

By: Morales Shaw

H.B. No. 1806

A BILL TO BE ENTITLED

AN ACT

relating to the prohibition of employment discrimination based on 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, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the individual'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, ~~or~~ age,
13 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, ~~or~~ 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, ~~or~~ age,
23 sexual orientation, or gender identity or expression the labor
24 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, Labor Code, is amended to read as
11 follows:

12 Sec. 21.054. ADMISSION OR PARTICIPATION IN TRAINING
13 PROGRAM. [~~(a)~~] Unless a training or retraining opportunity or
14 program is provided under an affirmative action plan approved under
15 a federal law, rule, or order, an employer, labor organization, or
16 joint labor-management committee controlling an apprenticeship,
17 on-the-job training, or other training or retraining program
18 commits an unlawful employment practice if the employer, labor
19 organization, or committee discriminates against an individual
20 because of race, color, disability, religion, sex, national origin,
21 [~~or~~] age, sexual orientation, or gender identity or expression in
22 admission to or participation in the program.

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

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

1 commits an unlawful employment practice if the employer, labor
2 organization, employment agency, or committee prints or publishes
3 or causes to be printed or published a notice or advertisement
4 relating to employment that:

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

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

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

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

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

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

1 SECTION 9. Section 21.113, Labor Code, is amended to read as
2 follows:

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

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

13 (A) employed by an employer;

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

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

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

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

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

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

27 SECTION 10. Section 21.120(b), Labor Code, is amended to

1 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 investigatory and conciliatory powers if:

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

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

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

12 SECTION 19. This Act takes effect September 1, 2023.