "Age" means chronological age except as otherwise provided by law.

(b) "Commission" means the civil rights commission established by section 29 of article ~~5~~ V of the state constitution of 1963.

(c) "Commissioner" means a member of the commission.

(d) "Department" means the department of civil rights or its employees.

(e) "Familial status" means 1 or more individuals under the age of 18 residing with a parent or other person having custody or in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For purposes of this definition, "parent" includes a person who is pregnant.

(F) "MARITAL STATUS" MEANS AN INDIVIDUAL'S CONDITION OF BEING SINGLE, LAWFULLY MARRIED, WIDOWED, DIVORCED, OR SEPARATED, BUT DOES NOT INCLUDE THE INDIVIDUAL'S CONDUCT OF LIVING WITH ANOTHER INDIVIDUAL TO WHOM HE OR SHE IS NOT LAWFULLY MARRIED.

(G) ~~(f)~~ "National origin" includes the national origin of an ancestor.

(H) ~~(g)~~ "Person" means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, the state or a political subdivision of the state or an agency of the state, or any other legal or commercial entity.

(I) ~~(h)~~ "Political subdivision" means a county, city, village, township, school district, or special district or authority of the state.

(J) ~~(i)~~ Discrimination because of sex includes sexual harassment which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

(e) "Familial status" means 1 or more individuals under the age of 18 residing with a parent or other person having custody or in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For purposes of this definition, "parent" includes a person who is pregnant.

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(*ii*) Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or public services, education, or housing.

(*iii*) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

National Organization for Women
Michigan Conference
Post Office Box 18063
Lansing, Michigan 48901
(517) 485-9687
FAX (517) 485-5808

Testimony Before
the House Committee On Constitutional Law and Ethics Opposing HB 4258
Presented by Alicia Perez-Banuet, President,
Michigan Conference - National Organization For Women (MI-NOW)

March 9, 1999

Good Morning, Representative Bishop and members of the House Committee On Constitutional Law and Ethics. Because I am unable to appear before you today, I appreciate your consideration of these written comments. MI-NOW was formed in 1969, and has more 250,000 members nationwide, and over 5,000 members in the state of Michigan.

We are here today to express our strong opposition to HB 4258, a bill which would amend Michigan's Elliott-Larsen Civil Rights Act definition of "marital status" in order to exclude individuals in heterosexual relationships the protection of the act if "cohabitating," which the bill defines as "living together as husband and wife without being lawfully married."

This bill, if passed into law, would allow employers, municipalities, educational institutions, public and private entities, and landlords to lawfully discriminate against individuals of the opposite sex who live together.

If passed, HB 4258 would:
allow a landlord to evict tenants, despite an existing rental agreement, who live together with children;
allow banks and other lending institutions to deny unmarried couples an application for mortgage or other financing; and
allow employers to terminate or refuse to hire an individual based upon his or her living arrangement.

MI NOW believes that HB 4258:
is an unprecedented and unwarranted intrusion of the State into the privacy of individuals;
breaches the separation of church and state, and conflicts with any number of federal laws, including the Fair Housing Lending Act; and
gives landlords, employers, and public and private institutions a "pretext" to discriminate against individuals of color or other protective classification.

We urge you to vote "NO" on HB 4258. Thank you for your again for your attention to my comments today. If you have any questions or concerns, please do not hesitate to contact me at (313) 966-2727.

420 Mich. 148, *; 362 N.W.2d 580, **;
1984 Mich. LEXIS 1282, ***; 11 Media L. Rep. 1337

In re Midland Publishing Company, Inc

Docket No. 68862

Supreme Court of Michigan

420 Mich. 148; 362 N.W.2d 580; 1984 Mich. LEXIS 1282; 11 Media L. Rep. 1337

January 4, 1984, Argued December 28, 1984, Decided January 9, 1985, Released

DISPOSITION: Affirmed.

CORE TERMS: right of access, suppression, common-law, First Amendment, constitutional right, common law, pretrial, Sixth Amendment, closure, prior restraint...

OPINION:

... [*153] [**583] [***3] Hospital Authority, 380 Mich 49, 55-56; 155 NW2d 835 (1968); Lafayette Dramatic Productions, Inc v Ferentz, 305 Mich 193, 218; 9 NW2d 57 (1943); Whitman v Mercy-Memorial Hospital, 128 Mich App 155, 158; 339 NW2d 730 (1983); Colombini v Dep't of Social Services, 93 Mich App 157, 161-162; 286 NW2d 77 (1979); ...

FOCUS| Save As ECLIPSE

128 Mich. App. 155, *; 339 N.W.2d 730, **;
1983 Mich. App. LEXIS 3225, ***
KAREN E. WHITMAN and EDWARD T. COCH, Plaintiffs-Appellants, v. MERCY-MEMORIAL HOSPITAL, Defendant-Appellee, v. DEPARTMENT OF CIVIL RIGHTS, Intervenor

Docket No. 64459

Court of Appeals of Michigan

128 Mich. App. 155; 339 N.W.2d 730; 1983 Mich. App. LEXIS 3225

February 18, 1983, Submitted
August 16, 1983, Decided

DISPOSITION: [***1]

Reversed.

CORE TERMS: delivery room, delivery, recur, birth, Elliott-Larsen Civil Rights Act, immediate family, attending physician, nonmedical, moot, baby, mootness, fiscal, marital status, unmarried, patient, married, social services, rendered moot, distinguishable, injunctive relief, likely to recur, result reached, discretionary, accommodation, preparation, anesthetist, excluding, nurse, phases

COUNSEL: Terrence P. Bronson, for plaintiffs.

Kitch, Suhrheinrich, Smith, Saurbier & Drutchas, P.C. (by Gregory G. Drutchas and Anthony A. Muraski), for defendant.

Frank J. Kelley, Attorney General, Louis J. Caruso, Solicitor General, and Michael A. Lockman, Assistant Attorney General, for the Michigan Department of Civil Rights.

JUDGES: B. B. MacKenzie, P.J., and S. J. Bronson and H. Hood, JJ. MacKenzie, P.J., concurred. Bronson, J. (dissenting).

OPINIONBY: HOOD

OPINION: [*157] [**731] Plaintiffs appeal from a denial by the trial court of an injunction which would have ordered defendant hospital to allow the presence of plaintiff Coch in the delivery room during the birth of his and plaintiff Karen Whitman's child. Since the relief sought has been rendered moot by the subsequent birth of the child, a review of the facts and the proceedings is instructive as to why the Court chooses to deal with the issue presented.

Plaintiffs filed in May, 1982, a petition seeking injunctive relief, asking that defendant hospital be

prohibited from excluding plaintiff Coch from its delivery room during the birth of a child expected on or about May 22, 1982, [***2] by plaintiff Whitman. Coch was the acknowledged father of the expected child. Although the plaintiffs were not married, Coch resided with Whitman and her son from a prior marriage and supported them, and the plaintiffs considered themselves "a family unit".

Plaintiffs had attended a natural childbirth course together and had received the attending physician's permission for Coch's presence during [*158] Whitman's labor and delivery at defendant hospital, which was the only hospital in Monroe County equipped for the delivery of babies. The hospital refused to permit Coch's presence in the delivery room because he was not a husband nor a member of Whitman's "immediate family". The hospital relied upon its written policy that limits a delivering mother to one nonmedical support person who must be a member of the mother's immediate family. Plaintiffs claim that the hospital's action and policy violate the Elliott-Larsen Civil Rights Act, 1976 PA 543; MCL 37.2101 et seq.; MSA 3.548(101) et seq.

The trial judge, after a hearing, denied plaintiffs' request for injunctive relief and dismissed their action. A panel of this Court then granted plaintiffs leave to appeal, [***3] and entered an order prohibiting defendant hospital from enforcing, as to plaintiffs, its policy of excluding any but the patient's "immediate family".

Plaintiffs' child, a baby girl, was born by Caesarean section at the University of Michigan Women's Hospital in Ann Arbor, Michigan, on June 30, 1982. Plaintiff Coch was present in the delivery room. Thus, while this dispute is, as has been indicated, technically moot, the issue involved is of public significance and likely to recur in the future. We therefore conclude that it should be decided by this Court. Colombini v Dep't of Social Services, 93 Mich App 157, 161; 286 NW2d 77 (1979).

[**732] The defendant's policy states that an "authorized participant" may be present in the delivery room only under the following conditions:

"A. The mother to give birth requests to have the authorized participant present during the delivery;

[*159] "B. The attending physician consents to the authorized participant's presence during delivery after satisfying himself/herself that preparation of the authorized participant is adequate;

"C. Admission of the authorized participant to the delivery room will only be considered when [***4] the mother is going to be awake; that is, the mother will be receiving, for the delivery, a local, spinal, epidural or caudal anesthetic and will not be in an unconscious or uncommunicative state due to medications or otherse;

"D. The authorized participant will leave the delivery room at the request of attending physician, anesthetist or nurse when in the judgment of the attending physician, anesthetist or nurse the presence of the authorized participant is or would be contrary to the best interest, welfare, safety or privacy of the mother, baby or other patient(s);

"E. The authorized participant may not enter the Delivery Room before the attending physician;

"F. While in the Delivery Room, the authorized participant will wear clothing which conforms to that worn by professional people in the room and will remain seated at the head of the delivery table;

"G. The authorized participant requests to be present in the Delivery Room by means of formal Request To Be Present for Birth-Acknowledgement and Assumption of Responsibility.

"H. The authorized participant will submit written evidence that he/she has completed an approved prenatal childbirth preparation course with the mother." [***5]

The defendant's policy also defines an authorized participant as "a husband or a member of the immediate family of the mother giving birth". In the "Request To Be Present" form which each "authorized participant" must submit, he or she must agree to:

"Assume all responsibility and risk for any adverse mental, emotional and/or physical effects which may result that in any manner arise from my presence and [*160] observations in the Delivery Room for the contemplated birth."

The request must be signed by the "participant" and the mother's attending physician.

Plaintiffs met each and every one of the defendant's requirements, except that Coch was not Whitman's husband or a member of her "immediate family". Therefore, the question we must answer is whether the hospital's policy as applied to Coch was impermissibly discriminatory. We conclude that it was.

The Elliott-Larsen Civil Rights Act provides that:

"Except where permitted by law, a person shall not:

"(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of * * * marital status." [***6] MCL 37.2302(a); MSA 3.548(302)(2).

A "place of public accommodation" includes a health institution "whose * * * services are offered * * * or * * * made available to the public". MCL 37.2301; MSA 3.548(301). Had plaintiffs Whitman and Coch been married to one another, it is clear that under defendant's policy Coch would have been permitted into the delivery room as Whitman's nonmedical support person. Therefore, defendant's policy clearly violated the above statutory provision against discrimination on the basis of marital status.

We also reject the defendant's argument that its policy is protected by the Public Health Code, § 21513, MCL 333.21513(a); MSA 14.15(21513)(a), which makes the hospital's governing body "responsible for all phases of the operation of [**733] the [*161] hospital * * * and quality of

care rendered in the hospital". MCL 333.21511; MSA 14.15(21511) provides that each hospital must be licensed under the code, and MCL 333.20152; MSA 14.15(20152) provides that each licensee should certify to the Department of Health as a part of its application that "[all] phases of its operation * * * comply with state * * * laws prohibiting discrimination". [***7] It is therefore clear that hospitals are not exempted from the mandates of the Elliott-Larsen Civil Rights Act.

Defendant also argues that the decision regarding whom to permit into the hospital's delivery rooms is a discretionary medical one and the limitations it has established, although they exclude the unmarried fathers of delivered children, are rationally related to medical goals.

There is indeed authority for the proposition that a hospital's policy regarding nonmedical support persons in delivery rooms is purely discretionary and involves no constitutional rights. See Fitzgerald v Porter Memorial Hospital, 523 F2d 716 (CA 7, 1975), cert den 425 U.S. 916; 96 S Ct 1518; 47 L Ed 2d 768 (1976); Hulit v St Vincent's Hospital, 164 Mont 168; 520 P2d 99 (1974). Defendant, however, unlike the hospitals involved in Fitzgerald and Hulit, has not excluded all nonmedical support persons. It has determined that each maternity patient may have one nonmedical person to support her during labor and delivery. Having established such a policy, defendant must administer the program in a nondiscriminatory manner.

We also reject defendant's assertion that its policy does [***8] not in fact discriminate on the basis of marital status because married persons and unmarried persons alike may only be accompanied by a relative. This argument completely ignores [*162] the fact that a married woman has one relative that no unmarried woman has: a husband.

Finally, defendant's recitation of the plethora of possible untoward results of disallowing its policy is speculative at best. We note that the other requirements in the defendant's policy are well designed to screen out those persons who are not bona fide in their relationship to and intent to aid and support the mother and her baby.

Reversed.

Information>Auto-Cite«170 Mich. App. 801, *; 429 N.W.2d 234, **;
1988 Mich. App. LEXIS 449, ***
WARNER SNYDER, Plaintiff-Appellant, v. ROSALEE SNYDER, Defendant-Appellee

Docket No. 104434

Court of Appeals of Michigan

170 Mich. App. 801; 429 N.W.2d 234; 1988 Mich. App. LEXIS 449

June 21, 1988, Submitted August 17, 1988, Decided

DISPOSITION: Reversed.

CORE TERMS: visitation, married, woman, companion, cancelling, morally, marriage, enjoining, automatically, morality, abused, lived, moot, medical care, disapproval, affection, overnight, lifestyle, fitness, totally, love

COUNSEL: Baker, Durst, Marr, Nelson, Benz & Baldwin (by Dane C. Nelson), for plaintiff. Adrian

Timothy P. Pickard, for defendant. Adrian

Lawrence C. Force, for Troy Snyder, a minor child. Adrian

JUDGES: Wahls, P.J., and Hood and N. J. Kaufman, * JJ.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

OPINIONBY: PER CURIAM

OPINION: á[*802]á á[**235]á Plaintiff appeals as of right from an order by the Lenawee Circuit Court cancelling his visitation rights until further order of the court and enjoining him from having his children in the presence of any woman with whom he was having a relationship, but to whom he was not married.

When the parties were divorced on October 25, á[*803]á 1984, the judgment of divorce awarded physical custody of the four minor children of the marriage, Holly, Troy, Jill, and Megan, to defendant. Plaintiff was awarded visitation rights, including the right to visit with the children on the first and third weekend of each month and on alternating holidays.

In the summer of 1985, plaintiff moved into the home of a woman to whom he was not married, and defendant raised concerns about the suitability of plaintiff's living arrangements á[***2]á for the children. A Friend of the Court home inspection was made, and the investigator found plaintiff's living arrangements to be suitable for the children for visitation purposes. After

approximately a year, plaintiff complained that defendant was denying his visitation rights, and defendant again countered with complaints about her ex-husband's living arrangements.

Eventually, defendant filed a petition to limit visitation and, after a hearing, a Friend of the Court referee recommended that the petition be denied. Defendant filed objections to the recommendation, and the trial court scheduled a hearing for January 19, 1987.

In the interim, defendant wrote a letter to the trial court asking that overnight visitation be suspended until after the hearing. Upon receiving the letter on December 18, 1986, the trial court summoned á[**236]á counsel for both parties to court and read the letter into the record. The trial judge indicated that he was shocked upon reading the letter and that he strongly believed that children should not be exposed to a "meretricious relationship." When counsel for plaintiff noted that there was no evidence of any harm to the children, the trial court á[***3]á stated that no proof of harm was needed and that harm could automatically be á[*804]á assumed by exposure of the children to the relationship. The trial court ordered that plaintiff was not to have the children in the presence of the woman with whom he was living.

The January, 1987, hearing was adjourned several times due to continuing trials and was eventually held beginning on June 4, 1987, and concluding on September 25, 1987. At the hearing, plaintiff testified that he believed that it was morally wrong for two unmarried persons to live together, but that he did so out of financial necessity. Plaintiff indicated that if he could manage financially he would get married. Defendant testified that she felt that the situation was morally improper, that it caused stress for the children, and that it caused them to have less respect for her moral teachings.

At the conclusion of the hearing, the trial court, in lengthy remarks, concluded, inter alia, that plaintiff would not provide a stable environment for the children even if he got married and that plaintiff was morally bankrupt. The trial court subsequently entered an order cancelling plaintiff's visitation rights completely á[***4]á until further order of the court and enjoining plaintiff from having the children in the presence of any woman with whom he was living, but to whom he was not married. This appeal followed.

We first note that defendant asserts that she offered to stipulate that the injunction could be lifted after plaintiff married his companion on September 28, 1987. Plaintiff states that this appeal is therefore moot. n1 Swinehart v Secretary of State, 27 Mich App 318, 320; 183 NW2d 397 (1970), lv den 384 Mich 801 (1971). We conclude that the á[*805]á issue on appeal is not moot. In neither the opinion rendered from the bench nor in its subsequent written order did the trial court provide that plaintiff's visitation rights would automatically be restored upon his marriage. In fact, the court specifically stated that restoration of his visitation rights would require more from plaintiff than his merely getting married. See also Whitman v Mercy-Memorial Hospital, 128 Mich App 155, 158; 339 NW2d 730 (1983).
á
----------Footnotes----------

n1 Subsequent to oral argument, defendant's counsel submitted to this panel a copy of a

stipulation and order, dated March 11, 1988, reinstating visitation rights on the part of plaintiff. We are constrained to decide this case on the basis of the record presented on appeal.
á
- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

á[***5]á Visitation disputes are governed by the Child Custody Act, MCL 722.21 et seq.; MSA 25.312(1) et seq. The controlling factor in visitation disputes is the best interests of the child. Farrell v Farrell, 133 Mich 502, 512-513; 351 NW2d 219 (1984). MCL 722.23; MSA 25.312(3) states:

"Best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the educating and raising of the child in its religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, á[***6]á of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

á[**237]á (g) The mental and physical health of the parties involved.

á[*806]á (h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

(k) Any other factor considered by the court to be relevant to a particular child custody dispute.

When deciding a visitation matter, the court must consider each of these factors and state a finding on each in order to determine the best interests of the child. Failure to make specific

findings is error. Williamson v Williamson, 122 Mich App 667, 672; 333 NW2d 6 (1982). This Court reviews a visitation order de novo, but will affirm that order unless the trial court abused its discretion or committed a clear legal error on a major issue. MCL 722.28; MSA 25.312(8); Van Koevering v Van Koevering, 144 Mich App 404, 407; á[***7]á 375 NW2d 759 (1985), lv den 422 Mich 971 (1985).

Our review of the record and the trial court's remarks throughout these proceedings convinces us that the trial court abused its discretion in cancelling visitation entirely and in enjoining plaintiff from having his children in the very presence of his companion, now his wife. The trial court clearly and erroneously concluded that the sole fact that plaintiff lived with a woman to whom he was not married was sufficient to determine that he was a morally unfit parent and thus should have his visitation rights cancelled. A parent's lifestyle cannot be the sole factor by which his or her morality is judged. Van Koevering, supra, pp 408-409; Williamson, supra, p 673.

á[*807]á While the trial court did make findings on the factors contained in MCL 722.23; MSA 25.312(3), the record reveals that the trial court focused solely on plaintiff's moral fitness and the fact that he was not married and blamed this situation for the problems which the family had experienced. Morality is only one of the factors which must be considered á[***8]á in determining visitation rights. The trial court's ruling that plaintiff could not exercise visitation in the presence of his companion under any circumstances, even at dinner or a movie, was apparently based on nothing more than the court's disapproval of relationships outside of marriage and totally disregarded plaintiff's visitation rights. Nothing in the record suggests that even the mother objected to plaintiff's companion's being in the presence of the children under circumstances other than overnight visits.

In summary, the trial court's action in totally cancelling plaintiff's visitation rights based solely on the court's disapproval of plaintiff's lifestyle constituted an abuse of the trial court's discretion.

Reversed.