

By: Villarreal

H.B. No. 538

A BILL TO BE ENTITLED

AN ACT

relating to the prohibition of employment discrimination on the basis of sexual orientation or gender identity or expression.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 21.002, Labor Code, is amended by adding Subdivisions (9-a) and (13-a) to read as follows:

(9-a) "Gender identity or expression" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, whether or not that identity, appearance, expression, or behavior is different from that commonly associated with the person's actual or perceived sex.

(13-a) "Sexual orientation" means the actual or perceived status of an individual with respect to the individual's sexuality.

SECTION 2. Section 21.051, Labor Code, is amended to read as follows:

Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, ~~or~~ age, sexual orientation, or gender identity or expression the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

1 (2) limits, segregates, or classifies an employee or
2 applicant for employment in a manner that would deprive or tend to
3 deprive an individual of any employment opportunity or adversely
4 affect in any other manner the status of an employee.

5 SECTION 3. Section 21.052, Labor Code, is amended to read as
6 follows:

7 Sec. 21.052. DISCRIMINATION BY EMPLOYMENT AGENCY. An
8 employment agency commits an unlawful employment practice if the
9 employment agency:

10 (1) fails or refuses to refer for employment or
11 discriminates in any other manner against an individual because of
12 race, color, disability, religion, sex, national origin, ~~[ex]~~ age, sexual orientation, or gender identity or expression; or

14 (2) classifies or refers an individual for employment
15 on the basis of race, color, disability, religion, sex, national
16 origin, ~~[ex]~~ age, sexual orientation, or gender identity or
17 expression.

18 SECTION 4. Section 21.053, Labor Code, is amended to read as
19 follows:

20 Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor
21 organization commits an unlawful employment practice if because of
22 race, color, disability, religion, sex, national origin, ~~[ex]~~ age, sexual orientation, or gender identity or expression the labor
23 organization:

25 (1) excludes or expels from membership or
26 discriminates in any other manner against an individual; or

27 (2) limits, segregates, or classifies a member or an

1 applicant for membership or classifies or fails or refuses to refer
2 for employment an individual in a manner that would:

3 (A) deprive or tend to deprive an individual of
4 any employment opportunity;

5 (B) limit an employment opportunity or adversely
6 affect in any other manner the status of an employee or of an
7 applicant for employment; or

8 (C) cause or attempt to cause an employer to
9 violate this subchapter.

10 SECTION 5. Section 21.054(a), Labor Code, is amended to
11 read as follows:

12 (a) Unless a training or retraining opportunity or program
13 is provided under an affirmative action plan approved under a
14 federal law, rule, or order, an employer, labor organization, or
15 joint labor-management committee controlling an apprenticeship,
16 on-the-job training, or other training or retraining program
17 commits an unlawful employment practice if the employer, labor
18 organization, or committee discriminates against an individual
19 because of race, color, disability, religion, sex, national origin,
20 ~~or~~ age, sexual orientation, or gender identity or expression in
21 admission to or participation in the program.

22 SECTION 6. Section 21.059(a), Labor Code, is amended to
23 read as follows:

24 (a) An employer, labor organization, employment agency, or
25 joint labor-management committee controlling an apprenticeship,
26 on-the-job training, or other training or retraining program
27 commits an unlawful employment practice if the employer, labor

1 organization, employment agency, or committee prints or publishes
2 or causes to be printed or published a notice or advertisement
3 relating to employment that:

4 (1) indicates a preference, limitation,
5 specification, or discrimination based on race, color, disability,
6 religion, sex, national origin, [~~or~~] age, sexual orientation, or
7 gender identity or expression; and

8 (2) concerns an employee's status, employment, or
9 admission to or membership or participation in a labor union or
10 training or retraining program.

11 SECTION 7. Section 21.102(c), Labor Code, is amended to
12 read as follows:

13 (c) This section does not apply to standards of compensation
14 or terms, conditions, or privileges of employment that are
15 discriminatory on the basis of race, color, disability, religion,
16 sex, national origin, [~~or~~] age, sexual orientation, or gender
17 identity or expression.

18 SECTION 8. Section 21.112, Labor Code, is amended to read as
19 follows:

20 Sec. 21.112. EMPLOYEES AT DIFFERENT LOCATIONS. An employer
21 does not commit an unlawful employment practice by applying to
22 employees who work in different locations different standards of
23 compensation or different terms, conditions, or privileges of
24 employment that are not discriminatory on the basis of race, color,
25 disability, religion, sex, national origin, [~~or~~] age, sexual
26 orientation, or gender identity or expression.

27 SECTION 9. Section 21.113, Labor Code, is amended to read as

1 follows:

2 Sec. 21.113. IMBALANCE PLAN NOT REQUIRED. This chapter
3 does not require a person subject to this chapter to grant
4 preferential treatment to an individual or a group on the basis of
5 race, color, disability, religion, sex, national origin, ~~[or]~~ age, sexual orientation, or gender identity or expression
6 sexual orientation, or gender identity or expression because of an
7 imbalance between:

8 (1) the total number or percentage of persons of that
9 individual's or group's race, color, disability, religion, sex,
10 national origin, ~~[or]~~ age, sexual orientation, or gender identity
11 or expression:

12 (A) employed by an employer;

13 (B) referred or classified for employment by an
14 employment agency or labor organization;

15 (C) admitted to membership or classified by a
16 labor organization; or

17 (D) admitted to or employed in an apprenticeship,
18 on-the-job training, or other training or retraining program; and

19 (2) the total number or percentage of persons of that
20 race, color, disability, religion, sex, national origin, ~~[or]~~ age, sexual orientation, or gender identity or expression
21 sexual orientation, or gender identity or expression in:

22 (A) a community, this state, a region, or other
23 area; or

24 (B) the available work force in a community, this
25 state, a region, or other area.

26 SECTION 10. Section 21.120(b), Labor Code, is amended to
27 read as follows:

1 (b) Subsection (a) does not apply to a policy adopted or
2 applied with the intent to discriminate because of race, color,
3 sex, national origin, religion, age, [~~or~~] disability, sexual
4 orientation, or gender identity or expression.

5 SECTION 11. Section 21.122(a), Labor Code, is amended to
6 read as follows:

7 (a) An unlawful employment practice based on disparate
8 impact is established under this chapter only if:

9 (1) a complainant demonstrates that a respondent uses
10 a particular employment practice that causes a disparate impact on
11 the basis of race, color, sex, national origin, religion, [~~or~~]
12 disability, sexual orientation, or gender identity or expression
13 and the respondent fails to demonstrate that the challenged
14 practice is job-related for the position in question and consistent
15 with business necessity; or

16 (2) the complainant makes the demonstration in
17 accordance with federal law as that law existed June 4, 1989, with
18 respect to the concept of alternative employment practices, and the
19 respondent refuses to adopt such an alternative employment
20 practice.

21 SECTION 12. Section 21.124, Labor Code, is amended to read
22 as follows:

23 Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST
24 SCORES. It is an unlawful employment practice for a respondent, in
25 connection with the selection or referral of applicants for
26 employment or promotion, to adjust the scores of, use different
27 cutoff scores for, or otherwise alter the results of

1 employment-related tests on the basis of race, color, sex, national
2 origin, religion, age, [~~or~~] disability, sexual orientation, or
3 gender identity or expression.

4 SECTION 13. The heading to Section 21.125, Labor Code, is
5 amended to read as follows:

6 Sec. 21.125. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE
7 CONSIDERATION OF RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE,
8 [~~OR~~] DISABILITY, SEXUAL ORIENTATION, OR GENDER IDENTITY OR
9 EXPRESSION IN EMPLOYMENT PRACTICES.

10 SECTION 14. Section 21.125(a), Labor Code, is amended to
11 read as follows:

12 (a) Except as otherwise provided by this chapter, an
13 unlawful employment practice is established when the complainant
14 demonstrates that race, color, sex, national origin, religion, age,
15 [~~or~~] disability, sexual orientation, or gender identity or
16 expression was a motivating factor for an employment practice, even
17 if other factors also motivated the practice, unless race, color,
18 sex, national origin, religion, age, [~~or~~] disability, sexual
19 orientation, or gender identity or expression is combined with
20 objective job-related factors to attain diversity in the employer's
21 work force.

22 SECTION 15. Section 21.126, Labor Code, is amended to read
23 as follows:

24 Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE
25 STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful
26 employment practice for a person elected to public office in this
27 state or a political subdivision of this state to discriminate

1 because of race, color, sex, national origin, religion, age, [~~or~~]
2 disability, sexual orientation, or gender identity or expression
3 against an individual who is an employee or applicant for
4 employment to:

- 5 (1) serve on the elected official's personal staff;
6 (2) serve the elected official on a policy-making
7 level; or
8 (3) serve the elected official as an immediate advisor
9 with respect to the exercise of the constitutional or legal powers
10 of the office.

11 SECTION 16. Section 21.152(a), Labor Code, is amended to
12 read as follows:

13 (a) A political subdivision or two or more political
14 subdivisions acting jointly may create a local commission to:

- 15 (1) promote the purposes of this chapter; and
16 (2) secure for all individuals in the jurisdiction of
17 each political subdivision freedom from discrimination because of
18 race, color, disability, religion, sex, national origin, [~~or~~] age,
19 sexual orientation, or gender identity or expression.

20 SECTION 17. Section 21.155(a), Labor Code, is amended to
21 read as follows:

22 (a) The commission [~~Commission on Human Rights~~] shall refer
23 a complaint concerning discrimination in employment because of
24 race, color, disability, religion, sex, national origin, [~~or~~] age,
25 sexual orientation, or gender identity or expression that is filed
26 with that commission to a local commission with the necessary
27 investigatory and conciliatory powers if:

1 (1) the complaint has been referred to the commission
2 ~~[Commission on Human Rights]~~ by the federal government; or

3 (2) jurisdiction over the subject matter of the
4 complaint has been deferred to the commission ~~[Commission on Human~~
5 ~~Rights]~~ by the federal government.

6 SECTION 18. This Act applies to conduct occurring on or
7 after the effective date of this Act. Conduct occurring before that
8 date is governed by the law in effect on the date the conduct
9 occurred, and the former law is continued in effect for that
10 purpose.

11 SECTION 19. This Act takes effect September 1, 2009.