

By: Villarreal

H.B. No. 3463

A BILL TO BE ENTITLED

AN ACT

relating to discrimination by the state, a political subdivision of the state, or a private person.

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

SECTION 1. Whereas the Legislature takes note that hospital visitation rights, the appointment of guardians, entitlement to life insurance proceeds, and other property rights can be arranged adequately and properly between interested persons, by means of contractual agreements, the appointment of agents, and the designation of guardians, all without regard to the existence or non-existence of any legally recognized family relationships between such persons,

SECTION 2. Subchapter C, Chapter 6, Family Code, is amended by adding Section 6.204 to read as follows:

Sec. 6.204. SAME-GENDER MARRIAGE OR CIVIL UNION. (a) A marriage between persons of the same gender or a civil union is contrary to the public policy of this state and is void in this state, even when valid in another jurisdiction.

(b) The state, its agencies, and its political subdivisions may not recognize or give effect to:

(1) a public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between two persons of the same gender or a civil union.

(2) a right, benefit, or responsibility asserted as a

1 result of a marriage between persons of the same gender or a civil
2 union.

3 (c) In this section, "civil union" includes any legal status
4 other than marriage that:

5 (1) is intended to provide an alternative to marriage
6 or is applicable primarily to cohabitating persons; and

7 (2) grants to the parties of the relationship any
8 right, benefit, or responsibility granted by law to the spouses of a
9 marriage.

10 SECTION 3. This Act applies to same gender marriages and to
11 civil unions entered into before, on, and after the effective date
12 of this Act.

13 SECTION 4. Subtitle A, Title 2, Labor Code, is amended by
14 adding Chapter 23 to read as follows:

15 CHAPTER 23. EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION
16 OR GENDER IDENTITY.

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 23.001. SHORT TITLE. This chapter may be cited as the
19 Texas Employment Nondiscrimination Act.

20 Sec. 23.002. DEFINITIONS. In this chapter:

21 (1) "Commission" means the Commission on Human Rights.

22 (2) "Covered entity" includes an employer, an
23 employment agency, a labor organization, a joint labor-management
24 committee, or another person.

25 (3) "Employer" has the meaning assigned by Section
26 21.002(9).

27 (4) "Employment agency" has the meaning assigned by

1 Section 21.002(9).

2 (5) "Gender identity" means the actual or perceived
3 gender of an individual.

4 (6) "Labor organization" has the meaning assigned by
5 Section 21.002(10).

6 (7) "Nonprofit organization" means a private,
7 nonprofit corporation, association, or organization that is exempt
8 from federal taxation under Section 501(c)(3), Internal Revenue
9 Code of 1986.

10 (8) "Religious organization" means:

11 (A) a religious corporation, association, or
12 society; or

13 (B) a school, institution of higher education, or
14 other educational institution, not otherwise a religious
15 organization, that:

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

18 (ii) has a curriculum directed toward the
19 propagation of a particular religion.

20 (9) "Sexual orientation" means the actual or perceived
21 status of an individual with respect to the individual's sexuality.

22 Sec. 23.003. RULES. The commission may adopt rules as
23 necessary to implement this chapter.

24 Sec. 23.004. NOTICES. Each covered entity shall post, in
25 the form and manner prescribed by commission rule, notices to
26 inform employees, applicants for employment, and members of the
27 entity applicable provisions of this chapter.

1 Sec. 23.005. EFFECT ON OTHER LAW. This chapter does not
2 limit or affect the rights, remedies, or procedures available to an
3 individual who claims discrimination prohibited under federal law,
4 another state law, or an order or ordinance of a political
5 subdivision of this state.

6 Sec. 23.006. NO DISPARATE IMPACT. The fact that a
7 particular employment practice has a disparate impact, as that term
8 is used under Section 703(k), Civil Rights Act of 1964 (42 U.S.C.
9 Section 2000e-2(k)), on the basis of sexual orientation or gender
10 identity does not establish a prima facie violation of this
11 chapter.

12 [Sections 23.007-23.020 reserved for expansion]

13 SUBCHAPTER B. UNLAWFUL EMPLOYMENT PRACTICES

14 Sec. 23.021. DISCRIMINATION PROHIBITED. A covered entity
15 may not:

16 (1) subject an individual to different standards or
17 treatment on the basis of sexual orientation or gender identity;

18 (2) discriminate against an individual based on the
19 sexual orientation or gender identity of persons with whom the
20 individual is believed to associate or to have associated; or

21 (3) otherwise discriminate against an individual on
22 the basis of sexual orientation or gender identity.

23 Sec. 23.022. RETALIATION AND COERCION PROHIBITED. (a) A
24 covered entity may not discriminate against an individual because
25 the individual:

26 (1) opposes any act or practice prohibited by this
27 chapter;

1 (2) makes or files a charge; or

2 (3) assists, testifies, or participates in any manner
3 in an investigation, proceeding, or hearing conducted under this
4 chapter.

5 (b) A covered entity may not coerce, intimidate, threaten,
6 or interfere with an individual in the exercise or enjoyment of, or
7 because the individual has exercised, enjoyed, assisted, or
8 encouraged the exercise or enjoyment of, a right granted or
9 protected by this chapter.

10 [Sections 23.023-23.040 reserved for expansion]

11 SUBCHAPTER C. CONSTRUCTIONS; APPLICATION; EXCEPTIONS

12 Sec. 23.041. CONSTRUCTION. This chapter may not be
13 construed to prevent an employer from terminating an employee based
14 on the employee's criminal conviction.

15 Sec. 23.042. LIABILITY OF GOVERNMENTAL ENTITY. (a) The
16 state or a political subdivision of this state is liable for a
17 violation of this chapter.

18 (b) Sovereign immunity is waived and abolished to the extent
19 of liability created by this chapter.

20 Sec. 23.043. APPLICATION TO CERTAIN BENEFITS. This chapter
21 does not apply to the provision of employee benefits to an
22 individual for the benefit of the individual's partner.

23 Sec. 23.044. RELIGIOUS OR NONPROFIT ORGANIZATION. (a)
24 Except as provided by Subsection (b), this chapter does not apply to
25 a religious organization.

26 (b) This chapter applies to the activities conducted by a
27 religious organization for profit to the extent that those

1 activities are subject to federal taxation under Section 511(a),
2 Internal Revenue Code of 1986, as that section existed on September
3 1, 2001.

4 (c) This chapter does not apply to a nonprofit organization
5 whose mission is to instill its system of values in young people and
6 whose official position is that homosexual conduct is inconsistent
7 with that system of values.

8 Sec. 23.045. VETERAN'S PREFERENCE. This chapter does not
9 repeal or modify a state or local law that creates a special right
10 or preference in employment for a veteran of the armed forces of the
11 United States.

12 [Sec. 23.046-23.060 reserved for expansion]

13 SUBCHAPTER D. ENFORCEMENT

14 Sec. 23.061. COMMISSION AUTHORITY; ENFORCEMENT;
15 PROCEDURES. (a) The commission has the same authority to
16 administer and enforce this chapter as it exercises under Chapter
17 21.

18 (b) The procedures and remedies applicable to a claim for a
19 violation of this chapter are the procedures and remedies
20 applicable to a claim brought under Chapter 21.

21 Sec. 23.062. ATTORNEY'S FEES. A prevailing party to an
22 action brought under this chapter is entitled to attorney's fees in
23 the manner provided by Section 21.259.

24 SECTION 5. (a) Except as provided by Subsection (b), this
25 Act takes effect immediately if this Act receives a vote of
26 two-thirds of all the members elected to each house, as provided by
27 Section 29, Article III, Texas Constitution. If this Act does not

1 receive the vote necessary for immediate effect, this Act takes
2 effect September 1, 2003.

3 (b) Section 2 of this Act takes effect September 1, 2003.

4 (c) Section 2 of this Act applies to conduct of a covered
5 entity, as that term is defined by Chapter 23, Labor Code, as added
6 by Section 2 of this Act, occurring on or after that date. Conduct
7 occurring before that date is governed by the law in effect on the
8 date the claim was filed, and the former law is continued in effect
9 for that purpose.