

By: Coleman

H.B. No. 2069

A BILL TO BE ENTITLED

AN ACT

relating to the prevention of discrimination based on sexual orientation or gender identity.

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

SECTION 1. Articles 42.014(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a) In the trial of an offense under Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if at the guilt or innocence phase of the trial, the judge or the jury, whichever is the trier of fact, determines beyond a reasonable doubt that the defendant intentionally selected the person against whom the offense was committed, or intentionally selected the person's property that was damaged or affected as a result of the offense, because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, ~~or~~ sexual preference, or gender identity or expression or by status as a peace officer or judge.

(c) In this article:

(1) "Gender identity or expression" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly

1 associated with the person's actual or perceived sex.

2 (2) "Sexual [~~,"sexual~~] preference" has the following
3 meaning only: a preference for heterosexuality, homosexuality, or
4 bisexuality.

5 SECTION 2. Title 4, Civil Practice and Remedies Code, is
6 amended by adding Chapter 100E to read as follows:

7 CHAPTER 100E. LIABILITY ARISING FROM DISCRIMINATION

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 100E.001. DEFINITIONS. In this chapter:

10 (1) "Aggrieved person" includes any person who:

11 (A) claims to have been injured by a
12 discriminatory practice; or

13 (B) believes that he or she will be injured by a
14 discriminatory practice that is about to occur.

15 (2) "Discriminatory practice" means an act prohibited
16 by this chapter.

17 (3) "Dwelling" means:

18 (A) any building, structure, or part of a
19 building or structure that is occupied as, or designed or intended
20 for occupancy as, a residence by one or more families; or

21 (B) any vacant land that is offered for sale or
22 lease for the construction or location of a building, structure, or
23 part of a building or structure described by Paragraph (A).

24 (4) "Gender identity or expression" means having or
25 being perceived as having gender-related identity, appearance,
26 expression, or behavior, whether or not that identity, appearance,
27 expression, or behavior is different from that commonly associated

1 with the person's actual or perceived sex.

2 (5) "Public accommodation" means a business or other
3 entity that offers to the general public food, shelter, recreation,
4 or amusement, or any other goods, service, privilege, facility, or
5 accommodation.

6 (6) "Religious organization" means:

7 (A) a religious corporation, association, or
8 society; or

9 (B) a school, institution of higher education, or
10 other educational institution, not otherwise a religious
11 organization, that:

12 (i) is wholly or substantially controlled,
13 managed, owned, or supported by a religious organization; or

14 (ii) has a curriculum directed toward the
15 propagation of a particular religion.

16 (7) "Sexual orientation" means:

17 (A) having a preference for heterosexuality,
18 homosexuality, or bisexuality;

19 (B) having a history of such a preference; or

20 (C) being identified or perceived as having such
21 a preference.

22 [Sections 100E.002-100E.050 reserved for expansion]

23 SUBCHAPTER B. DISCRIMINATION IN PUBLIC ACCOMMODATIONS PROHIBITED

24 Sec. 100E.051. PUBLIC ACCOMMODATIONS. A person commits a
25 discriminatory practice and a violation of this chapter if the
26 person, because of the sexual orientation or gender identity or
27 expression of an individual:

1 (1) denies that individual full and equal
2 accommodations in any place of public accommodation in this state,
3 subject only to the conditions and limitations established by law
4 and applicable to all persons; or

5 (2) otherwise discriminates against or segregates or
6 separates the individual based on sexual orientation or gender
7 identity or expression.

8 [Sections 100E.052-100E.100 reserved for expansion]

9 SUBCHAPTER C. HOUSING DISCRIMINATION PROHIBITED

10 Sec. 100E.101. REFUSAL TO SELL OR RENT. A person commits a
11 discriminatory practice and a violation of this chapter if the
12 person, because of the sexual orientation or gender identity or
13 expression of an individual:

14 (1) refuses to sell or rent a dwelling to the
15 individual after the making of a bona fide offer by the individual;

16 (2) refuses to negotiate for the sale or rental of a
17 dwelling to the individual;

18 (3) refuses to make available or otherwise denies a
19 dwelling to the individual; or

20 (4) discriminates against the individual in the terms,
21 conditions, or privileges of the sale or rental of a dwelling, or
22 the provision of services or facilities in connection with such a
23 sale or rental.

24 Sec. 100E.102. REAL ESTATE-RELATED TRANSACTIONS. A person
25 who engages in real estate-related transactions commits a
26 discriminatory practice and a violation of this chapter if, because
27 of the sexual orientation or gender identity or expression of an

1 individual, the person discriminates against the individual in
2 making available such a transaction.

3 Sec. 100E.103. REAL ESTATE SERVICES AND ORGANIZATION. A
4 person who engages in real estate-related transactions commits a
5 discriminatory practice and a violation of this chapter if, because
6 of the sexual orientation or gender identity or expression of an
7 individual, the person:

8 (1) denies the individual access to or membership or
9 participation in any multiple-listing service, real estate brokers
10 organization, or other service, organization, or facility relating
11 to the business of selling or renting dwellings; or

12 (2) discriminates against the individual in the terms
13 or conditions of the access, membership, or participation described
14 by Subdivision (1).

15 Sec. 100E.104. COERCION. A person commits a discriminatory
16 practice and a violation of this chapter if:

17 (1) because of the sexual orientation or gender
18 identity or expression of an individual, the person coerces,
19 intimidates, threatens, or interferes with the individual in the
20 exercise or enjoyment of a right granted or protected by this
21 subchapter; or

22 (2) the person coerces, intimidates, threatens, or
23 interferes with an individual because the individual has exercised
24 or enjoyed, or aided or encouraged any other person in the exercise
25 or enjoyment of, a right granted or protected by this subchapter.

26 Sec. 100E.105. PUBLICATIONS. A person commits a
27 discriminatory practice and a violation of this chapter if the

1 person makes, prints, or publishes, or causes to be made, printed,
2 or published, any notice, statement, or advertisement with respect
3 to the sale or rental of a dwelling that indicates any preference,
4 limitation, or discrimination based on sexual orientation or gender
5 identity or expression, or an intention to make such a preference,
6 limitation, or discrimination.

7 Sec. 100E.106. STEERING PROHIBITED. (a) A person commits a
8 discriminatory practice and a violation of this chapter if the
9 person, because of the sexual orientation or gender identity or
10 expression of an individual, represents to the individual that a
11 dwelling is not available for inspection, sale, or rental if the
12 dwelling is in fact available.

13 (b) A person violates this section if the person restricts
14 or attempts to restrict the choices offered to any buyer or renter,
15 including potential buyers or renters, because of the sexual
16 orientation or gender identity or expression of the buyer or
17 renter.

18 Sec. 100E.107. ENTRY INTO NEIGHBORHOOD. A person commits a
19 discriminatory practice and a violation of this chapter if the
20 person, for profit, induces or attempts to induce any person to sell
21 or rent a dwelling by representations regarding the entry or
22 prospective entry into the neighborhood in which the dwelling is
23 located of an individual of a particular sexual orientation or
24 gender identity or expression.

25 Sec. 100E.108. EXEMPTIONS. (a) This subchapter does not
26 apply to:

27 (1) the rental of a room or rooms in a dwelling if the

1 owner actually maintains and occupies part of the living quarters
2 of the dwelling as the owner's residence; or

3 (2) a unit in a dwelling containing living quarters
4 occupied or intended to be occupied by not more than four families
5 living independently of each other, if the owner actually maintains
6 and occupies one of the units as the owner's residence.

7 (b) This subchapter does not limit or affect the
8 applicability of any reasonable state statute or municipal
9 ordinance that restricts the maximum number of persons permitted to
10 occupy a dwelling.

11 (c) This subchapter does not prohibit a person engaged in
12 the business of furnishing appraisals of real property from
13 considering factors other than sexual orientation or gender
14 identity or expression in making the appraisal.

15 [Sections 100E.109-100E.150 reserved for expansion]

16 SUBCHAPTER D. EXEMPTIONS

17 Sec. 100E.151. RELIGIOUS ORGANIZATION. (a) Except as
18 provided by Subsection (b), this chapter does not apply to a
19 religious organization.

20 (b) This chapter applies to activities conducted by a
21 religious organization for profit to the extent that those
22 activities are subject to federal taxation under Section 511(a),
23 Internal Revenue Code of 1986, as that section existed on September
24 1, 2009.

25 [Sections 100E.152-100E.200 reserved for expansion]

26 SUBCHAPTER E. CAUSE OF ACTION

27 Sec. 100E.201. CIVIL ACTION. An aggrieved person may file a

1 civil action in district court not later than the second
2 anniversary of the occurrence of the termination of an alleged
3 discriminatory practice under this chapter to obtain appropriate
4 relief with respect to the discriminatory practice.

5 Sec. 100E.202. RELIEF GRANTED. In an action under this
6 subchapter, if the court finds that a discriminatory practice has
7 occurred or is about to occur, the court may award to the plaintiff:

8 (1) actual and punitive damages;

9 (2) reasonable attorney's fees;

10 (3) court costs; and

11 (4) subject to Section 100E.203, any permanent or
12 temporary injunction, temporary restraining order, or other order,
13 including an order enjoining the defendant from engaging in the
14 practice or ordering other appropriate action.

15 Sec. 100E.203. EFFECT OF RELIEF GRANTED. Relief granted
16 under this subchapter does not affect a contract, sale,
17 encumbrance, or lease that:

18 (1) was consummated before the granting of the relief;

19 and

20 (2) involved a bona fide purchaser, encumbrancer, or
21 tenant who did not have actual notice of the filing of a civil
22 action under this subchapter.

23 SECTION 3. Subchapter D, Chapter 11, Education Code, is
24 amended by adding Section 11.172 to read as follows:

25 Sec. 11.172. DISCRIMINATION, HARASSMENT, AND RETALIATION
26 PROHIBITED. (a) In this section:

27 (1) "Gender identity or expression" means a person's

1 having, or being perceived as having, a gender-related identity,
2 appearance, expression, or behavior, whether or not that identity,
3 appearance, expression, or behavior is different from that commonly
4 associated with the person's assigned sex at birth.

5 (2) "Sexual orientation" means heterosexuality,
6 homosexuality, or bisexuality.

7 (b) A school district or employee of a school district may
8 not:

9 (1) discriminate against or harass an employee of the
10 district or a student enrolled in the district on account of:

11 (A) the actual or perceived ethnicity, color,
12 gender, gender identity or expression, sexual orientation,
13 disability, religion, or national origin of the employee, student,
14 or student's parent; or

15 (B) one or more persons with whom the employee,
16 student, or student's parent associates; or

17 (2) retaliate against an employee of the district or a
18 student enrolled in the district for reporting potential
19 discrimination or harassment prohibited by Subdivision (1).

20 (c) This section applies to conduct that occurs:

21 (1) on school property;

22 (2) while attending a school-sponsored or
23 school-related activity on or off of school property; or

24 (3) in connection with transportation of students in a
25 vehicle owned or operated by a school district or owned or operated
26 by another entity under contract with a school district.

27 (d) A school district shall provide periodic training to

1 district employees regarding prevention of discrimination and
2 harassment prohibited by this section and procedures for responding
3 to reported or observed incidents of prohibited discrimination or
4 harassment. The training may be provided in conjunction with any
5 training provided under Section 37.083.

6 (e) In accordance with rules adopted by the commissioner,
7 each school district shall report annually to the agency
8 information regarding each incident of alleged discrimination or
9 harassment that occurred in the district during the preceding year.
10 The agency shall include the information in the comprehensive
11 annual report required by Section 39.182.

12 SECTION 4. Section 2.001(a), Family Code, is amended to
13 read as follows:

14 (a) A man and a woman, a man and a man, or a woman and a woman
15 desiring to enter into a ceremonial marriage must obtain a marriage
16 license from the county clerk of any county of this state.

17 SECTION 5. Section 2.401(a), Family Code, is amended to
18 read as follows:

19 (a) In a judicial, administrative, or other proceeding, the
20 marriage of a man and woman, a man and a man, or a woman and a woman
21 may be proved by evidence that:

22 (1) a declaration of their marriage has been signed as
23 provided by this subchapter; or

24 (2) the man and woman, man and man, or woman and woman
25 agreed to be married and after the agreement they lived together in
26 this state as spouses [~~husband and wife~~] and there represented to
27 others that they were married.

1 SECTION 6. Section 2.402(b), Family Code, is amended to
2 read as follows:

3 (b) The declaration form must contain:

4 (1) a heading entitled "Declaration and Registration
5 of Informal Marriage, _____ County, Texas";

6 (2) spaces for each party's full name, including the
7 [~~woman's~~] maiden surname for a woman, address, date of birth, place
8 of birth, including city, county, and state, and social security
9 number, if any;

10 (3) a space for indicating the type of document
11 tendered by each party as proof of age and identity;

12 (4) printed boxes for each party to check "true" or
13 "false" in response to the following statement: "The other party is
14 not related to me as:

15 (A) an ancestor or descendant, by blood or
16 adoption;

17 (B) a brother or sister, of the whole or half
18 blood or by adoption;

19 (C) a parent's brother or sister, of the whole or
20 half blood or by adoption;

21 (D) a son or daughter of a brother or sister, of
22 the whole or half blood or by adoption;

23 (E) a current or former stepchild or stepparent;

24 or

25 (F) a son or daughter of a parent's brother or
26 sister, of the whole or half blood or by adoption.";

27 (5) a printed declaration and oath reading: "I

1 SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO
2 EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE
3 AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS
4 SPOUSES [~~HUSBAND AND WIFE~~] AND IN THIS STATE WE REPRESENTED TO
5 OTHERS THAT WE WERE MARRIED. SINCE THE DATE OF MARRIAGE TO THE
6 OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS
7 DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS
8 CORRECT.";

9 (6) spaces immediately below the printed declaration
10 and oath for the parties' signatures; and

11 (7) a certificate of the county clerk that the parties
12 made the declaration and oath and the place and date it was made.

13 SECTION 4. Section 3.401(5), Family Code, is amended to
14 read as follows:

15 (5) "Spouse" means a party to a marriage [~~husband, who~~
16 ~~is a man, or a wife, who is a woman. A member of a civil union or~~
17 ~~similar relationship entered into in another state between persons~~
18 ~~of the same sex is not a spouse~~].

19 SECTION 7. Section 6.202(b), Family Code, is amended to
20 read as follows:

21 (b) The later marriage that is void under this section
22 becomes valid when the prior marriage is dissolved if, after the
23 date of the dissolution, the parties have lived together as spouses
24 [~~husband and wife~~] and represented themselves to others as being
25 married.

26 SECTION 8. Section 6.704, Family Code, is amended to read as
27 follows:

1 Sec. 6.704. TESTIMONY OF SPOUSE [~~HUSBAND OR WIFE~~]. (a) In
2 a suit for dissolution of a marriage, each spouse is a [~~the husband~~
3 ~~and wife are~~] competent witness [~~witnesses~~] for and against the
4 [~~each~~] other spouse. A spouse may not be compelled to testify as to
5 a matter that will incriminate the spouse.

6 (b) If a spouse [~~the husband or wife~~] testifies, the court
7 or jury trying the case shall determine the credibility of the
8 witness and the weight to be given the witness's testimony.

9 SECTION 9. Subchapter B, Chapter 45, Family Code, is
10 amended by adding Section 45.108 to read as follows:

11 Sec. 45.108. CHANGE OF NAME AND VITAL STATISTICS
12 INFORMATION. (a) Subject to the eligibility requirements for a
13 name change under Section 45.103, a court shall order a change of
14 name under this subchapter for a petitioner whose petition is
15 accompanied by a sworn affidavit of a licensed physician stating
16 the petitioner identifies as a gender other than the gender
17 indicated on the petitioner's driver's license, birth certificate,
18 or other official document.

19 (b) A court that orders a change of name for a petitioner
20 under this section shall simultaneously order:

21 (1) the Department of Public Safety, as soon as
22 practicable, to change the petitioner's name and gender on the
23 petitioner's driver's license and other identification documents
24 under the department's control; and

25 (2) the vital statistics unit of the Department of
26 State Health Services, on receipt of a licensed physician's sworn
27 affidavit that the petitioner identifies as a gender other than the

1 gender indicated on the petitioner's birth certificate, to amend
2 the petitioner's birth certificate in the manner provided by
3 Section 192.011, Health and Safety Code, to reflect the
4 petitioner's true gender.

5 (c) This section may not be construed to require a surgical
6 procedure as a prerequisite for a court order under Subsection (a)
7 or (b).

8 SECTION 10. Section 163.002, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 163.002. INSTRUCTIONAL ELEMENTS. Course materials and
11 instruction relating to sexual education or sexually transmitted
12 diseases should include:

13 (1) an emphasis on sexual abstinence as the only
14 completely reliable method of avoiding unwanted teenage pregnancy
15 and sexually transmitted diseases;

16 (2) an emphasis on the importance of self-control,
17 responsibility, and ethical conduct in making decisions relating to
18 sexual behavior;

19 (3) statistics, based on the latest medical
20 information, that indicate the efficacy of the various forms of
21 contraception;

22 (4) information concerning the laws relating to the
23 financial responsibilities associated with pregnancy, childbirth,
24 and child rearing;

25 (5) information concerning the laws prohibiting
26 sexual abuse and the legal and counseling options available to
27 victims of sexual abuse;

1 (6) information on how to cope with and rebuff
2 unwanted physical and verbal sexual advances, as well as the
3 importance of avoiding the sexual exploitation of other persons;

4 (7) psychologically sound methods of resisting
5 unwanted peer pressure; and

6 (8) emphasis, provided in a factual manner and from a
7 public health perspective, that homosexuality is not a lifestyle
8 acceptable to the general public [~~and that homosexual conduct is a~~
9 ~~criminal offense under Section 21.06, Penal Code~~].

10 SECTION 11. Section 21.11(b), Penal Code, is amended to
11 read as follows:

12 (b) It is an affirmative defense to prosecution under this
13 section that the actor:

14 (1) was not more than three years older than the victim
15 [~~and of the opposite sex~~];

16 (2) did not use duress, force, or a threat against the
17 victim at the time of the offense; and

18 (3) at the time of the offense:

19 (A) was not required under Chapter 62, Code of
20 Criminal Procedure, to register for life as a sex offender; or

21 (B) was not a person who under Chapter 62 had a
22 reportable conviction or adjudication for an offense under this
23 section.

24 SECTION 12. The following laws are repealed:

25 (1) Section 2.001(b), Family Code;

26 (2) Section 6.204, Family Code;

27 (3) Sections 810.001(g), (h), and (i), Government

1 Code;

2 (4) Section 85.007(b)(2), Health and Safety Code; and

3 (5) Section 21.06, Penal Code, is repealed.

4 SECTION 13. The change in law made by this Act applies only
5 to an offense committed on or after the effective date of this Act.
6 An offense committed before the effective date of this Act is
7 governed by the law in effect on the date the offense was committed,
8 and the former law is continued in effect for that purpose. For
9 purposes of this section, an offense was committed before the
10 effective date of this Act if any element of the offense occurred
11 before that date.

12 SECTION 14. (a) Each school district shall submit to the
13 Texas Education Agency information as required under Section
14 11.172(e), Education Code, as added by this Act, beginning with the
15 2022-2023 school year based on incidents of discrimination or
16 harassment during the 2021-2022 school year.

17 (b) The Texas Education Agency shall include the
18 information required under Section 11.172(e), Education Code, as
19 added by this Act, in the comprehensive annual report required by
20 Section 39.182, Education Code, beginning with the report required
21 to be submitted not later than December 1, 2022.

22 SECTION 15. This Act applies beginning with the 2021-2022
23 school year.

24 SECTION 16. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2021.