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Comparison of Original Equality Act (SB 788) and Proposed Model Act Incorporating Feminist Amendments

1) **Bill Summary**

Original Equality Act: Defines sex, sexual orientation, gender identity, pregnancy, childbirth, or related medical condition, and sex based stereotypes all as forms of sex discrimination. States that federal agencies and courts have correctly interpreted prohibitions on sex discrimination to include sexual orientation, gender identity and sex stereotypes. Defines 'sex' and 'gender identity' as synonymous terms and eliminates female only spaces by allowing access based on gender identity.

Feminist Amendments: Establishes two new categories or protected classes based on sexual orientation and sex stereotypes, separate from sex, incorporated into various civil rights laws. Sex discrimination includes "pregnancy, childbirth, lactation or a related condition." Sex stereotyping can be evidence of sex discrimination. Establishes separate categories in order to provide greater clarity, consistency and stronger more comprehensive civil rights protections. Prohibition against sex stereotyping discrimination protects all individuals who do not conform to or reject gender role expectations for their sex, including lesbian, gay, bisexual and transgender persons and others. Defines 'sex' as biology not subject to change. Eliminates any reference to 'gender identity' as a category. Preserves female-only spaces and programs.

2) **Findings regarding discrimination against women**

Original Equality Act: Includes in the findings only a very brief discussion of discrimination against women by stores, restaurants and businesses, and states that both LGBTQ people and women face discrimination in employment, services and places of public accommodation.

Feminist Amendments: Includes in the findings extensive discussion of the systemic inequalities of power and resources between men and women, the denial of privacy and bodily sovereignty including over women's reproductive capacity, the denial of equal access to employment, education and public accommodations, the problem of male-patterned violence, the need to recognize the different biology of males and females such as in health care, and to provide for female only spaces, programs, and services to combat discrimination and to provide privacy and refuge from male-pattern violence.

3) **Discrimination against Lesbians, Gays, Bisexuals and transgender individuals**

Original Equality Act: Includes in the findings the existence of widespread discrimination by both government and private sector including entities receiving federal funding based on sexual orientation and gender identity against lesbian, gay, bisexual transgender and queer people “LGBTQ” in areas of public accommodations, employment, housing, credit, foster care and jury service. Mentions “conversion therapy,” undefined, as discriminatory and harmful to LGBTQ people.

Feminist Amendments: Incorporates similar findings regarding widespread discrimination against lesbians, gay men, bisexuals, and transgender individuals on the basis of sexual orientation and/ or their non-conformity to sex stereotypes and recognizes the need for explicit protections. References to “queer” or “gender identity” are omitted. “Conversion Therapy” is described as discriminatory and defined as coercing lesbians, gay men, bisexuals and transgender people to abandon same-sex relationship and engage in heterosexual relationships and/or to pressure them to conform to sex stereotypes.

4) **Purpose of Act**

Original Equality Act: “It is the purpose of this Act to expand as well as clarify, confirm and create greater consistency in the protections and remedies against discrimination on the basis of all covered characteristics and to provide guidance and notice to individuals, organizations, corporations and agencies regarding their obligations under the law.”

Feminist Amendments: “It is the purpose of this Act to establish two new protected classes under federal Civil Rights laws, sexual orientation and sex stereotyping, to strengthen sex-based rights for women and girls, to clarify, confirm and create greater consistency in the protections and remedies and against discrimination on the basis of all covered characteristics, to provide guidance and notice to individuals, organizations, corporations and agencies regarding their obligations under the law, and to resolve conflicts of rights among members of protected classes.”

5) **Definitions of “Gender Identity,” “Sex” and “Sex discrimination”**

Original Equality Act: Defines “gender Identity” as “gender-related identity, appearance, mannerisms or other gender related characteristics of an individual regardless of the individual’s designated sex at birth.” “Sex” is defined to include “a sex stereotype; pregnancy, childbirth or a related medical condition; sexual orientation or gender identity; and sex characteristics, including intersex traits.” “Sex” and “gender identity” are treated as synonymous. There is no separate definition for “sex discrimination.”

Feminist Amendments: References to “gender identity” are deleted. Defines “sex” as primary physical characteristics that distinguish females from males on the basis of their reproductive organs and structure, including the biological state of being female or male, based on the gametes that an individual’s body is configured to produce.” Declares that sex ordinarily determined at conception and that sex cannot be changed. Defines ‘sex discrimination’ separately from ‘sex’ as “discrimination based on the sex of that individual or individuals” and includes “discrimination based on pregnancy, childbirth, lactation or a related condition.” Sex stereotyping may be considered as evidence to prove sex discrimination. Females/women/girls and males/men/boys are also defined on the basis of their

biological sex. Intersex is also defined and included as “sex”, and that such individuals should ordinarily be classified as male and female, with some adjustments made when warranted as long as the sex-based rights of women and girls are preserved.

6) **Definition of “Sexual Orientation”**

Original Equality Act: Defines “sexual orientation” as “homosexuality, heterosexuality or bisexuality.”

Feminist Amendments: Defines “sexual orientation” as “lesbianism, male homosexuality, heterosexual or bisexuality based on whether a person is attracted to or in intimate relationships with persons of the same and/or other sex.”

7) **Definition of “sex stereotype”**

Original Equality Act: Does not define “sex stereotype.”

Feminist Amendments: Contains lengthy definition of what “sex stereotyping” is and is not. It is “notions of proper behaviors appearance, mannerism, dress, grooming, socially imposed on males and females respectively. “ It includes the expectation of heterosexuality for both sexes, and expectations that certain interests and personalities stereotypically associated with their sex will be manifested. Sex stereotyping discrimination does not include recognizing or referring accurately or in good faith to the sex of an individual, regardless of that person’s deeply held sense of identity that conflicts with or denies their biology. Neither does it include seeking to ascertain an individual’s sex for legitimate reasons consistent with the Act.

8) **Women-only spaces and programs**

Original Equality Act: Provides that “an individual shall not be denied access to a shared facility, including a restroom a locker room, and a dressing room, that is in accordance with the individual’s gender identity.”

Feminist Amendments: The above provision is deleted. Instead, rules of construction are inserted that the bill should not be construed to prohibit: (a) classification of individuals as female or male “based on primary characteristics related to reproductive structure and function as observed and recorded at birth...”(b) female-only facilities, programs or services, including transportation services, multi-stall toilets, locker rooms, communal showers, battered women’s shelters, etc. where women are in states of undress and/or where their privacy may be compromised or safety at risk; (c) female-only programs, services or activities such a sports programs, women’s health clinics, education or jobs programs, political or cultural programs or clubs to advance the status of women and girls; (d) programs, clubs or events exclusively for lesbians, for gay men, for bisexual men, for bisexual women and for transgender persons; (e) collection and publication of statistics based on biological sex.