



Nondiscrimination in Places of Public Accommodation: State and Local Laws

Professor Brenda Bauges, Concordia University School of Law



Overview

- Idaho's Law
- Overview and Impact of Local Coverage
- Similarities and Differences Among the Local Ordinances
- Interplay Between State and Local Coverage
- Implications of Current Framework



Idaho's Nondiscrimination in Places of Public Accommodation Laws

- Civil – Idaho Code § 67-5909 (Idaho Human Rights Act)
- Criminal – Idaho Code § 18-7303



Idaho Human Rights Act: Protected Groups

- Idaho Code § 67-5909
- “It shall be a prohibited act to discriminate against a person because of, or on the basis of”:
 - race, color, **religion**, **sex**, or national origin
 - disability, including individuals without disabilities who are associated with a person with a disability (applies to only one subsection of public accommodation law)




Idaho Human Rights Act: Scope of Protections

- Idaho Code § 67-5909(5) – not including disability

A “**person**” may not:

- “deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of accommodation” or
- publish “a statement, advertisement or sign” indicating that the “full and equal enjoyment” of the place of public accommodation will be refused or that the presence of a protected individual is “objectionable, unwelcome, unacceptable, or undesirable”



Idaho Human Rights Act: IHRC and EEOC Interpretation

- What does EEOC and Title VII have to do with public accommodations laws?
- EEOC interpretation of sex
- Implications for IHRA



Idaho's Criminal Public Accommodation Law

- Protected groups:
 - “creed” and sex
 - Creed encompasses religion (see *Foster v. Shore Club Lodge, Inc.*, 908 P.2d 1228, 1233 (1995))
- Scope of protection:
 - Cannot deny “the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement”
 - Misdemeanor offense

Local Nondiscrimination in Places of Public Accommodation Ordinances

- MAP statistics:
 - 29% of state population protected by local ordinances
 - Total LGBT population:
 - 36,603 individuals
 - 2.8% of the population





Similarities

- Protects against:
 - Discriminating against or denying “ any person because of sexual orientation and/or gender identity/expression the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.”
- Religious Exemption:
 - “chapter shall be construed and applied in a manner consistent with [the] constitutional right of freedom of speech and exercise of religion”



Variations – Additional Religious Exemptions

- Chapter does not apply to “religious activities of any church, synagogue, mosque, temple or other place of worship or other place used primarily for religious activities and ordained priests or ministers of any denomination engaged in such activities” (Bellevue, Driggs, Hailey, Lewiston)
- Chapter does not apply to “religious corporations, associations, educational institutions, or societies.” (Boise, CDA, Ketchum, Meridian, Victor)
- Chapter does not prevent “such religious organizations from restricting members, services or use of facilities. This chapter shall be interpreted and enforced in accordance with the Idaho free exercise of religion act”



Variations – Other

- Meridian - civil infraction (all other cities, violation is a misdemeanor)
- False reporting penalty - misdemeanor
- Specific reduction to infraction and fine language
- Establishment of Human Relations Review Board
- Mediation prior to prosecution/civil filing option
 - Some have as option, some require, some do not include
 - Responsibility for/burden of fees differs (city, split between parties, split between city and parties)
- Specifically does not require non-segregated bathrooms (etc...) – Pocatello
- Aiding, abetting, inciting, compelling, or coercing a violation or obstructing compliance - Sandpoint



State Versus Local Ordinances: Distinctions and Implications

- Civil vs. criminal
- Remedies
- Enforcement



Implications of Current Framework

- Statewide:
 - Religion – protected
 - Sexual orientation and gender identity – not explicitly protected
- Local:
 - Patchwork of protections for sexual orientation and gender identity at city level
 - Where sexual orientation and gender identity protected, different remedies and enforcement